

**Joint submission by AGE Platform Europe, HelpAge International, The Law in the Service of the Elderly,
National Association of Community Legal Centres Australia¹
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Neglect, violence and abuse**

Authors*

1. This joint submission is authored by Robin Allen and Dee Masters (Cloisters UK), Andrew Byrnes (Australian Human Rights Centre, University of New South Wales), Israel Doron (The Law in the Service of the Elderly/University of Haifa), Nena Georgantzi (AGE Platform Europe / National University of Ireland Galway), Bill Mitchell (National Association of Community Legal Centres, Australia) and Bridget Sleap (HelpAge International). Our views do not necessarily reflect the broad and consensual positions of the organisations we represent, which will be submitted separately. This response addresses the guiding questions from a global perspective. It is an executive summary of a more comprehensive statement which will be provided to the 8th working session and can be found [here](#).

Guiding Question 2.

Types of abuse

2. Older persons are subjected to different types of violence, abuse and neglect, including physical, psychological, sexual, financial, neglect, abandonment and harmful traditional or customary practices. It may be a single or repeated act, may be against one individual or systemic, structural or part of an institutional practice, for example a restrictive practice.

Self-neglect

3. The inclusion of self-neglect within the context of protection from violence and abuse is controversial. Whereas violence, abuse and neglect are caused actively or passively by a third party, self-neglect is the result of the older person's choice of action (or inaction). It has unique ecological and personal characteristics. Autonomy and independence is central to the well-being of those at risk of self-neglect. The phenomenon of self-neglect in older age needs further definition and study.

Settings

4. Violence, abuse and neglect may take place within both private and public settings, be it at home, in the community or in long-term residential facilities. Public spaces include a wide range of physical and virtual locations. Providing care and support in the home and community without proper needs assessment, training, adequate resources and support may increase the risk of violence, abuse and neglect.
5. The provision of care and support provides an example of the complexity of violence, abuse and neglect in older age and can involve multiple actors in isolation and or in concert. There can be a conglomerate effect – such as where a relative is abusing an older person and the staff or facility manager is aware but takes no action, thereby exhibiting neglectful behaviour, or where the staff or facility manager are complicit in exploitation because of their reliance on an abuser for fee payments or their relationship with the abusers as the older person's representative or attorney.

Perpetrators

6. The diversity of the potential perpetrators and particular contexts distinguishes violence, abuse and neglect in older age from other forms of violence, for example male violence against women. Perpetrators may include spouses and partners and other family members, community members (non-family) known or unknown to them, community leaders, local militia or law enforcement groups, service providers, legal representatives, guardians and attorneys. Whilst interdependence between the perpetrator and the older person is critical in some contexts, perpetrators are not limited to those who might be considered to fall within an expectation of trust.

Specific Groups

7. Ageism intersects with other forms of discrimination and violence, creating distinct challenges for, among others, older persons with disabilities, older women, older LGBTI and older migrants and minorities who are more exposed to social isolation and have fewer opportunities to access quality health care and social assistance -- key elements in prevention of violence, abuse and neglect. In addition systemic ageism intersecting with other prejudices may result in, inter alia, disrespecting religious belief when performing intimate tasks, not accommodating the needs of or even harassing older lesbian and gay couples and neglecting those with high support needs.

Guiding Question 3.

8. There is no explicit right to protection from all forms of violence, abuse and neglect under UN international human rights treaties that applies generally or specifically in the context of older age and older persons. A UN DESA report of 2013 *Neglect, Abuse and Violence against Older Women*, highlighted the fact that domestic violence legislation does not, in general, specifically include older women. Attention to violence against older men in law and practice is rare.

¹ AGE Platform Europe, HelpAge International and the National Association of Community Legal Centres Australia are NGOs that enjoy consultative ECOSOC status. The Law in the Service of the Elderly is an NGO accredited to the OEWGA.

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9. Violence, abuse and neglect remain invisible in the monitoring of international human rights treaties. For example, in a study of 51 ASEM countries conducted in 2016² only 22 countries made reference to violence and abuse against older persons in their most recent periodic reports. Only eight of these 22 countries reported on their efforts to more than one Treaty Body and none of these reported consistently across the four treaties.
10. There were only six specific references to violence, abuse and neglect in Treaty Bodies and Special Procedures recommendations to ASEM countries between 1999 and April 2016. Violence, abuse and neglect against older persons has been practically invisible in the recommendations to ASEM countries in the UPR system, with only four recommendations made up until April 2016.

Consequences for a normative framework

11. Definitions should ensure that:
 - Violence, abuse and neglect in older age is understood as any acts, or threats of such acts, of violence, abuse and neglect that result in, or are likely to result in, death or physical, sexual, psychological or economic harm or suffering to older persons. It should not be understood as limited in relations with an expectation or position of trust.
 - Violence, abuse and neglect of older persons is understood to include coercion or arbitrary deprivation of liberty, expulsion from the community, and any form of abandonment or neglect that is perpetrated or tolerated by the State or its agents, whether occurring in public or in private settings.
 - Violence, abuse and neglect is understood as including a single or repeated act or omission or failure to act, and that it may be against one individual or may be systemic, structural, customary or part of an institutional practice.
12. In terms of material scope the right should provide for:
 - All forms of violence, abuse and neglect against older persons.
 - Protection against violence, abuse and neglect in older age in private and public settings.
 - Protection against violence, abuse and neglect in older age perpetrated by both private and public actors.
13. States may be responsible for private acts of violence abuse and neglect of older persons if they fail to act with due diligence to:
 - Prevent acts of violence abuse and neglect against older persons
 - Protect and support the victims/survivors
 - Investigate and prosecute incidents of violence, abuse and neglect
 - Punish the perpetrators
 - Provide redress to the victim/survivors for the harm suffered.
14. The right should:
 - Include an obligation on States to take comprehensive steps to prevent violence, abuse and neglect of older persons in public and private settings including but not limited to:
 - Put in place effective legislation and policies to ensure all forms of violence, abuse and neglect are identified, investigated and redressed
 - Allocate sufficient resources to effective implementation
 - Provide training for all care providers, including family and other informal care providers
 - Put in place a system of appropriate needs assessment and monitoring in situations of care and support
 - Pay specific attention to the intersectional drivers of violence
 - Raise awareness of and sensitising society to the different forms of violence, abuse and neglect in older age and how to identify and prevent them
 - Provide for access to a comprehensive range of support services for survivors of violence.
 - Provide for an obligation on States to assist survivors with making a complaint and investigating and laying criminal charges.
 - Provide for an obligation on States to collect, disaggregate, analyse, utilise and make public, at regular intervals appropriate information and statistical data on all forms of violence, abuse and neglect in older age.
 - Observe self-determination for the survivor.
 - Provide for an obligation to build the capacity of the judiciary and law enforcement to protect people from violence, abuse and neglect in older age.
 - Criminal justice responses, criminal offences and sentencing practices should reflect the aggravated nature of offending conduct against older persons.
15. The right to freedom from violence, abuse and neglect in older age relate to other rights in older age, including:
 - Freedom from torture, or other cruel, inhuman or degrading treatment or punishment
 - Right to physical and psychological integrity
 - Autonomy and independence
 - Freedom from ageism and age discrimination

² Sleep, *Issue Analysis and Specific Recommendations on the Human Rights of Older Persons in ASEM Countries*, National Human Rights Commission of Korea, 2016