

## **Elder abuse and neglect in Germany**

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Excellencies, distinguished delegates and experts, dear colleagues,

I would like to thank the Bureau for inviting me and to have the chance to give you an overview on the German situation in regard of elder abuse. I will tackle the issues of elder abuse and neglect in Germany but I have to admit that I can only present you small pieces of the complex situation.

### **Situation in Germany:**

The German population amounts to 80,3 Mio people. It is estimated that in 2060 every third person will be over 65. In 50 years, every 7<sup>th</sup> person will be over 80. The elderly are the fastest growing part of the German population. Four out of five persons over 85 are in need of care and the number of persons in this age with dementia is increasing. The major part of older persons´ in need of care is women.

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<sup>1</sup> Claudia Mahler is a senior researcher at the German Institute for Human Rights, which is the independent national human rights institution in Germany. The Institute was established in March 2001 on the recommendation of the German Federal Parliament (Deutscher Bundestag). It is based on the "Paris Principles" for National Human Rights Institutions adopted by the United Nations in 1993 and holds A-Status. The Institute provides information on the human rights situation within and outside of Germany and it aims to promote and protect human rights. The German Institute for Human Rights is part of the International Coordinating Committee of National Human Rights Institutions and part of the European Group of National Human Rights Institutions. Both networks are following the discussions on the promotion of older persons´ rights very closely and promote the goal of furthering the human rights of older persons at the national and international level.

In Germany, as in many other European countries, the abuse of older persons, especially elder women, is not a new phenomenon. Maltreatment of older persons is a major societal problem which often goes undetected. The ageing population has given rise to fears that elder abuse might increase. Stigma and stereotypes may further abuse, and the taboo attached to abuse and neglect prevents reporting of the issues. The thematic discussions on how we treat our older population and discussions on elder abuse are vivid. But there is not enough data available on the prevalence and complexity of elder abuse in Germany. Some studies and surveys have been conducted in different regions, in different settings in the last decade, but no central data collection has been established. Many of the studies had a narrow focus on care institutions and restraints. Scientists conducted interviews with care givers, and persons in need of care. But especially persons with dementia in the need of care have not been reached with these concepts. It has been shown that older persons are vulnerable to abuse and suffer severe consequences of violence.

Elder abuse has become a growing concern over the last decades in Germany. This increased attention is not only linked to the transformation of the age pyramid, but also to the change of family structures, the reform of the care system, and the recurring press coverage reporting inhumane conditions in the care sector. However, there can also be found very good examples, how to treat older persons in family settings and in care homes.

#### **Definition of elder abuse:**

There have been long-standing discussions about the elements of elder abuse and what kinds of preventive measures need to be adopted. The main focus in these discussions is on physical abuse, especially restraints in nursing homes. Diverse definitions are used, because the definition used should be neither too narrow nor too broad, and has to serve as a basis for different settings.

Allow me to come back to one central question: What is elder abuse? To date, no internationally accepted definition exists. Whereas different stakeholders refer to domestic violence in cases of elder abuse or human rights violations, others refer to neglect and maltreatment through medical practice or insufficient nursing. Scientists mostly mention the definition used in the Toronto Declaration by the WHO and the International Network for the Prevention of Elder Abuse. The WHO (2008) describes elder abuse as "a single or repeated act, or lack of appropriate action, occurring within any relationship where there is an expectation of trust which causes harm or distress to an older person."

Even though there is no agreed definition of elder abuse yet, most experts agree on five dimensions of elder abuse. These involve: **physical**,<sup>2</sup> **sexual**<sup>3</sup> and **psychological abuse**,<sup>4</sup> **financial exploitation**<sup>5</sup> and **neglect**.<sup>6</sup> One often described form of physical abuse is the

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<sup>2</sup> **Physical abuse** can be defined in general as causing physical harm to an older person.

E.g.: Hitting, Kicking

<sup>3</sup> **Sexual abuse** can be described as the forced contact of any kind with an older person.

E.g.: forcing an older person to take part in any sexual activity without his or her consent, including suggestive talk.

<sup>4</sup> **Psychological/emotional abuse** is causing mental anguish to an older person.

E.g.: threatening or assaulting the older person.

<sup>5</sup> **Financial abuse** can be defined as illegal or inadequate usage of funds, money or resources of older people.

practice of inadequate type and dose of medication, for example the inadequate usage of psychotropic drugs on people with a diagnosis of dementia.<sup>7</sup>

Therefore, a definition in an international human rights treaty on the rights of older persons would provide guidance on what should be regarded as elder abuse and would help to clarify and cover the different dimensions of abuse. An agreed definition would make elder abuse more visible and would help to challenge the taboo of elder abuse.

### **Forms of abuse and areas where abuse occurs:**

Violations of human rights of persons in the care system can be violence, abuse or neglect. Violence and neglect arise in the domestic setting or in the institutional settings. Abuse is seen as an active violation and neglect is described as an absence of action. Intentional and unintentional abuse and neglect have been distinguished depending on the motivation of the perpetrator. Also, self-neglect occurs. Different forms of abuse are found such as physical abuse, psychological, sexual and financial abuse. Physical and psychological abuse and neglect are the most reported forms. But as I said before, we are lacking data on the prevalence of the diverse forms of elder abuse in Germany, especially on sexual and financial abuse.

Many older persons are not aware that they can make advance choices on how to handle their finances even if they might need care. Financial abuse very often is not visible, because it is hard to know if goods or money are used with or without consent. Financial abuse can take various forms such as theft of money and goods, fraud or use of pressure in connection with wills, or the abusive utilization of power of attorney. In the domestic family environment, trick theft and fraud occur as well. A newer phenomenon is scam or fraud via internet.

Different human rights are at stake, like the rights to food, water, sanitation, adequate standard of living, autonomy, independence and the right to life. Many of the carers are not aware that they violate the older person's rights when, for example, they put an older person under physical restraint for safety reasons. (Even though no scientific research could prove that physical restraints have any positive effect to prevent falls - the findings rather prove the opposite.) Restrictions of freedom in nursing homes, like older persons having no chance to leave the house due to locked doors, also have to be considered as a form of elder abuse. Structural conditions may increase the likelihood of elder abuse.

When speaking of structural problems in this area, one has to deal with various issues: Care homes very often have a time table which does not meet the different live styles of the older persons living in the institution. The staff has to obey a time schedule which leaves no time for personal engagement. Experience shows that elder abuse is often interlinked with the quality of care and adequate resources. However, some scientists have come up with the explanation that it is not the stressful circumstances which exacerbate the risk to abuse but that more likely, the power structure is the main risk factor. Another setting where

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E.g.: Forcing an older person to transfer his/her property to other person, theft of money or other resources.

<sup>6</sup> **Neglect** can be described as active or passive withholding of relevant action necessary to secure an older person's well-being. Active neglect can be defined as intended withholding of relevant actions, whereby passive neglect can be defined as unintended failure. Acts like failure to provide adequate food or medical care can be described as neglect.

<sup>7</sup> Milcea: [http://www.milcea.eu/en/definition\\_en.html](http://www.milcea.eu/en/definition_en.html)

maltreatment can occur because of structural deficiencies in hospitals. Many hospitals have e.g. no special ward or system for persons with dementia and have no staff to take care of the special needs of this group of persons. This can give persons with dementia negative experiences because they often have problems to adapt to changed circumstances.

We also have to bear in mind that many care workers have to work under inhumane conditions especially in the informal sector, in families. In this regard, labor conditions of nurses and support for family members as care takers are also high priorities in public debates.

### **Recommendations of human rights monitoring bodies:**

Germany received recommendations of UN Human rights bodies as to take action to combat structural problems which lead to elder abuse in care homes. Violations of the right to health, self-determination and autonomy, as well as of the rights to food, shelter, water, sanitation, the right to privacy and family life, the right to live without violence or degrading treatment, had been reported by civil society in parallel reports.

One of the UN Human rights bodies which addressed these issues was the Committee on Economic, Social and Cultural Rights. The Committee's conclusions were based on reports on malnutrition and undersupply of drinks, missing privacy in the care homes and violence e.g. unjustified restraints and wrong medication. In its Concluding Observations of 2001, it expressed its great concern about inhumane conditions in nursing homes owed to structural deficiencies in nursing, as confirmed by the Medical Service of the national associations of health insurances (MDS). The Committee urged Germany to adopt urgent measures to improve the situation of patients in nursing homes.<sup>8</sup>

Similar recommendations were released by the Human Rights Committee in its Concluding Observations to Germany in 2004. In this state reporting cycle, alternative reports referred to unjustified restraints, wrong medication and verbal and physical abuse which had occurred in care homes. The Committee concluded that the vulnerable situation of older persons in long term care homes, which in some instances has resulted in degrading treatment and violated their rights to human dignity (Art. 7), is a matter of concern. The Committee recommended that the State party should pursue its efforts to improve the situation of elderly persons in nursing homes.<sup>9</sup>

After these recommendations had been released, a human rights oriented discussion started and dealt with human rights of older persons in care homes. In this period, our institute released a study on social rights of older persons in care.<sup>10</sup>

### **Protection and prevention at the national level:**

Many older persons are not aware of their rights, and do not know where they can report abuse or complain. Very often physicians, care professionals, social workers and police

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<sup>8</sup> Concluding Observations of the Committee on Economic, Social and Cultural Rights: Germany. 24/09/2001. E/C.12/1/Add.68. (Concluding Observations/Comments)

<sup>9</sup> Concluding Observations of the Committee on Civil and Political Rights: Germany. CCPR/CO/80/DEU 4 May 2004

<sup>10</sup> [http://www.institut-fuer-menschenrechte.de/uploads/tx\\_commerce/studie\\_soziale\\_menschenrechte\\_aelterer\\_personen\\_in\\_pflege.pdf](http://www.institut-fuer-menschenrechte.de/uploads/tx_commerce/studie_soziale_menschenrechte_aelterer_personen_in_pflege.pdf)

officials fail to recognize elder abuse. The existing complaints mechanisms in the care system are not sufficient in this regard. Some older persons cannot defend themselves. They fear that they become isolated after a complaint against the family or care taker, or that their situation would get even worse because of the inherent dependency on the care giver. This also seems to be true for relatives who want to complain on behalf of their family member; many of them said in surveys, that they fear a deterioration of the situation after complaining.

But it is also true that care givers themselves very seldom get a chance to talk about their concerns; especially professional care takers may lose their job when they speak about elder abuse caused by structural problems.<sup>11</sup> Therefore there is still a need for awareness raising programs for nurses, physicians or police officials.

On a very local level there are some useful tools already working, like phone hotlines or visitor services. There are monitoring mechanisms which deal with the quality of care: on a yearly basis, the German Health Insurance Medical Service - MDK (Medizinischer Dienst der Krankenkassen) monitors the care homes and also the care services, which is the caring structure for persons who prefer to stay in their homes. But this seems not enough to have a preventive influence through this monitoring procedure.

Germany has also developed a National Preventive Mechanism which monitors the implementation of the UN Convention against Torture on the national level. However, due to a lack of staff and resources, this mechanism is not engaging in preventing elder abuse in care homes.

At the Ministry of Health, a new position called “Secretary for patients in the care system” was created, through which the ministry seeks to raise awareness of the needs of older persons and to prevent abusive environments.

### **Conclusion and recommendation:**

Although abuse of older persons by family members, care givers and others is better understood today than a few decades ago, an agreed definition in an international treaty could still be a catalyst for human rights based policy-making and planning. A binding treaty for older persons would serve as benchmark for governments to measure good quality of care which in a perfect world means a violent-free care setting. Another aspect which could be of added value to combat elder abuse would be the preventive effect of an international instrument, which has a specific language to tackle the needed issues. Elder abuse is still a taboo. Many older persons and related professionals or family members do still primarily regard older persons as persons in need than as rights holder, and are still not aware of abusive acts. This could be changed through an international binding treaty which addresses the vulnerability and the specific aspects of older persons.

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<sup>11</sup> EGMR, Heinisch v. Germany, Nr. 28274/08, 21 Juli 2011, <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-105777>