

Open-ended Working Group on Ageing

Ninth working session

Compilation working document: Normative content on the protection of the rights of older persons from violence, neglect and abuse received from Member States, “A” Status National Human Rights Institutions and accredited non-governmental organizations

France

France underlines the importance of the reinforcements of rights and liberties of older persons in terms of security, moral and physical integrity.

Germany

The right to a life without violence, neglect and abuse is already derived at international level from standards laid down in human rights treaties which are internationally binding for the contracting states. These include in particular Art. 7 ICCPR, Art. 12 ICESCR, Art. 15 CRPD. In addition, at European level, Art. 1, 3 ECHR¹ and Art. 1, 3 EU Fundamental Rights Charter² also apply.

On the basis of this legal position, the following points are addressed in the recommendation of the Council of Europe (CoE CM/Rec (2014)2 Fig. 16-20), which is not binding in international law.

- The above-mentioned right of all people – and thus also of older people – to physical and mental integrity³ and to protection against violence, abuse and intentional or unintentional neglect should be upheld irrespective of whether this happens at home, in a care institution or in any other place.
- Older people have a right to the implementation of a range of appropriate awareness and other measures to protect them from financial exploitation, including deception or fraud.
- Older people have a right to the implementation by member states of appropriate measures to increase awareness amongst healthcare professionals, nursing staff, domestic carers or other people offering services for older people in recognising violence or abuse in the relevant environment, to provide them with advice in taking measures if violence or abuse are suspected and, in particular, to encourage them to report cases of abuse to the competent authorities.⁴ Member states should take measures to protect people who report abuse from any form of retaliation. To ensure structural improvements, member states should take measures to de-stigmatise the topic of violence against older people.

¹ In conjunction with the relevant case law of the European Court of Human Rights (ECtHR).

² In conjunction with the relevant case law of the European Court of Justice (ECJ).

³ Cf. Art. 3 EU Fundamental Rights Charter, Art. 3 ECHR, Art. 7 ICCPR, Art. 12 ICESCR, Art. 15 CRPD.

⁴ For example, the establishment of an independent complaints body, especially for older people living in isolation, could be considered.

- Older people have a right to thorough investigations being initiated if credible reports about violence against or abuse of older people are received or if the authorities have sufficient reason to suspect that such abuse has taken place. This also applies, in particular, for abuse in the domestic environment.
- Older people who have become the victims of abuse have a right to receive corresponding help and support. If member states do not fulfil their positive obligation to protect older people, older people have the right to demand effective redress from a national authority and if applicable to receive an appropriate compensation for the suffering caused to them within an acceptable period of time.⁵

The right to safety from neglect also includes the right to die with dignity:

This is derived, with various part-aspects, for example from Art. 7 ICCPR, Art. 12 ICESCR,⁶ Art. 15 CRPD. In addition, at European level, Art. 1, 3, 8 ECHR⁷ and Art. 1, 3 EU Fundamental Rights Charter⁸ also apply in particular.

On the basis of this legal position, the "*Charter on the care of terminally ill and dying people in Germany*" covers this area. The sponsors of this Charter, which has the status of a recommendation, are the German Society for Palliative Medicine, the German Hospice and Palliative Care Federation and the German Medical Association.

- Under the Charter, the following aspects form part of the right to die with dignity:
 - o Respect for the perceptions, wishes and values of older people even in the last phase of their life
 - o Respect for their wishes when decisions are to be made.
 - o Access to dignified support and care at the end of life including appropriate, qualified palliative care and support.⁹

Peru

The normative content should be based on the provisions of Article 9 of the Inter-American Convention on the Protection of the Human Rights of Older Persons.

“Right to safety and a life free of violence of any kind:

Older persons have the right to safety and a life without violence of any kind, to be treated with dignity, and to be respected and appreciated regardless of their race, color, sex, language,

⁵ Para. 1-5: Cf. Formulation of the recommendation of the Committee of Ministers of the Council of Europe – COE Recommendation CM/Rec (2014)2 Fig. 16-20.

⁶ See General Comment No. 14 (2000) des UN Committee on Economic, Social and Cultural Rights, Fig. 25"(…) and enabling them to die with dignity."

⁷ In conjunction with the relevant case law of the European Court of Human Rights (ECtHR).

⁸ In conjunction with the relevant case law of the European Court of Justice (ECJ).

⁹ In line with the Charter on the care of terminally ill and dying people in Germany, land“, the sponsors are the German Society for Palliative Medicine, the German Hospice and Palliative Care Federation and the German Medical Association (the Federal Ministry for Education and Research, the Federal Health Ministry, the Federal Ministry for Family Affairs, Senior Citizens, Women and Youth and the competent ministries in each of the Bundesländer have signed the Charter), principles 1 and 2.

culture, religion, political or other opinions, social origin, nationality, ethnicity, indigenous and cultural identity, socio-economic status, disability, sexual orientation, gender, gender identity, economic contribution, or any other condition.

Older persons have the right to a life without any kind of violence or mistreatment. For the purposes of this Convention, violence against older persons shall be understood as any act or conduct that causes death or physical, sexual, or psychological harm or suffering, either in the public or the private sphere. Violence against older persons shall be understood to include, inter alia, different forms of financial, physical, sexual, and psychological abuse and mistreatment, expulsion from the community, and any form of abandonment or negligence that takes place within the family or household unit or that is perpetrated or tolerated by the State or its agents, regardless of where it occurs.

States Parties undertake to:

- a. Adopt legislative, administrative, and other measures to prevent, investigate, punish, and eradicate acts of violence against older persons, as well as those that would enable reparation for harm occasioned by such acts.
- b. Produce and disseminate information in order to generate diagnostic assessments of possible situations of violence with a view to developing prevention policies.
- c. Promote the creation and strengthening of support services to address cases of violence, mistreatment, abuse, exploitation, and abandonment of older persons. Foster access for older persons to such services and provide them with information about them.
- d. Establish or strengthen mechanisms for preventing any form of violence in the family or household unit, facilities that provide older persons with long-term care services, and society at large, with a view to effectively protecting the rights of older persons.
- e. Inform and sensitize society as a whole about the various forms of violence against older persons and about how to identify and prevent them.
- f. Train and sensitize government officials, social workers, and health care personnel responsible for attending to and caring for older persons in long-term care facilities or at home about the different forms of violence, in order that they are treated with dignity and to prevent negligence, violence, and mistreatment.
- g. Develop training programs for family members and persons providing home care services, in order to reduce violence in the home or household unit.
- h. Promote appropriate and effective complaint mechanisms for cases of violence against older persons and strengthen legal and administrative mechanisms for dealing with such cases.
- i. Actively promote the elimination of all practices that generate violence and affect the dignity and integrity of older women”

Slovenia

- Protection of the right of older persons to freedom from violence, neglect and abuse in private and public settings.

- Obligation to provide access to effective remedy and redress to victims of violence, neglect and abuse.
- Obligation to take appropriate awareness-raising and protection measures to prevent violence, neglect and abuse of older persons.
- Obligation to collect and analyse relevant statistical information and use it in the formulation of policies or measures to prevent violence, neglect and abuse of older persons.
- Obligation to formulate appropriate educational or training measures for relevant professionals (care providers, health care and social workers, the judiciary and law enforcement) to recognise and address situations of violence, neglect and abuse of older persons.

United Kingdom

1. The state has an important role to play in minimising the instances of older persons being subjected to violence, neglect or abuse. This should include all forms of violence, neglect and abuse (including domestic abuse) against older persons.
2. States should put in place effective legislation and policies to ensure that instances of violence, neglect and abuse against older persons are identified, investigated and, where appropriate, prosecuted.
3. States should take appropriate steps to prevent violence, neglect and abuse in older age; should promote training on the legal duties and responsibilities of care providers, health care and social workers, the judiciary and law enforcement; appropriate needs assessment, monitoring, inspection and regulation of situations of care and support provision; public prevention campaigns; and research into the intersectional drivers of violence.
4. States should ensure mechanisms are in place to enable appropriate responses to be made to allegations of violence, neglect and abuse committed against older persons who are vulnerable.
5. States should afford access to support services for victims of violence, neglect and abuse as appropriate, including appropriate health and social care services; legal services; access to information about available support and services; access to appropriate victim support services; and access to effective remedies and redress.
6. Criminal justice responses and sentencing practices should be able to reflect the aggravated nature of offences committed against older persons who are vulnerable.

Zimbabwe

- Violence against older persons as a criminal offence with clear definition on the nature of abuse, cruelty, neglect, abuse and maltreatment;

- Context appropriate definitions on the severity of violence and harmful traditional practices that interfere with entitlements;
- Distinguish forms of violence and abuse and the context under which neglect occurs;
- Provide clear guidelines on compliance by Member States and channels of redress for older persons from community, all the way to national level;
- Compliance and monitoring to be undertaken by an independent agency;
- Social protection as a right for older persons to reduce the burden of care imposed by HIV/AIDS
- Establishment of research institutions to collect data on matters pertaining to the welfare of older persons. Resources should be mobilized to support research and analysis
- The rights of older persons to freedom from abuse, neglect and exploitation, maltreatment, freedom from discrimination and right to work, access to resources, property and health services should be clearly documented.

Age Platform Europe

Understanding of the right

The provision shall include a definition of violence, abuse, neglect and exploitation against older people.

Scope of the right

- The right covers all forms of violence, abuse, neglect and exploitation against older persons
- The right applies in private and public settings.
- The right covers both relationships of trust and cases of violence, abuse, neglect and exploitation on account of old age outside relationships of trust, regardless of whether they are against an individual or are systemic, structural, customary or part of an institutional practice
- The right covers acts committed by state actors and by non-state actors to the extent that State Parties fail to take all reasonable measures to prevent, as well as to investigate, prosecute, punish and provide reparations for acts or omissions by non-state actors which constitute acts of violence against older persons and abuse, neglect and exploitation of older persons

State obligations

States Parties shall take appropriate legislative and administrative and other appropriate measures to prevent violence, abuse and neglect of older persons in public and private settings by, inter alia:

- Adopting effective legislation covering all forms of violence, abuse, neglect and exploitation of older persons, which includes the duty to prevent, identify, investigate and redress for acts of violence, abuse, neglect and exploitation and a duty to protect and support victims and survivors; such legislation should not only cover deliberate or intentional abuse but also structural abuse.
- Measures shall be proportionate and compatible with older persons' ability to live independently and autonomously.
- Ensuring that older persons are adequately protected in legislation, policies and measures that address other types of violence, such as gender-based violence.
- Developing effective independent monitoring mechanisms to detect violence, abuse, neglect and exploitation of older persons at home, in residential settings and in the community.

- Allocating sufficient resources for the care and support of older persons, including by providing support for informal carers, as means to prevent violence, abuse, neglect and exploitation in care settings.
- Providing training for all care and support providers, including family and other informal care and support providers, and other service providers, including law enforcement agents to better identify violence, abuse, neglect and exploitation and protect victims and survivors.
- Raising awareness of, and sensitising society to, the different forms of violence, abuse, neglect and exploitation in older age and how to identify and prevent them.
- Providing information to and raising awareness of older persons of their rights

States Parties shall ensure timely and effective access by older persons to a range of support services for victims, survivors and persons at risk of violence, abuse and neglect, including but not limited to:

- A full range of medical, social, psychosocial, rehabilitative and legal services
- Access to information about available support and services
- Access to appropriate support services for victims, survivors and persons at risk, including assistance to file complaints and report violence, abuse, neglect and exploitation.

States Parties shall ensure timely access by older persons to effective remedies and redress by taking appropriate measures which include but which are not limited to:

- Investigating violations effectively, promptly, thoroughly and impartially and, where appropriate, taking action against those allegedly responsible in accordance with domestic and international law
- Providing older persons who claim to be victims of violence, abuse and neglect with equal and effective access to justice and, where relevant and possible, to extra judicial redress such as mediation and restorative justice, which should be available also in cases where prosecution is not possible or preferable by the victim or survivor.
- Ensuring timely access by older persons to support, where necessary, to make autonomous decisions about reporting acts of violence, abuse and neglect.
- Providing effective remedies to victims and survivors, including reparation. Criminal justice responses, criminal offences and sentencing practices shall reflect the aggravated nature of offences against older persons. Prosecutorial action and compensatory damages shall not be limited by older age.

States Parties shall undertake to collect, disaggregate, analyse, utilise and make public at regular intervals appropriate information and statistical data on all forms of violence, abuse, neglect and exploitation for all age cohorts and genders. This shall take intersectionality into account and include prevalence and trends, risk factors, perpetrators, access to support services and effective remedies and redress. The process of all information collection, and research and use of statistics shall comply with internationally accepted norms and ethical principles.

Centre for the Users and Survivors of Psychiatry¹⁰

Issues relating to respect for physical and mental integrity, privacy and dignityⁱ

1. Older persons have a right to maintain their alertness and full range of emotion to the extent they desire, and not to be controlled with drugs.¹¹
2. Neuroleptics and other psychotropic drugs are often used on older people as a form of chemical restraint, for example to quell ‘agitation.’ It is a serious and widespread problem in psychiatric institutions, in nursing homes, in facilities designated to serve older persons, and in some palliative care facilities. Chemical restraint and forced drugging for any reason must be prohibited as torture and ill-treatment.
3. Psychotropic drugs can be used only with the free and informed consent of the person concerned, in the absence of any coercion or incentive and ensuring that alternatives are adequately explored, along with individuals’ values and inclinations regarding different classes of psychotropic drugs.¹² The resulting course of action must adhere to the individual’s will and preferences.

¹⁰ The Center for the Human Rights of Users and Survivors of Psychiatry (CHRUSP) works for legal capacity for all, the abolition of committal, forced treatment and substitute decision-making, and creation of supports that respect individual choices and integrity. CHRUSP is a disabled people’s organization and holds special consultative status with ECOSOC. Contact Tina Minkowitz, info@chrusp.org; website www.chrusp.org.

¹¹ Inter-American Convention to Prevent and Punish Torture, Article 2 Torture shall also be understood to be the use of methods upon a person intended to obliterate the personality of the victim or to diminish his physical or mental capacities, even if they do not cause physical pain or mental anguish.

¹² CRPD General Comment 1 para 42 As has been stated by the Committee in several concluding observations, forced treatment by psychiatric and other health and medical professionals is a violation of the right to equal recognition before the law and an infringement of the rights to personal integrity (art. 17); freedom from torture (art. 15); and freedom from violence, exploitation and abuse (art. 16). This practice denies the legal capacity of a person to choose medical treatment and is therefore a violation of article 12 of the Convention. States parties must, instead, respect the legal capacity of persons with disabilities to make decisions at all times, including in crisis situations; must ensure that accurate and accessible information is provided about service options and that non-medical approaches are made available; and must provide access to independent support. States parties have an obligation to provide access to support for decisions regarding psychiatric and other medical treatment. Forced treatment is a particular problem for persons with psychosocial, intellectual and other cognitive disabilities. States parties must abolish policies and legislative provisions that allow or perpetrate forced treatment, as it is an ongoing violation found in mental health laws across the globe, despite empirical evidence indicating its lack of effectiveness and the views of people using mental health systems who have experienced deep pain and trauma as a result of forced treatment. The Committee recommends that States parties ensure that decisions relating to a person’s physical or mental integrity can only be taken with the free and informed consent of the person concerned.

CRPD Guidelines on Article 14, para 12 The Committee has called on States parties to protect the security and personal integrity of persons with disabilities who are deprived of their liberty, including by eliminating the use of forced treatment, seclusion and various methods of restraint in medical facilities, including physical, chemical and mechanic restrains. The Committee has found that these practices are not consistent with the prohibition of torture and other cruel, inhumane or degrading treatment or punishment against persons with disabilities pursuant to article 15 of the Convention. [internal footnotes omitted]

4. Older women have been disproportionately subjected to electroshock, which impairs the memory and causes other cognitive impairment, as a psychiatric intervention. This practice should be banned, in light of the increased vulnerability of older persons.¹³
5. Service providers must respect the bodily privacy of older persons, for example by conducting physical examinations in private and not in common rooms of a facility.
6. When a person is experiencing pain or distress or discomfort, service providers as well as friends or family attending them need to respond in a timely manner to acknowledge the person's suffering and offer any available relief.
7. Older persons who require assistance with mobility or other bodily needs must be treated with care and dignity. Service providers and friends and family attending them must deal with any negative emotions or reactions they may have to the older person they are caring for, in ways that do not cause harm to that person.
8. Exploitation of the older person can occur when family members or service providers call into question the older person's decision-making so as to implement a decision contrary to that person's will and preferences. This can result in financial exploitation, dispossession of the person from their home and surroundings, placement in an institution, drugging, and other restriction of the person's autonomy and participation. Even when it does not result in such abuses, depriving an older person of the right to make decisions violates obligations under the CRPD to respect the legal capacity of all adults, including older persons, to make decisions and not have others make substituted decisions for them against their will.¹⁴
9. Training and support should be provided to service providers and friends and family caring for older persons to prevent neglect, violence, exploitation, and abuse of any kind.

¹³ Special Rapporteur on Torture Manfred Nowak, A/63/17, para 61 The use of electroshocks on prisoners has been found to constitute torture or ill treatment. The use of electroshocks or electroconvulsive therapy (ECT) to induce seizures as a form of treatment for persons with mental and intellectual disabilities began in the 1930s. CPT has documented instances in psychiatric institutions where unmodified ECT (i.e. without anaesthesia, muscle relaxant or oxygenation) is administered to persons to treat their disabilities, and used even as a form of punishment. The Special Rapporteur notes that unmodified ECT may inflict severe pain and suffering and often leads to medical consequences, including bone, ligament and spinal fractures, cognitive deficits and possible loss of memory. It cannot be considered as an acceptable medical practice, and may constitute torture or ill-treatment. In its modified form, it is of vital importance that ECT be administered only with the free and informed consent of the person concerned, including on the basis of information on the secondary effects and related risks such as heart complications, confusion, loss of memory and even death.

¹⁴ See CRPD references on legal capacity in endnotes to submission on Autonomy and Independence, as well as Arts 15 and 16 cited above. Further reference: Special Rapporteur on Torture Manfred Nowak, A/63/175 para 50 Torture, as the most serious violation of the human right to personal integrity and dignity, presupposes a situation of powerlessness, whereby the victim is under the total control of another person. Persons with disabilities often find themselves in such situations, for instance when they are deprived of their liberty in prisons or other places, or when they are under the control of their caregivers or legal guardians. In a given context, the particular disability of an individual may render him or her more likely to be in a dependent situation and make him or her an easier target of abuse. However, it is often circumstances external to the individual that render them "powerless", such as when one's exercise of decision-making and legal capacity is taken away by discriminatory laws or practices and given to others.

HelpAge International

Affirmation of the right

1. Older persons have the right to freedom from violence, abuse and neglect.

Scope of the right

1.1 The right includes all forms of violence, abuse and neglect against older persons.

1.2 The right applies to violence, abuse and neglect in private and public settings.

1.3 States Parties are responsible for acts of violence against older persons and abuse and neglect of older persons committed by organs, officials and agents of the state at all levels, including private actors acting under the direction of or in accordance with the instructions of the state, or whose acts are otherwise attributable to the state.

1.4 States Parties are responsible in relation to the acts of non-state actors if the State Party fails to meet its obligation to take all reasonable measures to prevent, as well as to investigate, prosecute, punish and provide reparations for acts or omissions by non-state actors which involve acts of violence against older persons and abuse and neglect of older persons.

State obligations

2. States Parties shall take appropriate legislative and administrative and other appropriate measures to prevent violence, abuse and neglect of older persons in public and private settings by, inter alia:

- Raising awareness of, and sensitising society to, the different forms of violence, abuse and neglect in older age and how to identify and prevent them.
- Putting in place effective legislation and policies to ensure all forms of violence, abuse and neglect are identified, investigated and redressed.
- Ensuring that measures to prevent violence, abuse and neglect are proportionate and compatible with the right to autonomy and independence.
- Allocating sufficient resources for effective implementation.
- Providing information to and raising awareness of older persons of their rights.
- Providing training for all care and support providers, including family and other informal care and support providers, and other service providers, including law enforcement.
- Ensuring a system of appropriate needs assessment and monitoring in all situations of care and support.
- Ensuring that all facilities and programmes designed to serve older persons are effectively monitored by independent authorities.
- Ensuring a comprehensive violence protection policy in all care and support settings, regardless of whether care and support is provided by state or non-state bodies. This shall include training of providers, a complaints system, protection of those reporting violence, and interventions procedures.
- Paying specific attention to the intersectional and other determinants of violence, abuse and neglect.

3. States Parties shall ensure timely and effective access by older persons to a range of support services for victims, survivors and persons at risk of violence, abuse and neglect, including but not limited to:

- A full range of medical, social, psychosocial, rehabilitative and legal services.
- Access to information about available support and services.
- Access to appropriate support services for victims, survivors and persons at risk.

4. States Parties shall ensure timely access by older persons to effective remedies and redress by taking appropriate measures which include but which are not limited to:

- Investigating violations effectively, promptly, thoroughly and impartially and, where appropriate, taking action against those allegedly responsible in accordance with domestic and international law.
- Providing older persons who claim to be victims of violence, abuse and neglect with equal and effective access to justice, irrespective of who may ultimately be the bearer of responsibility for the violation.
- Ensuring timely access by older persons to support, where necessary, to make autonomous decisions about reporting acts of violence, abuse and neglect.
- Providing effective remedies to victims and survivors, including reparation. Criminal justice responses, criminal offences and sentencing practices shall reflect the aggravated nature of offences against older persons. Prosecutorial action and compensatory damages shall not be limited by older age.

5. States Parties shall undertake to collect, disaggregate, analyse, utilise and make public at regular intervals appropriate information and statistical data on all forms of violence, abuse and neglect for all age cohorts. This shall take intersectionality into account and include prevalence and trends, risk factors, perpetrators, access to support services and effective remedies and redress. The process of all information collection, research and use of statistics shall comply with internationally accepted norms and ethical principles.

FIAPA – Fédération Internationale des Associations de Personnes Agées

State obligations

- Appropriate early warning systems. Identification of abuse often requires access to highly personal information. As this is usually not freely available, there is a danger abuse may not be spotted in a timely fashion, so early involvement seems advisable.
- Systems to enable professionals to track and log incidences of financial abuse, as well as to document responses made and keep a record of follow up actions taken.
- Suitable legislation. Measures are required to defend the legal rights of older people, to protect their possessions better, and to secure for them a wider sphere of responsibility.
- A new way of thinking about the citizenship of older people. The elderly should all have the right to play a full part in society irrespective of advancing years or frailty.
- Support for family carers, like access to respite care via appropriate partnerships and the provision of suitable facilities.
- Efficient response and a real effort from the police and prosecution service as well as legislation to protect whistle-blowers.
- A concerted public information campaign designed to help prevent abuse. There is a need to identify and make contact with older people who are in financial difficulty, who are excluded from society or who have diminished cognitive abilities. This will not be easy as such individuals tend to withdraw within themselves, but if the campaign is to be successful then it has to be done. We envisage a core campaign of communication about the types of financial abuse and their risks, supported by material tailored to the needs of each target group together with information about what to do if you are abused.

Other – examples of national legislation and policies on violence and abuse

France

Adapting constantly public advisory structures to empirical reality

France is willing to provide an efficient institutional environment of governance structures guaranteeing good monitoring to tackle all kind of violence, neglect and abuse towards older people.

The inauguration of a National Committee for Vigilance concerning the abuse of older people by an order of 16th November 2002 (*Arrêté du 16 novembre 2002 relatif à la création du Comité national contre la maltraitance des personnes âgées*) was a first step towards this political endeavor.

A decree of 12th March 2007 (*Décret n° 2007-330 du 12 mars 2007 portant création d'un Comité national de vigilance et de lutte contre la maltraitance des personnes âgées et des adultes handicapés*) took over this institutional arrangement by the creation of a new National Committee aiming to tackle abuse of dependent adults – including disabled persons. A more recent decree of 7th January 2013 (*Décret n° 2013-16 du 7 janvier 2013 portant création du Comité national pour la bientraitance et les droits des personnes âgées et des personnes handicapées*) continues this mission. The committee has since been replaced by the Council of Family, Children and age, under the Prime Minister's authority (*Loi n°2015-1776 relative à l'adaptation de la société au vieillissement*).

Furthermore, the Act on adapting society to an aging population (*Loi n°2015-1776 relative à l'adaptation de la société au vieillissement*) foresees a commission on good treatment practices and abuse prevention. Introduced in February 2018, it proposes concrete measures to tackle all kind of abuse in regard of older and/or disabled persons.

Mandatory reporting of dysfunctions and abusive treatments

A decree of December 2016 (*Décret n° 2016-1813 du 21 décembre 2016 sur la mise en place de l'obligation de signalement aux autorités administratives de tout dysfonctionnement dans les établissements et services médico-sociaux*) obliges to report of dysfunctions of care structures and social-medical services.

Taking into account the social connection between older people and the rest of society

In a larger context, all prevention policies of loss of autonomy which guarantee older persons to age in best conditions and stay full participants in their aging process – especially the Act on adapting society to an ageing population (*Loi n° 2015-1776 du 28 décembre 2015 relative à l'adaptation de la société au vieillissement*) – contributes actively to the fight against all forms of negligence, violence and abuse.

Malta

The Parliamentary Secretariat for Persons with Disability and Active Ageing was instrumental in introducing new forms of deterrent measures in the Maltese Criminal Code, to ensure maximum protection for older persons, even from relatives, so as to safeguard their best interests. Another noteworthy legislation concerned the possibility whereby persons convicted of crimes where older persons are victims will be automatically liable for damages upon

sentencing. Hence, eliminating the need for the older person to pursue the perpetrator for damages through a civil case. In the coming days the Secretariat will be presenting to parliament the 'Protection of Vulnerable Older Persons and Adult Persons with Disability' Act. This Act provides for the protection of vulnerable older adults, and adult persons with disability, from harm and abuse, and to provide them with adequate protection and services. It also empowers institutions working in social and criminal protection to intervene in court proceedings and take all the necessary safeguarding measures. This Act will enable Malta to ratify the international Convention relating to the international protection of adults.

State of Palestine

The Palestinian Basic Law deals with issues of violence and neglect in general, and not particularly for the elderly. The applicable legislation is the Jordanian Penal Code, which is old law dating back to 1960. There is a draft penal code in Palestine but this draft is not yet valid. The draft law on the rights of older persons in Palestine, speaks explicitly about the issues of neglect, violence, and abuse against the elderly, but this draft is not valid, and we are working to approve this year as expected.

Other - general comments

Dominican Republic

In the Dominican Republic, we promote a new paradigm of attention to older persons based on a rights approach for the comprehensive protection of this population. In this sense, the following rights are proposed:

1. Equality and non-discrimination because of age
2. Right to life and dignity of older persons
3. Right to security and a life without any violence
4. Equal recognition as a person before the law
5. Right to stay in your family nucleus
6. Right to social protection
7. Right to integrity
8. Right to security

State of Palestine

There is a need for commitments by Governments to establish a complaints reporting system in specialized units, accountability systems and penalties for those who violate the rights of older persons, centers for the protection and rehabilitation of older persons and psychological, social and legal services.

Zimbabwe

Acknowledging that age is a social construct, violence, abuse and neglect against older persons are acts that are often embedded in cultural and social norms. The nature and severity of

violence and abuse varies across the globe, consequently a “one size fits all” approach in addressing violations may not work. It follows that a desirable instrument is one that is context specific, fully accommodating socio economic realities of Member States. An international instrument can provide the guiding principles while context specific regional treaties can then provide the specifics of law. This is particularly important for the African region where violence and abuse are often rooted in harmful traditional practices and socio economic deprivations. Within the same region, the HIV and AIDS pandemic has increased the burden of care for older persons, thereby presenting unique circumstances that expose them to abuse and violence. Accordingly, a legally binding regional treaty can adequately address current gaps by moving away from “soft laws” on the treatment of the aged to more concrete laws that prevent violations and promote protection. Zimbabwe recommends the establishment of a regional treaty to promote the protection of the aged against violence, neglect and abuse. The regional treaty should draw principles from the proposed convention on the rights of older persons. Zimbabwe recommends the inclusion of an article that criminalizes violence and abuse against older persons with an international instrument.

ⁱ CRPD Arts 15 and 16

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

(1) No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his or her free consent to medical or scientific experimentation.

(2) States Parties shall take all effective legislative, administrative, judicial or other measures to prevent persons with disabilities, on an equal basis with others, from being subjected to torture or cruel, inhuman or degrading treatment or punishment.

Freedom from exploitation, violence and abuse

(1) States Parties shall take all appropriate legislative, administrative, social, educational and other measures to protect persons with disabilities, both within and outside the home, from all forms of exploitation, violence and abuse, including their gender-based aspects.

(2) States Parties shall also take all appropriate measures to prevent all forms of exploitation, violence and abuse by ensuring, inter alia, appropriate forms of gender- and age-sensitive assistance and support for persons with disabilities and their families and caregivers, including through the provision of information and education on how to avoid, recognize and report instances of exploitation, violence and abuse. States Parties shall ensure that protection services are age-, gender- and disability-sensitive.

(3) In order to prevent the occurrence of all forms of exploitation, violence and abuse, States Parties shall ensure that all facilities and programmes designed to serve persons with disabilities are effectively monitored by independent authorities.

(4) States Parties shall take all appropriate measures to promote the physical, cognitive and psychological recovery, rehabilitation and social reintegration of persons with disabilities who become victims of any form of exploitation, violence or abuse, including through the provision of protection services. Such recovery and reintegration shall take place in an environment that fosters the health, welfare, self-respect, dignity and autonomy of the person and takes into account gender- and age-specific needs.

(5) States Parties shall put in place effective legislation and policies, including women- and child-focused legislation and policies, to ensure that instances of exploitation, violence and abuse against persons with disabilities are identified, investigated and, where appropriate, prosecuted.

African Disability Protocol Arts 5 and 6

Right to Liberty, Security of Person and Freedom from Torture or Cruel, Inhuman or Degrading Treatment or Punishment

(1) Every person with a disability has the right to liberty and security of person and the right to be free from torture or cruel, inhuman or degrading treatment or punishment.

(2) States Parties shall take appropriate and effective measures to ensure that persons with disabilities, on an equal basis with others:

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- a. Enjoy the right to liberty and security of person and are not deprived of their liberty unlawfully or arbitrarily;
 - b. Are not forcibly confined or otherwise concealed by any person or institution;
 - c. Are not subjected to torture or cruel, inhuman or degrading treatment or punishment;
 - d. Are not subjected without their free, prior and informed consent to medical or scientific experimentation or intervention;
 - e. Are not subjected to sterilisation or any other invasive procedure without their free, prior and informed consent;
 - f. Are protected, both within and outside the home, from all forms of exploitation, violence and abuse.
- (3) States Parties shall take appropriate measures to prevent deprivation of liberty to persons with disabilities, to prosecute perpetrators of such abuse and to provide remedies for the victims.
- (4) Where persons with disabilities are lawfully deprived of their liberty, States Parties shall ensure that they are on an equal basis with others entitled to guarantees in accordance with international human rights law and the objects and principles of the present Protocol.
- (5) The existence of a disability or perceived disability shall in no case justify deprivation of liberty.

Harmful Practices

- (1) States Parties shall take all appropriate measures, including legal sanctions, educational and advocacy campaigns, to eliminate harmful practices perpetrated on persons with disabilities, including witchcraft, abandonment, concealment, ritual killings or the association of disability with omens.
- (2) States Parties shall take measures to discourage stereotyped views on the capabilities, appearance or behaviour of persons with disabilities, and they shall prohibit the use of derogatory language against persons with disabilities.
- (3) States Parties shall offer appropriate support and assistance to victims of harmful practices.

CRPD General Comment 3, para 55

... Age and impairment, separately or jointly, can increase the risk of institutionalization of older persons with disabilities. In addition, it has been widely documented that institutionalization may expose persons with disabilities to violence and abuse, with women with disabilities being particularly exposed.