

Legislative protections for older women at risk of neglect, abuse and violence

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Abstract

Legislative developments at the national level reflect the division among conceptual frameworks for abuse of older women: whether it is an older adult protective program, a form of elder mistreatment, or reflect intimate partner violence. Most, but not all, national legislation passed is bifurcated, addressing women as part of domestic violence laws, older adults as part of family violence legislation if at all, and older care dependent adults in need of protection residing in nursing homes and sometimes in the community as part of laws to protect the vulnerable in need of protection. Domestic violence legislation is generally not specifically inclusive of older women and vulnerable older adult legislation assumes some degree of care dependency on the part of the older adult victim; gender is not usually specified.

There is a growing awareness of older women victims of family mistreatment both in terms of prevalence and in terms of commonalities and differences when compared to younger battered women. Both quantitative and qualitative research studies have begun to identify salient factors in cultural differences, age related needs, and service needs and gaps for older women victims.

In addition, gender-based scholarship has begun to examine the application of frameworks for practicing effectively with older women who are victims of abuse. Gerontologists are beginning to focus more research attention on older women and abuse, and human rights experts are beginning to recognize the special vulnerabilities of older women who are care dependent and may lack the ability to protect themselves from undue harm without special protections that go beyond those needed by women of all ages who are not care dependent.

Keywords: abuse, neglect, older women, violence.

Access to justice for older women at risk of abuse – National laws

Legislative developments at the national level reflect the division among conceptual frameworks for abuse of older women: whether it is an older adult protective program, a form of elder mistreatment, or reflect intimate partner violence. Most, but not all, national legislation passed is bifurcated, addressing women as part of domestic violence laws, older adults as part of family violence legislation if at all, and older care dependent adults in need of protection residing in nursing homes and sometimes in the community as part of laws to protect the vulnerable in need of protection. Domestic violence legislation is generally not specifically inclusive of older women and vulnerable older adult legislation assumes some degree of care dependency on the part of the older adult victim; gender is not usually specified.

In Australia, there is no national legislation mandating reporting of elder abuse in the community but there is national legislation mandating reporting of abuse against nursing home residents to an office within the national Office of Quality Care and Compliance, and to the police in the state where the reported abuse occurred (1).

There is no elder abuse statute in Canada, but elder abuse and neglect cases are reflected into criminal code law and some expansion of Canada's criminal Code R.S. 1985, c. C-45, s. 215, on failure to provide basic necessities to a care dependent older adult (2). Domestic violence statutes do not specify older women and abuse: this is subsumed with child protection in family violence statutes (3).

In Hong Kong, elder abuse in the community (male and female) is addressed in the Domestic and Cohabitation Relationships Violence Ordinance, formerly known as the Domestic Violence Ordinance. First enacted in 1986 to address spouse/partner violence, it was amended in 2008 to include elder abuse by expanding victim categories to non-spousal family relationships (4).

The People's Republic of China (PRC) passed the

Law of the People's Republic of China on Protection of the Rights and Interests of the Elderly in 1996. Family members have the responsibility to support an older family member financially, physically and emotionally. Article 4 of this legislation prohibits discrimination and, insults against as well as maltreatment or desertion of aged family members. A separate article (Article 48) addresses and establishes penalties for family members who exploit aged members financially (4). Domestic violence legislation prohibiting violence against women has been established but does not specifically refer to older women or women of all ages.

In Taiwan, older adult victims of abuse are provided protection under the Domestic Violence Protection Act of 1998 and as amended in 202, which provides penalties for any mentally or physically abusive acts against spouses, ex-spouses, parents and/or dependents. In addition, older adults are protected through the Senior Citizens Welfare Act, passed in 1980 and updated in 2002 (4), which specifically addresses elder abuse. Unlike Hong Kong or the PRC, there is mandatory reporting of elder abuse in Taiwan. Reported cases increased almost three-fold between 2002, when mandatory reporting was established, to 2010 (4).

In Ireland, the Irish Constitution (Bunreacht na Éireann) states a responsibility to protect the aged, but there is no specific legislation to protect older adults from abuse and there is no mandatory reporting for this (5). The Domestic Violence Act, passed in 1996, may be used to protect abused older adults, however. Specifically, this Act, passed to protect domestic violence victims, provides for state intervention if fear or trauma prevents the victim from taking action (5).

Israel has a long history of legislation aimed at protection of the elderly. Both the Law of Legal Competence and Guardianship, 1962, and the Law for the Defense of Protected Persons, 1966, provide protection for adults who are unable to care for themselves, and address issues of elder abuse and neglect, respectively (6). The Law for the Prevention

of Violence in the Family, passed in 1991, was intended to provide temporary relief for intra-familial victims of sexual, physical and mental abuse. Finally, a series of directives issued by the Director-General of the Ministry of Health in 2003 stated the intent to increase awareness of elder abuse and neglect, instructing medical institutions to identify and report cases of elder abuse and neglect, specialized training and education should be developed for interdisciplinary care teams, and teams should include nursing, social work and medical professionals (6). Among African nations, South Africa through its Older Persons Act (2006) explicitly prohibits abuse of older persons and provides a framework for reporting and litigating against older adult abuse. Other countries, including Kenya, Ghana, Tanzania, Mozambique, Uganda and Cameroon have developed national policies on aging, which usually include provisions on elder abuse. In spite of general policy level advances, however, there are few formal programmatic responses to elder abuse and mistreatment (7).

In Kenya, there is a growing consciousness about elder abuse in the form of accusations about witchcraft, fueled by media attention and HelpAge International field workers. To complicate matters, federal laws still exist from Colonial times prohibiting witchcraft and sanctioning witchcraft practitioners. The discourse on elder abuse and neglect, for example official references in Kenya's recently ratified (2009) National Policy on Ageing and Older Persons, does not yet connect with abuse of older adults charged with practicing witchcraft by community members, and injured and killed (7). According to HelpAge, older adults accused of witchcraft are typically women (8).

In 2003, Kyrgyzstan adopted The Law On Social And Legal Protection from Domestic Violence, which requires state authorities to develop protection to domestic violence victims. To ensure that older adult victims of domestic violence, a project called Right to Life Without Violence in Old Age was initiated at the community level to raise awareness

about domestic violence against older people, use principles of mediation and conflict resolution, and work to eliminate harmful traditional practices (9). In many Latin American countries there are either family violence or elder abuse legislation at the national level. In Argentina, the 1994 Protection Law against Family Violence is enforced through Family Tribunal Courts (Tribunales de Familia), and the National Ministry of Social Development oversees policies for the prevention of discrimination and mistreatment of older adults (10). Bolivia has a federal law against interfamilial and domestic violence. In Brazil, Law 10.741 (2003) establishes protection of elders' rights. In Chile, the law on domestic violence was amended in 2010 to include abuse of older people. Colombia's 1994 law on domestic violence; however, this does not specifically include language on older adult abuse.

Costa Rica's domestic violence law mentions that people 60 years of age and older also experience violence. In El Salvador Law 717, passed in 2002, mandates comprehensive care for older adults. Guatemala passed its law, Protection of the Elderly People, on the prevention, punishment and eradication of domestic violence against older adults. In Mexico, violence against the elderly was criminalized in 2011. Nicaragua's Law 720, passed in 2010, establishes seniors' rights to live with dignity and security, free of exploitation, physical or psychological abuse.

In Peru, Law 28803 (2006) guarantees the rights of elders and makes their families responsible for the welfare of dependent elderly parents. The Dominican Republic passed Law 352-98 in 1998 on protection of aging persons (10).

Norway does not have mandatory reporting of elder abuse. Criminal law now permits the police to bring charges against perpetrators of domestic violence, including elder abuse, without the consent of the victims. Other protections for older adult victims of abuse are located in the health care legislation and the Guardianship Act of 2010 (11).

Portuguese legislative policy on older adult neglect

and abuse developed under the umbrella of domestic violence. Legislatively, Portuguese law doesn't cover elder abuse directly, Law 112/09, Judicial establishments to the prevention of domestic violence, protection and assistance to its victims, distinguishes between domestic violence victims and victims who are especially vulnerable. This can include victims of advanced age, poor health status, psychological instability, and physical impairments that may be related to the victimization (12).

Spain does not have a law that regulates the state response to elder abuse. However, protections for older adult family members against domestic abuse are included in family and domestic violence statutes (since 2003) and in January 2007, Law 39/2006, Promotion of Personal Autonomy and Assistance to Persons in Situations of Dependency, came into effect. This law provided the groundwork for funding services needed by dependent elderly to remain living safely in the community (13).

There is no single piece of legislation specifically concerning protection of older adults in the UK (14). Legislation passed to protect people who lack capacity to protect themselves, like the Mental Health Acts of 1983 and 2007, and the Mental Health Capacity Act of 2005 are not age specific. However, the Family Law Act of 1996 and the Domestic Violence, Crime and Victims Act of 2004 covers elder abuse in a domestic setting and familial homicide. In England, Wales and Northern Ireland, legal remedies for vulnerable older adults are covered by these laws, along with some legal provisions to remove an adult at risk of harm to a safe place (14).

In Scotland, the Adult Support and Protection Act of 2007 provides protection for adults of all ages who are at risk of harm (14). In Scotland, The Adult Support and Protection Act, was implemented in 2008 with a focus on the local level to protect adults at risk of harm. Although older women victims of intimate partner violence could seek protection under this act, they may view themselves as a vulnerable

adult as a victim of domestic violence (15).

In the USA, the latest national legislation on elder abuse passed in 2010 is the Elder Justice Act (EJA), passed as part of the national health care legislative, the Affordable Care Act (16). The EJA, although signed into law, has not been funded by the US congress as part of the appropriations process to date. The federal domestic violence legislation, Violence against Women Act (VAWA) recognizes older women in a category eligible for community services and targeted training for law enforcement, but does not address policy decisions about violence against women, including older women, as state level decisions.

Relevance to selected United Nations (UN) documents

A study by the Office of the United Nations Secretary General (2006) recommended that states should carry out the systematic collection and analysis of data on violence against women, ensuring that data are disaggregated by age and well as gender, race, and disability. While violence against older women was not referenced by the UN General Assembly Human Rights Council in its Directive (Accelerating efforts to eliminate all forms of violence against women: remedies for women who have been subjected to violence, July 2, 2013), the final Outcome Document of the 57th Commission on the Status of Women includes elimination of violence against older women as a recommendation. In addition, two non-binding human rights instruments, The Convention for the Elimination of all Forms of Discrimination against Women (CEDAW) General Recommendation No. 27, and the 2002 Madrid International Plan of Action on Ageing both reference violence against older women. The non-binding nature of these two documents represents a normative gap in human rights protections against violence against older women that could be addressed in a legally binding instrument like a Convention for the Human Rights of Older People.

Convention for the Elimination of all Forms of Discrimination against Women (CEDAW)

The CEDAW General Recommendation No. 27 was adopted by the CEDAW Committee at its 42nd Session (Begum, 2010) and ratified by the UN General Assembly in December 2010. As a result, a human rights instrument for older women supplements the Articles of CEDAW. Specific areas of concern related to abuse and exploitation of older women include: 26) abuse of older women under some statutory and customary laws that deprive widows of economic security after the death of their spouses; and 27) older women and exploitation and abuse especially economic abuse, when their legal capacity is deferred to lawyers and family members.

Recommendations related to prevention and elimination of abuse of older women include: 36) eliminate negative stereotyping and cultural practices that are prejudicial and harmful to older women and can lead to their physical, sexual, psychological, verbal and economic abuse; and 37) draft legislation recognizing and prohibiting domestic violence, sexual violence and violence in institutional settings against older women, and investigating, prosecuting and punishing all acts of violence against older women, including those resulting from traditional practices and beliefs.

Madrid International Plan of Action on Ageing

The Madrid International Plan of Action on Ageing, promulgated at the Second World Assembly on Ageing in Madrid, Spain, in 2002, includes a section on neglect, abuse and violence. It noted that older women face greater risk than men of physical and psychological abuse due to discriminatory social

attitudes and the non-realization of human rights of women, and some harmful traditional and customary practices result in abuse and violence directed against older women, who may face barriers such as poverty and lack of legal protection (Priority area III: Ensuring enabling and supportive environments, Issue 3, 108).

Recommended actions specific to older women include minimizing risks of all forms of neglect, abuse and violence by increasing public awareness of, and protecting older women from, neglect, abuse and violence (Issue 3, Objective 1, f). The recommendation for further research into the causes, nature, extent, seriousness and consequences of violence against older women is made in Objective 1, f.

Conclusions

There is a growing awareness of older women victims of family mistreatment both in terms of prevalence and in terms of commonalities and differences when compared to younger battered women. Both quantitative and qualitative research studies have begun to identify salient factors in cultural differences, age related needs, and service needs and gaps for older women victims.

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