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**Joint submission to the Special Rapporteur on violence against women, its causes and consequences on the adequacy of the international legal framework on violence against women**

**This submission focuses on the adequacy of the intentional legal framework to protect and promote the right to freedom violence against women in older age.**

**1. Do you consider that there is a need for a separate legally binding treaty on violence against women with its separate monitoring body?**

The enhanced legal protection, alongside the definitive legal and moral prohibition that a new international treaty on violence against women would bring, has the potential to benefit all women at every stage in their lives.

However, the greatest potential of such a separate international treaty for older women lies in its detail. Generic human rights standards on a wide range of rights have failed to adequately protect women’s rights in older age because they fail to articulate exactly how particular rights apply to older women and to the context of older age.

To be effective for all women, therefore, a separate legally binding treaty on violence against women must explicitly take into account all the forms of violence that women are subjected to at every stage of their lives and not just physical, sexual and emotional violence. It must allow for the widest range of perpetrators including violence by women against other women and relationships beyond the family. It must recognize that the drivers of gender-based violence can be multiple, both cumulative and intersectional, where harmful social norms and forms of discrimination based on gender and one or more characteristics, including older age, intersect. It must explicitly establish state obligations to provide prevention, support and redress services tailored to the specific requirements of different women, including older women, and to collect data on violence against women beyond the age of 49.

Our concern is that a new treaty that is too generic, too general, that applies to “all women” without explicitly providing for different women subjected to different forms of violence by different perpetrators, will not protect the rights of women in older age. A new treaty must therefore go beyond the rhetoric of “women of all ages” or “women across the life cycle” and contain detailed provisions on measures relevant to gender-based violence in older age, examples of which are provide in the response to Question 5 below.

**2. Do you consider that there is an incorporation gap of the international or regional human rights norms and standards?**

**3. Do you believe that there is a lack of implementation of the international and regional legislation into the domestic law?**

It is our view that international and regional human rights law fails to provide adequate standards on women’s right to be free from violence and abuse in older age.

The lack of adequate international human rights standards to incorporate or implement has had far reaching consequences in relation to fragmentation as well as significant gaps and inconsistencies in legislation across countries. As a result older women are afforded different levels of protection depending on where they live. This undermines the core principles of equality and the universality of human rights. Examples are given in the response to Question 4 below.

Another consequence is the inadequate attention by States parties to report on the measures they are taking to prevent and provide support and redress for violence against women in older age.

For example, in a recent review of 51 countries across Asia and Europe[[1]](#footnote-1) (Asia Europe Meeting, ASEM, countries), only 22 made reference to violence and abuse against older persons in their most recent periodic reports on their implementation of the following four international human rights treaties: CEDAW, ICESCR, ICCPR and CRPD. Of those that did, only four were from Asia: Australia, Japan, Singapore and Thailand. Reporting also remains sporadic. Only eight of the 22 reporting countries reported on their efforts to address violence and abuse in older age to more than one Treaty Body and none of these reported consistently across the four treaties. Issues reported on varied widely from general statements about how violence against older persons will receive special attention to more specific references to policies for example, on ensuring a restraint-free environment or providing special victim support.

In a review of available Common Core Documents for the 51 countries reviewed, only three, Japan, Portugal and Slovenia, refer to violence and abuse against older persons, and of these only Slovenia recognized gender-based violence across the lifecycle. Croatia reported that since 2006 Croatian legislation has included age as ground for hate crime.

There have also been remarkably few recommendations, notes of concern or requests for information to the 51 countries reviewed from the Treaty Bodies and Special Procedures. A search of the Office of the High Commissioner for Human Rights’ Universal Human Rights Index found only six specific references between 1999 and April 2016. Three of these were by the CEDAW Committee: welcoming Japan’s adoption of its elder abuse law in 2006, recommending Poland adopt a comprehensive strategy to eliminate all violence against women including against older women, and to Austria recommending they pay attention to violence against older women. The Special Rapporteur on violence against women recommended that Sweden pay attention to violence against women with special needs, including older women. The Committee on Economic Social and Cultural Rights noted its concern about the abandonment of older women in China.

Violence and abuse against older women has also been practically invisible in 51 countries reviewed in the Universal Periodic Review system, with only four recommendations to date: to Brunei Darussalam, Kazakhstan and two recommendations to Portugal, all of which looked at violence in older age more broadly and not gender-based violence specifically.

Violence against older women has also been invisible in the reporting and monitoring of the Beijing Platform for Action, which recognises older women are particularly vulnerable to violence (116). As part of 20-year review of implementation of the Beijing Platform for Action in 2015, governments were asked by UN Women to provide information on the situation of older women wherever possible. However a review of 131 government reports showed that only 13 recognised that women are at risk of violence in older age and only two referred to a specific form of violence that disproportionately affects older women: medication abuse and witchcraft related killings. There was no reference to the violence older women may experience in the different settings where they receive care and support, to neglect or to financial exploitation and abuse.[[2]](#footnote-2)

Although, two new regional human rights instruments have recently been adopted that include standards on violence against women in older age, neither has come into force yet. These are the *Inter-American Convention on the Protection of Human Rights of Older Persons* and the *Protocol to the African Charter on Human and People´s Rights on the Rights of Older Persons in Africa*. The incorporation and implementation of their provisions on violence against older women in the respective regions must be monitored closely when they do. Such regional standards, however, are limited in their geographic application and do not preclude the need for robust international standards.

**4. Do you think there is a fragmentation of policies and legislation to address gender-based violence?**

There is considerable fragmentation of legislation related to violence against women in older age. Older women are subjected to a number of different types of violence and abuse by a number of different perpetrators. Subsequently older women have to look to a wide range of different types of legislation for protection of their right to be free from violence and abuse. Below are some illustrative examples. These are not intended to be an exhaustive list.

In Singapore, the Women’s Charter was recently amended to protect both older women and older men from family violence. The Maintenance of Parents Act protects against financial neglect. The Penal Code protects against physical, criminalizing hurt and wrongful restraint and confinement, and financial abuse, including cheating or fraudulent deeds. The Mental Capacity Act protects against physical and emotional harm, neglect and financial abuse those who are deemed to lack mental capacity. The Protection from Harassment Act protects against causing alarm, distress and fear, the use of threatening language, stalking and other forms of harassment.

In China there is a similar range of laws that older women could look to for protection: the Anti-Domestic Violence, The Law on Protection of Rights and Interests of the Elderly, the Marriage law, the Tort Law, the Law on Administrative Penalties for Public Security and the Criminal Law. There are also two relevant policy documents that provide guidance: The Opinion on Handling of Criminal Cases Involving Domestic Violence and the Guide for Hearing Marriage Cases Involving Domestic Violence.

The situation in Australia is further complicated by the system of both Commonwealth legislation and state legislation where legislation on human rights, mental capacity, money and property offences, criminal offences, and other civil law is all relevant to violence against women in older age. In Queensland, for example, the Domestic and Family Violence Protection Act 2012 was amended specifically “to help prevent elder abuse in Queensland” by making protection orders available to a broader range of relationships, which now include family and informal care relationships. The New South Wales Crimes (Domestic and Personal Violence) Act 2007 also applies to relationships and situations that older women may find themselves at risk of violence in, for example with a paid or unpaid care provider or living in a residential facility.

In the UK, in most cases the law of England and Wales does not identify violent crimes against older women as separate from violent crimes generally. There are therefore a number of offences that apply to older women as they do to other sections of the population, for example, inter alia, under the Sexual Offences Act 2003, the Criminal and Justice Courts Act 2015, the Serious Crimes Act 2015, the Mental Capacity Act 2005 and the Care Act 2014. Older persons are however specifically referenced within the definition of vulnerable adults in Section 5 (6) of the Domestic Violence, Crime and Victims Act 2004 (as amended).

Some jurisdictions have specific legislation on violence and abuse in older age, or “elder abuse” that applies to both older women and older men. Whether this type of legislation affords older women great protection than broader gender-based violence legislation needs to be explored.

For example, Japan has specific legislation to prevent elder abuse and provide support to caregivers, The Act on Prevention of Elder Abuse, Support for Caregivers of Elderly Persons and Other Related Matters (Act no.124 of November 9, 2005), hereafter the Elder Abuse Act.

The Elder Abuse Act applies to both women and men over the age of 65 and to physical, emotional, sexual and financial abuse and neglect. The Japanese Penal Code applies for other forms of violence that may not fall under the scope of the Elder Abuse Act, such as murder. However, there are a number of limitations to this Act that raise concerns about its effectiveness in realizing older women’s right to be free from all forms of violence and abuse.

The legislation restricts the potential perpetrators to caregivers and care facility staff members. It does not articulate the drivers of violence against older women and men apart from reference to the ‘burden borne by caregivers’ in Article 1. It confers no duty on the state to provide specific redress for elder abuse nor provide any support to a survivor for making a complaint. Sentencing for any offences would occur in accordance with the Penal Code. The Elder Abuse Act does not allow for any measures to support older women and men in such proceedings. The legislation does not appear to take the survivor’s wishes into account when deciding what steps the state should take.

However the Act does obligates the state to take a number of steps including specialized training for public servants, co-ordinating cooperation among government agencies; providing support to private support organisations; coordinating with local police; assigning specific public servants exclusively to elder abuse management; conducting studies on elder abuse, promoting awareness of elder abuse, promoting the Adult Guardianship System, and maintaining records and making announcements regarding the statistics of elder abuse in care facilities each financial year.

**5. Could you also provide your views on measures needed to address this normative and implementation gap and to accelerate prevention and elimination of violence against women?**

Women’s right to be free from violence must apply to all forms of violence, including but not limited to, financial exploitation, fraud and scams, concealment, physical, sexual and psychological violence, neglect, coercion, abandonment, medical abuse such as the use of chemical restraints and over-medication, harmful traditional practices including those related to allegations of witchcraft, expulsion from the home and threats of any kind regardless of where the violence and abuse occurs and by whom.

Particular measures that states would need to take to fulfil, respect and protect older women’s right to be free from violence and abuse include[[3]](#footnote-3):

* Effective legislation and policies that ensure all forms of violence and abuse against women in older age are identified, investigated and where appropriate prosecuted
* Access to effective remedies and redress for older women
* Accessible and appropriate victim support services targeted at and tailored to the requirements of older women
* Specific attention to intersectional drivers of violence, in particular of discrimination on the basis of gender and age and ageist stereotypes and prejudicial attitudes towards older women
* Training of all care providers (paid and unpaid, formal or informal, or family care provider) , health care personnel, social workers, traditional or community healers, government officials, judiciary and law enforcers in how to recognise and respond to situations of violence and abuse in which older women may be particularly at risk
* Awareness raising and other measures to prevent all forms of violence and abuse against women in older age
* Remove upper age limits from data collection on violence against women in DHS and other surveys
* Conduct specific surveys conducted targeting women over the age of 50 which include the intersection between ageism and gender-based violence.

**Submitted by:**

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1. Conducted by HelpAge International for the National Human Rights Commission of Korea, April 2016, unpublished [↑](#footnote-ref-1)
2. E/CN.6/2016/NGO/160, Joint NGO written statement to the 60th session of the Commission on the Status of Women 2016 [↑](#footnote-ref-2)
3. HelpAge International, *A new convention on the rights of older people,* p.6 [↑](#footnote-ref-3)