

## **Neglect, Violence and Abuse**

### **ENNHRI Submission to the OEWG-Ageing**

**5<sup>th</sup> May 2017**

#### **Introduction**

The European Network of National Human Rights Institutions (ENNHRI) brings together over 40 NHRIs<sup>1</sup> across the wider European region. ENNHRI's goal is to enhance the protection and promotion of human rights throughout Europe by assisting in the establishment and accreditation of NHRIs; co-ordinating exchange of information and best practice between members; facilitating capacity building; engaging with regional mechanisms; and intervening on legal and policy developments in Europe. ENNHRI is one of four regional networks of NHRIs, which together make up the Global Alliance of NHRIs (GANHRI). This submission focuses on how international human rights standards operate at European level, particularly in the area of long-term care (LTC).

#### **Members' Work on Ageing**

Over the last ten years, approximately one-quarter of ENNHRI's members have carried out monitoring investigations on long-term care for older persons. All reported failings in related areas of choice and autonomy, participation, privacy and dignity and some evidence of neglect, violence and abuse was found.<sup>2</sup> The worst cases included older persons not being fed or being left without access to food and water, or in soiled clothes and sheets. Other concerns, such as a resident being left with their glasses or hearing aid out of reach, appeared to have been caused by a lack of understanding of the human rights of older persons.

#### ***The Human Rights of Older Persons and Long-term Care Project***

In January 2015, the European Commission (DG Employment, Social Affairs and Inclusion) started a three-year project on *The Human Rights of Older Persons and Long-term Care* to improve the human rights of older persons in LTC, with particular emphasis on residential care. As part of the Project, a Pilot Group of six European NHRIs<sup>3</sup> carried out intensive monitoring within their jurisdictions.

#### **Human Rights Framework: Neglect, Violence and Abuse Standards**

To guide the monitoring work, ENNHRI carried out a text-based analysis of the binding and non-binding international and European conventions in order to identify the human rights standards relevant to the organisation and delivery of LTC.<sup>4</sup> This showed that the right to be free from torture and cruel and degrading treatment is strongly protected in international human rights treaties, albeit

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<sup>1</sup> National Human Rights Institutions (NHRIs) are state-mandated bodies, independent of government, with a broad constitutional or legal mandate to protect and promote human rights at the national level. A list of the A-status members, supporting this submission, is available on request.

<sup>2</sup> ENNHRI, 2015, Human Rights of Older Persons: Review of Previous NHRI Findings, [http://www.ennhri.org/IMG/pdf/ennhri\\_op\\_project\\_summary\\_of\\_previous\\_findings\\_sept\\_2015.pdf](http://www.ennhri.org/IMG/pdf/ennhri_op_project_summary_of_previous_findings_sept_2015.pdf)

<sup>3</sup> UNIA, the Interfederal Centre for Equal Opportunities, Belgium, The Office of the Ombudswoman of the Republic of Croatia, The German Human Rights Institute, The Office of the Commissioner for Human Rights Hungary, The Seimas Ombudsmen's Office of the Republic of Lithuania and The Romanian Institute for Human Rights.

<sup>4</sup> ENNHRI: *Human Rights of Older Persons and LTC Project: The Application of International Human Rights Standards to Older Persons in LTC*, [http://ennhri.org/IMG/pdf/ennhri\\_application\\_of\\_human\\_rights\\_to\\_ltc\\_feb\\_2017.pdf](http://ennhri.org/IMG/pdf/ennhri_application_of_human_rights_to_ltc_feb_2017.pdf)

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with a high threshold, while neglect, violence and abuse are less well protected. However, a grey area exists in relation to abuse, with little guidance from treaty bodies and the courts.

The ICCPR (Articles 2, 3 and 7), the Convention Against Torture (CAT; Article 2) and the European Convention on Human Rights (Articles 3 and 13) offer protection from torture and/or cruel and degrading treatment in absolute terms. The Human Rights Committee has also highlighted the vulnerability of older persons in institutional and long-term care to inhuman or degrading treatment<sup>5</sup> and in 2008, the UN Committee against Torture noted<sup>6</sup> that institutions that care for older people fall within the definition of places of detention and so States Parties must also prevent torture and other ill-treatment from occurring in such settings.

There are no international or regional human rights standards specifically prohibiting neglect, violence and abuse. Instead, the right has become inferred from related, broad standards, such as the right to dignity, to the highest attainable standard of health, liberty and freedom of movement, legal capacity, equality before the law, and privacy. International bodies have inferred a number of positive obligations on states to protect individuals who are vulnerable to abuse by private actors. For example, the CESCR has highlighted the need for states parties to ensure an adequate number of staff, training nursing care personnel according to the recently adopted standards of training and conduct more thorough inspections of care homes in order to improve the situation of older persons in nursing homes and improve inhuman conditions (Article 12, the right to the highest attainable standard of health).<sup>7</sup> However, there is a lack of clarity as to what each term means in practice.

One area that has received attention at the UN is restraint. Under Article 15 of the CRPD, practices involving restraints and seclusion may be considered torture or another form of ill-treatment.<sup>8</sup> In light of this, the United Nations Special Rapporteur on Torture's 2013 report on abuses in health care settings states that any restraint on people with mental disabilities, including seclusion, even for a short period of time, may constitute torture or ill-treatment.<sup>9</sup> The Special Rapporteur on the right to the highest attainable standard of physical and mental health has noted that the persistent denial of the right to informed consent could constitute a form of physical and psychological abuse of older persons.<sup>10</sup> Other areas, such as the autonomy, legal capacity of older persons in care, receive limited attention in preventing violence and abuse.

### **Project Findings on Neglect, Violence and Abuse**

Several instances of neglect, violence and abuse were identified throughout the monitoring work by ENNHRI's Pilot Group. While none of the monitoring NHRIs in any of the six countries witnessed any evidence of torture or violence directly, staff and residents made reference to incidents of aggressive behaviour, often enacted by other residents with cognitive impairment, often the result of a challenge in communicating their needs, or the outcome of an unmet need. For the most part, the care homes visited had strong systems for follow up and intervention.

Three of the monitoring NHRIs noted secondary research which found that violence, neglect and abuse still occur in care homes, although all noted that some aspects of elder abuse are gradually becoming less prominent. Care home staff in two countries admitted to rare incidents of verbal aggression towards patients. Residents interviewed by one NHRI complained about occasionally being treated in an aggressive or brusque manner.

Various forms of restraint were witnessed in all care homes in all six countries and included both unintentional actions (e.g. forgetting to remove a tray from in front of someone's chair after they have finished eating) and attempts by staff to protect residents' safety while they were occupied with other residents, often in conjunction with understaffing. In many instances, these efforts were recorded,

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<sup>5</sup> Human Rights Committee, 2004, Concluding Observations, Germany, CCPR/CO/80/DEU, para 17.

<sup>6</sup> General Comment No. 2

<sup>7</sup> Committee on Economic, Social and Cultural Rights, 2011, Concluding Observations, Germany, E/C.12/DEU/CO/5

<sup>8</sup> Committee on the Rights of Persons with Disabilities, Concluding observations on the initial report of China, adopted by the Committee at its eighth session (17–28 September 2012), CRPD/C/CHN/CO/1.

<sup>9</sup> HRC, 2013, Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Méndez,

<sup>10</sup> HRC, 2011, Thematic study on the realization of the right to health of older persons by the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Anand Grover: [http://www2.ohchr.org/english/bodies/hrcouncil/docs/18session/A-HRC-18-37\\_en.pdf](http://www2.ohchr.org/english/bodies/hrcouncil/docs/18session/A-HRC-18-37_en.pdf)

monitored and steps were taken to compensate for them in order to ensure their autonomy while protecting their safety. In other cases, monitoring did not take place.

In three of the six countries, residents in some care homes experienced chronic restraint and deprivation of liberty, caused by extremely low numbers of staff, a lack of knowledge about human rights, and the physical environment. Some residents were bed bound, with extremely limited opportunities to exercise, engage in meaningful activities or have their independence and autonomy facilitated. This had an impact on their physical, mental and emotional well-being. Several monitoring NHRIs also reported that residents were given tranquilisers in order to prevent challenging behaviour, and questioned whether they were medically necessary. Even if some actions were well-meaning, their consistent and repeated use has the potential to be seen as a form of ill-treatment.

### **Implications for the Human Rights Legislative Framework**

The prohibition of torture and cruel and degrading treatment is well protected in both international and European human rights legislation, though neglect, violence and abuse is something of a “grey area”, with protection largely inferred from related, broad standards. Given the high rates of elder abuse internationally, particularly by formal care providers,<sup>11</sup> the findings from ENNHRI’s project that concerns were raised in relation to the protection of the human rights of residents in almost all care homes monitored in six EU countries is unsurprising. In spite of this, human rights monitoring in such settings is inadequate. These findings suggest that existing human rights standards are inadequate to ensure the full protection of the right of older persons from neglect, violence and abuse and may point to the need for a new instrument to better protect these rights. Our findings also highlight the need for more training and awareness-raising amongst care providers, care workers and older persons themselves about human rights and how these can be applied in long-term care settings.

The biggest contributing factor to residents not having freedom of movement was a lack of staff available to facilitate the movement of residents, as well as a lack of understanding by staff of this human right. Although this was an issue common to care homes in all six countries, the level of severity varied from care home to care home and from country to country. These findings suggest that a higher staff ratio as well as training for staff on human rights and how to implement them in practice can help European states meet their obligations towards older persons in care.

### **Recommendation**

ENNHRI underlines that all actors must work towards the effective implementation of existing human rights standards to protect the human rights of older persons. At the same time, given the normative and implementation gaps in existing international and regional human rights legislation outlined in this statement, ENNHRI recommends a new Convention on the Rights of Older Persons,<sup>12</sup> which includes for protection from neglect, violence and abuse and more clarity as to what each term means in practice.

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<sup>11</sup> [http://www.who.int/violence\\_injury\\_prevention/violence/elder\\_abuse/en/](http://www.who.int/violence_injury_prevention/violence/elder_abuse/en/)

<sup>12</sup> ENNHRI is aware of the challenges faced in drafting a Convention for the Rights of Older Persons, not least in defining the term ‘older person’. From NHRIs’ experience of working on older persons’ human rights, ENNHRI stands ready to input to this process.