Defining ‘Elder Abuse’ at National and International Levels of Legal Discourse

Professor John Williams
Centre for the Study of Ageing, Abuse and Neglect
School of Law and Criminology
Aberystwyth University
Wales, UK
jow@aber.ac.uk
**United Nations Universal Declaration of Human Rights**

<table>
<thead>
<tr>
<th>Article</th>
<th>Text</th>
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<tr>
<td><strong>Article 1</strong></td>
<td>All human beings are born free and equal in dignity and rights.</td>
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<td><strong>Article 2</strong></td>
<td>Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.</td>
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<td><strong>Article 3</strong></td>
<td>Everyone has the right to life, liberty and security of person.</td>
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<td><strong>Article 4</strong></td>
<td>No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms.</td>
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<td><strong>Article 5</strong></td>
<td>No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.</td>
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<td><strong>Article 6</strong></td>
<td>Everyone has the right to recognition everywhere as a person before the law.</td>
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Older age?
The first approach of ‘old age’ begins at fifty:
At fifty though mental faculties of man are in full vigour, and his judgement better than at any preceding date, the bodily powers for laborious life are on the decline . . . He begins to earn less and is less capable of enduring wind and weather; and in those more retired employments where sight is required, he fails apace and sees himself like an old horse, beginning to be turned adrift.

At sixty ‘old age’ begins:
At sixty his labour ought to be over, at least from direct necessity. It is painful to see old age working itself to death, in what are called civilised countries for daily bread.
‘Older people’?

The UN has not adopted a standard criterion, but generally use 60+ years to refer to the older population.

This is of limited value where life expectation may fall short of what it is in developed countries.

Of the 183 countries in the survey:
- 162 have life expectancy of 60 years and above
- 21 fall below 60 years
The Age of 60 is a social construct based on ‘pensionable age’

“... it seems more appropriate in Africa to use a combination of chronological, functional and social definitions. However, the challenge of how to incorporate a suitable multidimensional definition into the "pensionable age" concept remains.”

**Proposed working definition of an older person in Africa for the MDS Project**
Issues

Whatever age is the appropriate one, why does it matter?

Is it ageist to identify in law and policy a discrete group of people and attach the label 'older'?

Is the issue an enforcement one rather than a normative one?

Older people should enjoy the same protection as others – for example, the United Nations Universal Declaration of Human Rights.

Even if we identify the start of older age, it will not be an homogenous group of people – covers a wide age cohort.

Jamaican woman, 117, is oldest person on Earth

Violet Brown becomes oldest registered person after death of Italian Emma Morano, also 117

Violet Brown was congratulated by Jamaica's prime minister. Photograph: Raymond Simpson/AP
Elder abuse
Traditional Definition of Elder Abuse

“... 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".

- physical
- psychological
- sexual
- financial
- institutional
- intentional or unintentional neglect

elder mistreatment, senior abuse, abuse in later life, abuse of older adults, abuse of older women, and abuse of older men, abuse of vulnerable older people
Traditional definition:
- Too restrictive.
- Western centric?
- Fails to recognise the criminal nature of the act or omission – decriminalisation??
- Ageist?
- Paternalistic?
- Dated?
Domestic abuse

Elder abuse is thus viewed as a problem with its own distinctive characteristics, which set it apart from other forms of violence, instead of looking at the evident correspondences between the abuse of older women and violence towards younger women and developing responses in conjunction with these.  

(Penhale 2003)

Domestic abuse of older people is often put under the generic category of ‘elder abuse’ and referred not to the police but to adult protection services. This means that older people may find it difficult to access the support, legal remedies and justice that are usually open to victims of domestic abuse. It is imperative that older people are not discriminated against in this way and that practitioners are helped to understand how abuse of older people is to be addressed.  

(Older People’s Commissioner for Wales 2012)

Evaluating the ‘Access to Justice’ Project has identified significant overlaps between domestic violence and elder abuse.  

(Clarke et al. 2012 p 49)
'Elder Abuse' in International Law

• “witch” killings
• Neglect
• AIDS/HIV testing
• Poverty
• Lack of social protection
• Health and social care
• Older people during and post conflict – for example the rape of older women
• Older people in times of disaster
Murder
Rape
Theft or fraud
Assault
Harassment
Neglect
Discrimination
Domestic abuse
False imprisonment
Unlawful medication
The Access to Justice evaluation, and the Adult Protection and Domestic Abuse and Hate crimes research found a significant degree of unmet need in relation to elder abuse victims accessing justice.

Clarke et al (2013)
Concluding thoughts

• By using the term ‘elder abuse’ we are in danger of redefining unlawful/criminal behaviour insofar as it applies to older people.
• The key question is whether older people have the same rights to justice, fairness and resolution as younger people – does the redefinition exclude them on grounds of age.
• Do older people need additional normative rights? Or is it a question of ensuring that the rights bestowed upon ‘all people’ and ‘everyone’ are not denied to older people?
• The term ‘elder abuse’ maybe has (had?) a transient value in highlighting the exclusion of older people from justice and fair resolution.
• The objective must be to ensure that older people enjoy rights without discrimination.
“There is no old age. There is, as there always was, just you.”

Carol Matthau
O Magazine 2003