International Human Rights and the Elderly

Jaclynn M. Miller
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We do not grow absolutely, chronologically.
We grow sometimes in one dimension, and not in another; unevenly.
We grow partially. We are relative.
We are mature in one realm, childish in another.
The past, present, and future mingle and pull us backward, forward, or fix us in the present.
We are made up of layers, cells, constellations.¹

While some may think growing old is a blessing, others may think it a curse and have good reason to fear the onset of old age. There are a number of problems plaguing the elderly in the United States and throughout the world, such as inequalities in healthcare and treatment during emergencies like natural disasters.² This paper will argue that despite the international instruments that make reference to the rights of the elderly,

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steps still need to be taken to ensure that both laws and enforcement policies are being created internationally and nationally to protect the elderly, especially those who need institutionalized care. In addition, this paper argues that for this to occur, better enforcement mechanisms must be created, primarily an international treaty specifically designed to protect the rights of the elderly.

To demonstrate why it is that the elderly are deserving of special consideration within the international legal system, I will begin by defining old age and briefly discussing the physical and mental impact aging has on individuals, as well as providing some global statistics on aging. From there, I will discuss the existing international legal framework that exists for the protection of the elderly and how it addresses their needs. After that, I will provide examples of abuses that are still occurring in the United States and Great Britain, developed countries that may be looked to as examples, to demonstrate that more needs to be done to ensure the safety and proper treatment of the elderly, particularly in care facilities. Finally, I will conclude by discussing what is being done and what must still be done to secure rights for the elderly.

STATISTICS AND EFFECTS OF OLD AGE

Aging presents the world with challenges that impact all aspects of society, such as transportation, employment, and social inclusion. Individual public and private sectors cannot meet these challenges alone, especially as the number of people age sixty and over increases. For the first time in history, in the United States and most other developed and developing countries, the "very old," those over age eighty, are the fastest growing segment of the population.

4. See id.
5. WORLD HEALTH ORGANIZATION, TOWARD POLICY FOR HEALTH AND
In 2000, there were 600 million people aged sixty and over; there will be 1.2 billion by 2025 and 2 billion by 2050;

- Today, about two-thirds of all older people are living in the developing world; by 2025, it will be 75%;

- In the developed world, the very old (over age eighty) is the fastest growing population group;

- Women outlive men in virtually all societies; consequently, in very old age the ratio of women to men is two to one.\(^6\)

The question of who is elderly is more than just a function of chronological age.\(^7\) It also encompasses a number of other factors such as functional capacity, social involvement, and physical and mental health.\(^8\) However, being old in years does not mean that one has lost his physical or mental capacity; rather, “the term ‘elderly’ is only a generalization that draws together people of vastly different characteristics.”\(^9\) People age differently, with some going through life with few health issues, while others may suffer from multiple conditions.

It is difficult to generalize the profile of an aging population, especially in the United States, where the aging population is made up of several subpopulations including African-Americans, Mexican-Americans, and Native Americans.\(^10\) People in these subpopulations and other populations throughout the world have different economic

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**AGEING,** available at http://www.who.int/ageing/publications/alc_fs_ageing_policy.pdf.

6. *Id.*


8. *Id.*


10. *Id.* at 1-2.
circumstances, lifestyles, and values. Other factors also contribute to differences in elderly populations. For example, "women and men have distinct characteristics and needs," as do the elderly who live in rural areas or undeveloped countries. The elderly, despite being a class, still consist of individuals with unique life experiences, goals, and needs.

There is an element of unpredictability in the life span of any individual because "so little is known about the interrelationships between the inherited genetic contributions to aging and those contributions that are either environmental or the result of what might be called an attitudinal response to the passing years." However, over time the aging brain undergoes damage to proteins, experiences a decrease in blood flow, and may suffer from deficiencies in chemical neuron-transmissions. These things may result in somewhat slower learning, slower reaction time, and memory loss. Physically, as a person ages there is often a loss of bone density, muscle strength, vision, and hearing.

Due to the physical and mental ailments that often accompany old age, the elderly may face issues such as difficulty maintaining independence. They may also become socially isolated or depressed. The loss of independence that some elderly experience can render them less capable of defending their rights and interests. Additionally, the "loss of physical capabilities, mental capacity, and greater economic vulnerability" are unique to the aging population and call for special legal recognition.

11. Id. at 2.
12. Id.
14. Id. at 33.
15. Id. at 35-36.
16. Id. at 43-44, 51.
17. FROLIK & BARNES, supra note 9, at 12-13.
18. Id. at 14.
19. Id.
INTERNATIONAL LEGAL FRAMEWORK FOR THE PROTECTION OF THE ELDERLY

Although many documents and treaties refer to rights that have particular relevance to the elderly, no comprehensive international instrument exists that thoroughly attends to the specific needs of and required protections for the elderly.\textsuperscript{20} This is not to say that international instruments do not cover the elderly.\textsuperscript{21} Many instruments exist that recognize specific rights of all persons, thereby clearly applying to the elderly.\textsuperscript{22} These instruments range from international covenants to regional laws and regulations.\textsuperscript{23} However, even with all of the international and regional legal instruments that exist, the elderly are still without a treaty tailored to their particular needs.\textsuperscript{24} As a result, the rights of the elderly are often ignored or even denied, indicating that the existing international legal framework falls short of ensuring the elderly their human rights.\textsuperscript{25} One way to better address their needs and ensure their rights and protection is to create a legally binding instrument by which governments are held accountable for the treatment of the elderly.\textsuperscript{26}

THE UNITED NATIONS AND ELDER LAW

The Universal Declaration of Human Rights directly makes reference to the rights of the elderly in Article 25(1).\textsuperscript{27} The

\begin{itemize}
\item \textsuperscript{21} Thomas Hammarberg, \textit{Aged People Are Too Often Ignored and Denied Their Full Human Rights} (2008), available at http://www.coe.int/t/commissioner/Viewpoints/080428_en.asp (last visited Jan. 12, 2010).
\item \textsuperscript{22} Rodriguez-Pinzón & Martin, supra note 20, at 917.
\item \textsuperscript{23} \textit{Id.}
\item \textsuperscript{24} \textit{Id.} at 917-18.
\item \textsuperscript{25} Hammarberg, \textit{supra} note 21.
\item \textsuperscript{26} International Council of Voluntary Agencies, \textit{Aging, Development and Displacement}, (Feb./Mar. 2000), http://www.icva.ch/doc00000107.html (last visited Jan. 12, 2010).
\end{itemize}
reference provides that:

Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.\textsuperscript{28}

The United Nations' effort to address the needs of the elderly did not stop there. In 1982, the International Plan of Action on Aging (the Plan) was adopted at the 1982 World Assembly on Aging in Vienna.\textsuperscript{29} The Plan focused on ways to assist and protect the elderly and was later implemented through the five principles of independence, participation, care, self-fulfillment, and dignity by the United Nations Principles for Older Persons.\textsuperscript{30} Most recently, and in a follow up to the Vienna World Assembly, the International Plan of Action was adopted by 159 countries at the Second World Conference on Ageing in Madrid in 2002.\textsuperscript{31} The International Plan of Action calls for “the promotion and protection of all human rights and fundamental freedoms,” and includes the need to incorporate aging into the global agenda.\textsuperscript{32} The International Plan of Action puts primary responsibility on national governments to put the Plan into action by developing and implementing policies to ensure economic and social protection for older people, promoting and ensuring their good health, and making services and housing available and accessible.\textsuperscript{33} In general, the goal of the International Plan of Action is to eliminate neglect, abuse, and violence toward older people.\textsuperscript{34}

While the United Nations is moving toward implementing methods to eliminate elder abuse, it must keep in mind that time

\begin{footnotesize}
\begin{enumerate}
\item Id.
\item Rodriguez-Pinzón & Martin, supra note 20, at 947.
\item Id. at 948.
\item Id. at 949.
\item Id.
\item Id. at 949-50.
\item Id. at 950.
\end{enumerate}
\end{footnotesize}
is of the essence because aging populations around the world are on the rise.\textsuperscript{35} Aged populations in Germany, France, and Sweden are projected to increase 30\% to 60\% by 2020.\textsuperscript{36} In developing countries like Thailand and Kenya, aged populations are expected to increase more than 300\%.\textsuperscript{37} The world is looking at major demographic changes in the next ten years, and these changes require action to prevent a potentially negative fallout.\textsuperscript{38} To go about these changes, organizations like the World Health Organization and the International Council of Voluntary Agencies urge international policy changes to address elder abuse\textsuperscript{39} and adoption of a legally binding international charter of rights for the elderly.\textsuperscript{40} Such policy changes and an international legal instrument could then serve as guides for countries as they incorporate human rights for the elderly into their own legal systems.\textsuperscript{41} Taking these steps would enable states to hold themselves and each other accountable for their treatment of the world’s elderly.

\textit{The International Covenant on Economic, Social, and Cultural Rights and General Comment 6}

In its preamble, the International Covenant on Economic, Social, and Cultural Rights (ICESCR) recognizes that the rights it conveys are derived “from the inherent dignity of the human person.”\textsuperscript{42} Part II, Article 2, says, “[t]he States Parties to the present Covenant undertake to guarantee that the rights

\begin{itemize}
\item \textsuperscript{36} Id.
\item \textsuperscript{37} Id.
\item \textsuperscript{38} See International Council of Voluntary Agencies, supra note 26.
\item \textsuperscript{39} See Missing Voices, supra note 35, at 2.
\item \textsuperscript{40} International Council of Voluntary Agencies, supra note 26.
\end{itemize}
enumerated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status." Age is not explicitly referred to as a category protected from discrimination within this article. However, the Committee on Economic, Social, and Cultural Rights ("CESCR") has stated that "discrimination on the grounds of 'other status' could be interpreted as applying to age."

Part III, Article 12, states, "[t]he States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health." Although the elderly are not mentioned specifically in the covenant, they are still human and therefore have inherent dignity and should be entitled to the highest attainable standard of physical and mental health. In order to clarify the extent to which the ICESCR applies to the elderly, the CESCR adopted General Comment 6. General Comment 6 is the CESCR's interpretation of the provisions of the Covenant in relation to the elderly.

In addition to adopting General Comment 6, the CESCR also took on the responsibility of monitoring the implementation of protections for the elderly, as well as promoting and protecting the economic, social, and cultural rights of the elderly within the member States. In doing so, the CESCR became the first United Nations mechanism to specifically focus on the elderly.

Though General Comment 6 discusses articles that address

43. id. at Art. 2.
45. CESAR: General Comment 6, supra note 44, at ¶ 12.
47. Rodríguez-Pinzón & Martin, supra note 20, at 952.
48. See CESCR: General Comment 6, supra note 44.
49. Rodríguez-Pinzón & Martin, supra note 20, at 954.
50. id.
the rights of the elderly related to work, social security, and others areas, I will focus on Article 12: Right to Physical and Mental Health, which relates the most closely to the health care issues I discussed previously. General Comment 6 recommends that when interpreting Article 12 of the ICESCR, State parties should take into account recommendations one to seventeen of the Vienna International Plan on Ageing, which focus on preserving the health of the elderly. The Vienna plan relates four main facets of the right to health. The first is availability, which refers to "the sufficient quantity and sustainable quality of health care facilities, goods, services and programs." The second is accessibility, referring to freedom from discrimination and physical, economical, and informational roadblocks. Third, acceptability incorporates cultural understanding, including the needs of the genders and data confidentiality. Lastly, quality encompasses "the scientifically and medically appropriate production of medical goods, services, facilities, and drugs." Additionally, to ensure that these principles are put into action, "states should maintain adequate and enforceable health standards, by providing adequate access to judicial review or other appropriate remedies to address violations of the right to health."

While prevention may work for future generations, these recommendations do little to assist the present elderly who have already been abused or are currently suffering abuse. Although the ICESCR is an enforceable international instrument, the elderly whose rights are being violated may not have the

51. See CESCRI General Comment 6, supra note 44, at Art. 12.
52. See id.
53. Rodriguez-Pinzón & Martin, supra note 20, at 969.
54. Id.
55. Id.
56. Id.
57. Id. at 971.
ability to voice those violations, and abuse is therefore under-reported. The CESCR has a difficult job ahead of it to ensure that States parties are adhering to the Convention when those that are being victimized may not be seen or heard.

Until legal standards are set to protect elderly persons' rights, and until a concerted effort is made to adopt a comprehensive international instrument, the elderly will remain in a disadvantaged state. Enforceable legal standards need to be created to ensure that the United Nations' principles regarding the elderly are binding. Until then, the elderly will remain "the only vulnerable population that does not have a comprehensive and/or binding international instrument addressing their rights specifically."

**INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS**

On its face, the International Covenant on Civil and Political Rights (ICCPR) may not seem to provide the elderly with many specific protections; however, its articles can be used for that purpose. The ICCPR has been accepted by the Human Rights Committee to protect the rights of the elderly. Specifically, Article 26 establishes the right to equal protection and has been found to afford the right to social security to the elderly. The case that established the precedent of applying Article 26 to obtain social security was Brooks v. Netherlands. In Brooks v. Netherlands, a woman's social security benefits were cut off

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59. See id.; see also WORLD HEALTH ORGANIZATION, A GLOBAL RESPONSE TO ELDER ABUSE AND NEGLECT: BUILDING PRIMARY HEALTH CARE CAPACITY TO DEAL WITH THE PROBLEM WORLDWIDE: MAIN REPORT 1 (2008), available at http://www.who.int/ageing/publications/ELDER_DocAugust08.pdf [hereinafter A GLOBAL RESPONSE TO ELDER ABUSE].
60. See Age Concern, supra note 58.
61. Rodríguez-Pinzón & Martin, supra note 20, at 1007-08.
63. Rodríguez-Pinzón & Martin, supra note 20, at 1008.
64. Id. at 923.
65. Id.
66. Id.
because she did not fall within the permitted category of social security recipients. The Committee found that where legislation is adopted to provide social security, "such legislation must comply with Article 26 of the Covenant." The Committee also extended the interpretation to any domestic legislation, holding that Article 26 bars discriminatory legislation. Although most of this case law deals with social security benefits, it nevertheless demonstrates how it may be possible to use other provisions, like the right to integrity, to acquire or establish the right of health.

In the case of below adequate standards for nursing homes, it is possible that a case could be brought based on Part III, Article 6, which provides that "[e]very human being has an inherent right to life." If the states parties cannot establish enforceable guidelines that create satisfactory nursing home or elderly care centers, residents could end up arbitrarily deprived of their lives. In terms of the misuse of psychiatric drugs and treatments, Part III, Article 7, of the ICCPR could be used to bring a claim because it could constitute nonconsensual use of medical or scientific experimentation. Article 7 provides that "[n]o one shall be subjected to torture or to cruel, inhuman, or degrading treatment or punishment. In particular, no one shall be subjected without free consent to medical or scientific experimentation." However, current precedent is limited to the use of Article 26 in the field of social security benefits.

Despite the protections that exist as a result of these international and other regional legal instruments, the elderly still remain a vulnerable population whose rights are frequently not enforced and are even denied. One of the consequences of

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68. Id. at 2.1.  
69. See id. at 12.4.  
70. See id.  
71. Rodriguez-Pinzón & Martin, supra note 20, at 934.  
73. Id. at Art. 7.  
74. Rodriguez-Pinzón & Martin, supra note 20, at 934.  
75. Hammarberg, supra note 21.
this is that elder abuse is occurring in countries around the world.\textsuperscript{76} To aid in the prevention of such abuse, advocates recommend policy changes on behalf of the elderly on an international level, as well as a legally binding international charter to enforce their rights.\textsuperscript{77}

**MISTREATMENT OF THE ELDERLY**

The mistreatment of the elderly is not something people like to talk about and, until recently, elder abuse, the mistreatment of older people, has been hidden from society's view.\textsuperscript{78} The World Health Organization (WHO) defines elder abuse as "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."\textsuperscript{79} Elder abuse can occur in several different ways.\textsuperscript{80} It can be physical, psychological/emotional, sexual, and financial.\textsuperscript{81} It can also take the form of neglect, abandonment, and permitting self-neglect.\textsuperscript{82}

In most cultures, elder abuse is under-reported and the extent of mistreatment is unknown.\textsuperscript{83} Elder abuse is not just a problem for undeveloped countries.\textsuperscript{84} For example, in developed countries such as the United States and Great Britain, which may be viewed as examples by developing countries, the elderly are still being mistreated despite efforts to eradicate elder abuse.\textsuperscript{85} It is a problem present in all societies and therefore

\textsuperscript{76}. See \textit{A GLOBAL RESPONSE TO ELDER ABUSE}, \textit{supra} note 59, at 1.
\textsuperscript{77}. See \textit{MISSING VOICES}, \textit{supra} note 35, at 20; see also International Council of Voluntary Agencies, \textit{supra} note 26.
\textsuperscript{79}. \textit{id}.
\textsuperscript{80}. See \textit{id}.
\textsuperscript{81}. \textit{id}.
\textsuperscript{82}. \textit{BARBARA WEXLER, GROWING OLD IN AMERICA} 166 (Paula Kepos ed., 2008).
\textsuperscript{83}. \textit{Ageing and Life Course}, \textit{supra} note 78.
\textsuperscript{84}. \textit{id}.
\textsuperscript{85}. See generally \textit{id}.
INTERNATIONAL HUMAN RIGHTS

requires a global response.\textsuperscript{86}

\textbf{Cruel Mental Health Programs}

Today, the task of caring for many elderly people is placed on organizations like nursing homes and age-care centers.\textsuperscript{87} Leaving the elderly in the care of others takes a certain amount of trust, and there is an expectation that staff will care for our elders with dignity and respect.\textsuperscript{88} However, frequently the institutions render the elderly "submissive, quiet, somehow vacant, a sort of lifelessness about them, perhaps blankly staring or deeply introspective and withdrawn."\textsuperscript{89} The cause of this, if not tranquilizers or psychoactive drugs, could be electroconvulsive or shock treatment (ECT), or simply threats of painful and demeaning restraints.\textsuperscript{90}

Often the tranquilizers prescribed, benzodiazepines, are addictive.\textsuperscript{91} "In Australia, a study found one third of elderly people were prescribed tranquilizers . . . ."\textsuperscript{92} Additionally, psychoactive drugs were prescribed to Australian elderly in nursing homes because they were being "'noisy,' 'wanting to leave the nursing home,' or were 'pacing.'"\textsuperscript{93} In the United Kingdom, the coroner’s report showed that benzodiazepines contributed to causes of unnatural death more so than all other illegal drugs.\textsuperscript{94} In the United Kingdom, a reported "23,000 elderly people with Alzheimer's could be dying prematurely in care homes each year after being given drugs to keep them quiet."\textsuperscript{95} By incorrectly prescribing and administering anti-

\begin{footnotes}
\footnote{86. \textit{id}.}
\footnote{87. \textit{Elderly Abuse, supra note 2, at 2.}}
\footnote{88. \textit{id}.}
\footnote{89. \textit{id}.}
\footnote{90. \textit{id} at 2.}
\footnote{91. \textit{id} at 3.}
\footnote{92. \textit{id}.}
\footnote{93. \textit{id}.}
\footnote{94. \textit{id}.}
\footnote{95. Sarah Womack, \textit{Sedatives 'Killing 23,000 Alzheimer's Victims a Year'}, \textit{The Daily Telegraph} (London), Apr. 1, 2008.}
\end{footnotes}
psychotic drugs to people with dementia, care homes are violating the human rights of their residents. In the United States, one in five seniors is abusing prescribed psychoactive drugs. As a result of the prescription of these drugs, “senior citizens suffer the extreme indignity of having their power of mind heartlessly nullified by psychiatric treatments or their lives simply brought to a tragic and premature end.”

Cecile Henry went into a nursing home “as good as you and I,” but two weeks later she was “babbling instead of talking, drooling constantly, shaking violently, and was unable to control her bowels.” It was later discovered that the psychiatric drug she was on had been increased to 100 times the recommended amount. The drug had caused her symptoms and permanent liver damage.

In addition to the psychiatric drugging of the elderly, the use of Electroconvulsive Therapy (ECT) also contributes to the healthcare system’s abuse of the elderly. Those elderly subjected to ECT can suffer from brain damage, memory loss, and intellectual impairment. “In the United States, sixty-five-year-olds receive 360% more ECT treatments than sixty-four-year-olds.” This may be attributable to the fact that Medicare coverage takes effect at age sixty-five. Also, psychiatrists have an almost “malpractice-free” domain because complaints may be dismissed as “patient’s senility.”

The improper use of restraints results in another common abuse of the elderly. In a 2002 court case, a registered nurse

96. Id.
97. Elderly Abuse, supra note 2, at 3.
98. Id.
99. Id. at 2.
100. Id.
101. Id.
102. Id. at 9.
103. Id.
104. Id. at 11.
105. Id.
106. Id.
107. See id.
said that "patients can become so exhausted fighting against restraint, they risk cardiac and respiratory collapse."108 In Japan, it was discovered that private psychiatric hospitals were forcibly incarcerating elderly patients, as well as illegally restraining them.109 In Denmark, hospitals got additional funding for "treating" patients with restraints.110

GREAT BRITAIN'S PROBLEMS WITH INSTITUTIONALIZED CARE

Recently, care homes in Great Britain received significant media attention because of the poor treatment their elderly residents were receiving. In 2007, it was discovered that care home residents had been "left lying in their own urine or excrement, suffering malnutrition and being abused by staff."111 "[Twenty-one percent] of care homes [also] failed to reach minimum standards for privacy and dignity."112 The frequency of inspections decreased in 2006 from once every two years to once every three years, and the number of standards used during the inspection was reduced in 2004 from thirty-eight to fifteen.113 Lilly Leathman, an eighty-one-year-old resident of a nursing home of Laurel Bank in Halifax, lost six stones (or forty-eight pounds), in the six months she resided there.114 She had also developed bedsores so bad that her hip bones could be seen.115 When her family removed her from the home, Lilly "could no longer walk and needed eighty days in the hospital . . . to recover."116

108. Id.
109. Id.
110. Id.
112. Id.
115. Id.
116. Id.
In response to the reports of the abuse, the parliamentary joint committee on human rights said: ""In our view, elder abuse is a serious and severe human rights abuse which is perpetrated on vulnerable older people who often depend on their abusers to provide them with care.'" At the time, a loophole existed in the British Human Rights Act that exempted private companies that provided public services, like elder care homes, from its authority. After a substantial outcry, the bill was amended in 2008 to close the loophole so that these homes would be subject to the Act.

In August of 2008, about one year after the initial reports of abuse, reports still circulated that care homes and hospitals were ignoring the human rights of the elderly. There were still problems with elderly ""being left in their own excrement and being heavily sedated . . . ."" One elderly woman, who was unable to see, was not alerted by the staff that her meals had arrived, nor was she offered any help to eat them. As a result, many of them were removed untouched. Another elderly man, hospitalized for renal impairment, was not given any help to drink water or pass fluids. He died of renal failure.

Steps are being taken in the United Kingdom to try to alleviate some of the hardships on the elderly. Mental health assessments will be conducted to determine whether care home

117. Tweedie, supra note 111.
120. Id.
121. Id.
122. Id.
123. Id.
125. Id.
residents are being institutionalized unlawfully. There are also new regulations, "triggered by a ruling of the European Court of Human Rights, [that] could . . . [allow] care home staff [to] be[ ] prosecuted for assault if they try to restrain patients who should be free to leave." However, staff could also be prosecuted if their patient is harmed while he was unsupervised. While these new regulations might seem like the solution, there are concerns that "the rules have been so badly drafted," and the forms and detailed guidelines as to how to apply the new rules had not yet been produced as of February 2, 2009, and they were to be implemented April 1, 2009. There is also concern that the mental health assessments might have poor results because a patient may appear lucid or be receiving treatment for a mental health problem, so an assessor may make an incorrect determination that would enable that person to leave a facility at will.

**Elder Abuse in Institutions in the United States**

Although the United States' Omnibus Budget Reconciliation Act of 1987 (the Act) requires nursing homes to maintain the "highest practicable physical, mental, and psychological well-being of each resident," elder abuse in nursing homes is still a problem. The Act improved quality "immediately after [its] implementation . . ., but . . . there is evidence that quality has deteriorated in recent years." Part of this may be due to inadequate regulatory processes and "inadequate staffing, compounded by insufficient staff training." Additionally,
compliance with the Act varies from state to state and also between facilities.\textsuperscript{137} Despite the federal laws and regulations that govern nursing homes, standards do not exist that regulate other types of facilities such as personal care homes, homes for the aged, and assisted living facilities.\textsuperscript{138}

States are doing their part to help prevent elder abuse by adopting additional legislation. For example, Wisconsin has Wis. Stat. Sec. 940.285, Abuse of Individuals at Risk, which provides the definitions for abuse and penalties for certain perpetrators.\textsuperscript{139} Wisconsin also has Wis. Stat. Sec. 46.90, Elder Abuse Reporting System, which provides additional explanation for areas such as what constitutes abuse, who a caregiver and "elder adult at risk" are, who must report abuse, how it will be handled after it is reported, and the penalties for the abuse.\textsuperscript{140} Despite these laws, in February 2009 an 87-year-old Wisconsin man was found outside his assisted-living center frozen to death.\textsuperscript{141} The man was wearing only a T-shirt, pants, and slippers in bitter cold weather.\textsuperscript{142} He had apparently locked himself out of the center and tried several doors to get back inside, but he was unable to make it to the front of the building to the unlocked doors.\textsuperscript{143}

From a more general perspective, "one half of nursing home patients suffer from dementia and are unable to voice their abusive situation or seek help."\textsuperscript{144} In a random-sample survey done in one state, 10% of those nurses’ aides surveyed reported committing at least one act of physical abuse and 40% said they had committed at least one act of psychological abuse, all of

\textsuperscript{137} Id. at 168.
\textsuperscript{138} Id.
\textsuperscript{140} Wis. Stat. Ann. § 46.90 (West 2009).
\textsuperscript{142} Id.
\textsuperscript{143} Id.
which occurred in the past year.¹⁴⁵ Yet, even with information like this, Congress has done nothing to create a federal statute to prevent elder maltreatment even though statutes exist for prevention of child abuse and domestic violence generally.¹⁴⁶

Requiring reporting of elder abuse is common among states. For example, Illinois has the Elder Abuse and Neglect Act,¹⁴⁷ Kansas has Article 14, Reporting Abuse, Neglect or Exploitation of Certain Persons,¹⁴⁸ and Florida, with the highest proportion of elderly at almost 19%,¹⁴⁹ has the Adult Protective Services Act,¹⁵⁰ as well as a statutory chapter dealing with the Abuse, Neglect, and Exploitation of Elderly Persons and Disabled Adults.¹⁵¹ As of March 31, 1993, all states had enacted laws addressing elder abuse in both domestic and institutional settings.¹⁵² However, because some states do not define elder abuse as a crime per se, elder abuse was not a data element in the FBI’s national Uniform Crime Reporting system as of May 2006.¹⁵³ State laws and intensified efforts to improve quality are proving not to be enough; the United States Government Accountability Office issued a report indicating that:

- A small but still unacceptable proportion of nursing homes actually caused harm to residents, or through neglect or mistreatment placed them at risk for serious injury or death.

¹⁴⁵. Id. at 1293.
¹⁴⁶. Id. at 1295.
¹⁴⁷. 320 ILL. COMP. STAT. ANN. § 20/2 (West 2009).
¹⁵⁰. FLA. STAT. ANN. § 415.101 (West 2009).
¹⁵¹. FLA. STAT. ANN. § 825.101 (West 2009).
Complaints from residents, family members, or staff about possible mistreatment or harm may not be investigated for weeks or months and delays in reporting alleged abuse hampers investigations and prolongs the potential risk of harm to residents.

In general, federal oversight mechanisms to monitor safety and quality were limited in their scope and effectiveness.\textsuperscript{154}

Given these findings and the fact that it "is estimated that between one million and four million elderly U.S. adults experience some form of neglect . . . or outright mistreatment, either at home or in long-term care facilities,"\textsuperscript{155} a national and international standard is needed to provide guidance, structure, and a means to ensure that the elderly are treated with dignity and have the rights they deserve.\textsuperscript{156}

Around the world, the institutionalized elderly are being subjected to unnecessary and potentially dangerous "treatments" and treatment.\textsuperscript{157} Even in developed countries, a struggle exists in determining how to protect one of the most vulnerable and legally unrecognized groups of people, the elderly.\textsuperscript{158} While laws on paper may guarantee various protections, there are still flaws in their enforcement and implementation.\textsuperscript{159} With these facts in mind, international policy and law must be developed to make sure that this quickly


\textsuperscript{155} Jane Neff Rollins, Abused Elders May Not Complain, So Be Proactive, 39 INTERNAL MED. NEWS, July 15, 2006, at 20.

\textsuperscript{156} See id.

\textsuperscript{157} See Elderly Abuse, supra note 2.

\textsuperscript{158} See A Global Response to Elder Abuse, supra note 59, at 98, 124; see also Rodriguez-Pinzón & Martin, supra note 20, at 1008.

\textsuperscript{159} See, e.g., WEXLER, supra note 82, at 168, 170.
growing population is protected.160

CONCLUSION AND RECOMMENDATIONS

No international treaty exists that addresses the rights of the elderly specifically, although treaties have been created for similarly vulnerable groups, such as women and children.161 For example, the United Nations proclaimed in the preamble of the Convention on the Rights of the Child "that childhood is entitled to special care and assistance."162 The Declaration of the Rights of the Child states, "the child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection . . . ."163 This or similar recognition should be extended to the elderly, who by reason of their physical and mental maturity, should be able to expect the same special safeguards, care, and legal protection.164

In taking steps to provide safeguards and legal protection for the elderly, particularly in the field of health care, there are a number of factors that should be taken into consideration.165 Often, the elderly are unaware of their human rights or even rights they may have as patients.166 Additionally, they may not know about or have access to means for dealing with complaints or rights violations.167 Publicity and education may serve to increase their awareness and encourage use of legal remedies.168 However, even with an increased awareness and legal outlets, some older individuals may lack the capacity to voice their

160. See Missing Voices, supra note 35, at 20-21; see also International Council of Voluntary Agencies, supra note 26.
164. See The Toronto Declaration, supra note 41, at 2.
165. See e.g., Age Concern, supra at note 58.
166. See e.g., id.
167. Id.
168. Id.
problems or may be afraid of retaliation by an abuser if they do.\textsuperscript{169} It is because of problems and fears like these that some experts believe elder abuse is underreported by as much as 80\%, resulting in fewer claims being filed on behalf of the elderly.\textsuperscript{170}

Even when cases of elder abuse are recognized, they are often not addressed due to the absence of "proper legal instruments to respond and deal with them."\textsuperscript{171} To address this issue, it would be beneficial to have an international set of standards for prevention of elder abuse developed as part of a binding international treaty addressing the specific needs and rights of the elderly.\textsuperscript{172} These international standards could include the proper treatment of elderly in nursing homes and other care facilities.\textsuperscript{173} These guidelines and standards could require better education of staff at elderly care homes and facilities to make them aware of the signs of and be better able to deal with elder abuse.\textsuperscript{174} In addition, all countries should develop structures that enable an effective response to abuse and work towards prevention.\textsuperscript{175}

With the world’s population of elderly rapidly growing, an international response to elder abuse is necessary to prevent an increase in its incidence and prevalence.\textsuperscript{176} An international treaty addressing the rights and needs of the elderly would provide enforceable protection for the elderly and aid in the prevention of elder abuse.\textsuperscript{177} It would do this by forcing party governments to create new laws or change existing laws in order to put the treaty into effect at the national level.\textsuperscript{178} By adopting

\textsuperscript{169} See id.
\textsuperscript{170} A Global Response to Elder Abuse, supra note 59, at 1; see International Council of Voluntary Agencies, supra note 26.
\textsuperscript{171} The Toronto Declaration, supra note 41.
\textsuperscript{172} See Missing Voices, supra note 35, at 20; see also International Council of Voluntary Agencies, supra note 26.
\textsuperscript{173} See generally Missing Voices, supra note 35, at 20.
\textsuperscript{174} The Toronto Declaration, supra note 41.
\textsuperscript{175} Id.
\textsuperscript{176} A Global Response to Elder Abuse, supra note 59, at 2.
\textsuperscript{177} See generally The Toronto Declaration, supra note 41, at 2.
such a treaty, governments would finally acknowledge that the elderly have a basic human right to be free from abuse.\footnote{179}