Violence against vulnerable groups

Hilary Brown

Integrated project "Responses to violence in everyday life in a democratic society"

All Europeans feel affected by violence and its repercussions. Personal security is threatened every day in a whole range of places and circumstances: at home, at school, at work, at sports events and on the streets. While violence and the fear of violence affect everyone's quality of life, certain groups – such as women, children and the elderly as well as migrants, refugees and particular ethnic groups – may be seen as specific targets.

The integrated project on "Responses to violence in everyday life in a democratic society" was launched by the Secretary General of the Council of Europe as a means of mobilising the Council's resources over a period of three years (2002-04) to address the widely shared concerns that violence engenders. Its main aim is to help decision makers and others to implement consistent policies of awareness-raising, prevention and law enforcement to combat violence in everyday life. Significantly, these policies have to be formulated and applied in ways that respect human rights and the rule of law. That is an absolute prerequisite for achieving lasting improvement in the actual situation and in people's feelings about security in Europe.

Violence against vulnerable groups is the tenth of a series of publications for a general readership containing recommendations or instruments used to launch Council of Europe activities and projects on violence prevention. The series also includes discussion and summary documents on the different topics covered by the integrated project.

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FOREWORD

Europe is marked by great cultural and individual diversity. It is a principal source of our strength which we must promote actively. Everyone should feel at home in Europe.

The Council of Europe stands for equal opportunities for all Europeans: we want a Europe for all and by all. Gender, age or disability should never form a barrier against full participation in professional and social life.

I am particularly alarmed when our diversity is used against us in selecting certain groups of people as specific targets of violence: violence against women, older people, children, people with disabilities or ethnic minorities. Violence is especially cruel and often more frequent when targeted at those groups of people who already find themselves disadvantaged or discriminated against in society. Therefore, along with empowerment, awareness-raising and mainstreaming, we still need special measures to protect those people who continue to be more vulnerable than others.

This report provides a model of co-ordination and lateral thinking for dealing with the problem of violence against three vulnerable groups: children, older people and people with disabilities. I trust it provides a relevant and very applicable contribution to combating this particularly cowardly aspect of violence.

Walter Schwimmer
Secretary General of the Council of Europe

I. A PRINCIPLED MANDATE

Introduction

This report is produced as part of the Council of Europe's integrated project on "Responses to violence in everyday life in a democratic society". The project is designed to look at violence in its many forms, including domestic violence and how this affects children, women and men. As such it also provides, from within the Council of Europe, a model of co-ordination and lateral thinking, which has much in common with national initiatives designed to protect children and vulnerable adults from abuse and to uphold their rights.

As the title of this report suggests, violence against vulnerable people is commonplace; it occurs in homes, schools, workplaces and neighbourhoods. Our communities are diminished each time a child is hit in a supermarket queue, each time a person with a disability is taunted in the street, whenever someone with a mental health problem is homeless or an older person isolated because they are afraid to go out. While incidents like this are treated as nothing out of the ordinary, taken together they represent a cumulative erosion of the human rights and dignity of people who already face barriers and have difficulties to overcome.

Protection as an equal rights issue

However, protection is not a special privilege, only of concern to vulnerable groups; all citizens take steps to protect themselves while expecting that the state will also take reasonable measures to assure their personal safety and to seek redress on their behalf if they are victims of violence.

This report highlights the duty of member states to act equitably in respect of all its citizens, including children, older people, and people with physical or mental disabilities. It aims to provide an account of the work that has been done across these boundaries, pooling ideas, without obscuring important differences. Comparing conceptual frameworks and examples of best practice increases understanding about what these groups have in common, and allows us to interrogate the nature and sources of vulnerability, to search for explanations of the predisposing factors and dynamics which underlie everyday violence and to see if solutions derived in one setting can help those seeking answers in another.

The report reflects the Council of Europe's strong commitment to human rights and views these issues through that lens. Here there are no questions about whether certain punishments or treatments might "work" if they represent a violation of the integrity of those concerned. The Committee of Ministers has emphasised that it is committed to a proactive stance and uses strong language to signal that determination, stating, for example, that its goal is "promoting children's rights as the term promotion is broader than protection" (European Convention on the Exercise of Children's Rights, 1996, p. 18).

A note about "labels"

Across Europe different terminology is used to describe people with disabilities, each with its own nuanced meaning and inferences. In this report the term "people with disabilities"[1] is used, and "people with intellectual disabilities" is the term used to describe people also sometimes referred to as people with mental handicaps, learning disabilities or learning difficulties. "Older people" is the preferred term for people who are sometimes referred to as elderly, or as senior citizens.

Individuals and groups might dispute the term "vulnerable" when applied to them, or to a group they identify with: not all people with disabilities or older people are especially "vulnerable" and many have fought assertive and hard-won campaigns to establish their rights as ordinary adults in society. In some cultures, vulnerability is stigmatised and it is certainly at odds with the image projected by the disability movement who are actively campaigning on their own behalf to have their rights respected and to live their lives free from discrimination.

A social model of vulnerability

Nevertheless, these groups do share, with children, young people, women, refugees and ethnic minorities, certain disadvantages when they are the victims of violence and it is for this reason that they are grouped together in this report. Chapter III explores the roots of this additional vulnerability, which is not necessarily located in a person's impairment, but in the way others, including responsible agencies, treat them. Nor is protection

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1. Throughout this report the term "people with disabilities" is taken to include children with disabilities, where only adults are concerned this is made clear.

advocated as a retreat from empowering service provision. On the contrary, it should be seen as an essential element in new models of assistance, support and community living. It is to be achieved, wherever possible, through ordinary routes and mainstream agencies. The protection of an institution is not the kind of protection offered to other citizens.

A commitment to take all violence seriously

The work described in this report can therefore be seen as part of the Council's commitment to challenge all forms of discrimination, with the goal that violence against these groups is taken as seriously as it is in relation to other citizens. If there is one idea to take away from the projects described in this report, it is that these groups are asking their countries to provide them with equal not special protection. Although a few individuals[1] have particular needs and may require special measures to be in place, for most this agenda is not a plea for kid gloves but for equal rights.

There is now, across all these groups and throughout the agencies that advocate on their behalf, a determination that violence and abuse against vulnerable people will no longer be justified, minimised or tolerated; and that powerful individuals and agencies will be held to account for human rights violations and acts of cruelty or negligence. This commitment is backed up by a strong international consensus. The Council of Europe's work across all these sectors provides instruments, guidance and exemplars to assist member states translate this commitment into a reality.

Finding your way around the report

The report is divided into three chapters: Chapter I explores the remit and mandate of the Council of Europe in relation to prevention of violence; Chapter II explores the definition of violence and the labelling of certain groups as "vulnerable"; and Chapter III looks at what is known about such violence and its causes, which will contribute to finding shared solutions.

A list of documents issued by the Council of Europe is included with other references at the end of the report.

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1. Specifically, young children and adults who lack mental capacity and are therefore unable to make their own decisions or act in their own best interests.

The human rights mandate of the Council of Europe

The mandate for the Council of Europe's work in relation to abuse derives from the European Convention on Human Rights, the European Social Charter, the United Nations Declaration on the Rights of the Child and the UN Standard Rules on Equalisation of Opportunities for Persons with Disabilities interpreted in Committee of Ministers Recommendation No. R (92) 6 on a coherent policy for people with disabilities.

Children's rights

Children's rights are spelt out in the UN Convention on the Rights of the Child; backed up for member states by the European Convention on Human Rights, which obviously applies equally to children. The European Convention on the Exercise of Children's Rights was opened for signature in 1996 to provide the legal instrument enforcing and supplementing the UN declaration, particularly in relation to children's rights in legal proceedings concerning them. It establishes their rights to be informed, represented and to participate in proceedings in family courts. Consideration had been given to the creation of a separate European convention on children's rights but bodies within the Council of Europe have stated a preference for putting their energies into implementing the instruments that already exist rather than enacting new ones that might inadvertently lead to duplication or dilution.

Rights of people with disabilities

The Council's activities in the sphere of disability are supervised by the Committee on the Rehabilitation and Integration of People with Disabilities and guided by Committee of Ministers Recommendation No. R (92) 6 on a coherent policy for people with disabilities, which advocates the integration and full participation of people with disabilities in society. Such a commitment should also be seen against the background of the European Convention on Human Rights and the European Social Charter and in particular anti-discrimination protocols.

Rights of people with mental health problems

The actions of governments in relation to people with mental health problems is strictly governed by the European Convention on Human Rights, which sets out the conditions under which detention may be authorised: Article 5, paragraph 1.*e*, sets out the right of "persons of unsound mind" not to be deprived of their liberty except in accordance with a procedure prescribed by

law. According to the European Court of Human Rights the detention of a person of unsound mind is lawful only where:

– a true mental disorder is objectively established;

– the disorder warrants detention;

– the detention continues no longer than the disorder.

The article also asserts that compulsory treatment in the community will be lawful if it is "proportionate" and "necessary for the protection of health". Article 5, paragraph 4, concerns the right of a detained person to take legal proceedings to appeal the lawfulness of his detention and states that such an appeal should be decided "speedily" by the court. Article 3 of Protocol No. 1 assures that even detained patients retain the right to vote.

A brief overview of the work of the Council in relation to vulnerable groups

A range of projects

Work on violence against vulnerable groups has taken place under the aegis of a number of groups across the Council and has included work to address:

– conditions in institutions, detention centres and penal establishments;

– abuse against older people in their families;

– access to health care for people living in institutions including residential homes;

– equitable access to health care, justice and public amenities;

– sexual exploitation, trafficking and risks of the Internet;

– gender-based violence and all forms of domestic violence;

– trafficking in children and women, whether for sexual exploitation, organ donation or trading in babies and children for adoption;

– abduction of children by one parent;

– unaccompanied children, people disabled by war and disabled refugees;

– orphaned and abandoned children;

– children at war including use of child soldiers;

– Internet exploitation;

– drug and alcohol issues for young people;

– children's rights, protection from abuse and exploitation, corporal punishment and sexual exploitation;

– abuse and violence against disabled children and adults;
– rights of people who cannot represent themselves and/or are subject to mental incapacity legislation;
– measures to combat social exclusion, including universal design of the built environment, inclusive education and mainstreaming for disabled people in other public services;
– bullying and violence in schools and amongst vulnerable and alienated youth in urban settings;
– violence, bullying and exploitation of young people in sport.

A number of groups have shared the responsibility for working on this broad range of violence against vulnerable groups within the Council of Europe:[1] this creates strength but also requires co-ordination if it is not to leave gaps or to create uncertainty about which bodies are responsible for taking actions forward.

The Council of Europe's work on children

Work on the rights of children is primarily carried out by the Forum for Children and Families, working as a sub-committee of the European Committee for Social Cohesion (CDCS). The Assembly sees the role of the Council of Europe as "a champion of human rights, in defending and promoting the rights of the child"; and in its recent statement to the United Nations General Assembly Special Session (UNGASS) the Council stated that its work would "concentrate on the legal status of children, improved protection against exploitation and abuse … and work to make Europe a child-friendly area in which member states apply all treaties and standards promoting the best interests of children and young people".

The forum prioritises work on implementation rather than on developing new instruments and aims to achieve these ends by creating strong links with existing groups rather than by setting up new structures, such as instituting an independent European children's ombudsman. Specifically it seeks to set up strong links between the Council and the European Union, and with the Committee on Children's Rights set up under Article 43 of the United Nations convention. Similarly, when asked to consider setting up a register of missing children the forum expressed caution, seeking to work with Interpol to

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1. This report draws on a review conducted for the European Committee for Social Cohesion (CDCS) by Professor Stuart Asquith on "The relevance of work on children's issues conducted in other intergovernmental bodies in the Council of Europe to the work of the Forum for Children and Families", CS-Forum (2002) 9.

mobilise existing structures and expertise (CDCS (2002) 66). As an example of its work a recent seminar was held on abolishing corporal punishment of children under the guise of discipline: a move already deemed to be overdue in the light of recent judgments from the European Court of Human Rights.

In 2000, following its report to the United Nations committee, the Council took steps to implement the European Convention on the Exercise of Children's Rights by promoting national cross-ministerial bodies for children and ombudsmen schemes at national level as a medium through which these rights could be enacted. Cross-ministerial units should also seek to anticipate issues for children and young people arising out of all generic legislation and monitor the impact of particular legislative change on their behalf across a raft of mainstream agencies and provision.

Disabled children are often marginalised and poorly served within generic child protection frameworks or blamed for inviting abuse as if the cause lay with them and their impairments rather than within the systems which have grown up to serve them. The task of campaigners is to counter such assumptions and make disabled children visible as a minority group with distinct needs within mainstream child protection processes.

The Council of Europe's work on people with disabilities

Work on disability has focused on integration and anti-discrimination but due to mounting concerns about violence perpetrated against people with disabilities, the Committee on the Rehabilitation and Integration of People with Disabilities (CD-P-RR) set up a Working Group on Violence against and Ill-treatment as well as Abuse of Persons with Disabilities (P-RR-VIA) in 1998, which met five times between 1999 and 2001. In 2002, the Council published *Safeguarding disabled children and adults against abuse*, which was prepared by the working group.

The Council has also done work to improve the lives of disabled people by advocating the move to small, community-based living and away from institutional provision, supporting independent living schemes and direct payments, and urging the development of more mainstream support services and universal design to minimise barriers in the built environment. Recent work has included addressing the needs of people in need of a high level of support and their carers, and pioneering work on promoting equitable access to technical aids and assistance.

The Council of Europe's work on violence as it affects older people and families

Under the auspices of the Steering Committee on Social Policy, the Social Cohesion Directorate initiated work on prevention of violence against older people, leading in 1992 to the publication of *Violence against elderly people*. It was compiled from a co-ordinated research project that explored violence against older people in a family context. This began the important process of information sharing and collaboration on methodologies for further research and service development. It was published as part of the 1990-91 Co-ordinated Research Programme in the Social Field by the Study Group on Violence against Elderly People, working under the aegis of the Steering Committee on Social Policy.

According to the above publication (p. 23), a person is recognised as "old" at a different age across countries and usually within countries men and women reach "old age" differentially so that this boundary varies from 60-67 and makes it difficult to do comparative research or to record cases consistently. Concepts of "old age" which refer to "loss of social and economic status and the fact of being retired" (ibid., p. 32) are conceptually more coherent but may be difficult to codify across member states with very different levels and patterns of employment and inclusion.

The Council has also worked on the development of positive alternatives for older people, including the publication of *Improving the quality of life of elderly persons in situations of dependency* (O'Shea, 2002) and the improvement of home help services.

The Steering Committee on Social Policy also oversees the work of the Forum on Children and Families, which includes representatives from the legal experts on family law group and from the disability field. The Steering Committee for Equality between Women and Men (CDEG) has taken a lead in addressing domestic violence and in making links around this issue into the Forum on Children and Families. The forum has taken a lead in addressing child protection issues and most recently corporal punishment (physical assault) of children.[1]

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1. Work on children and families has been mapped across other Council of Europe intergovernmental bodies in document CS-Forum (2002) 11.

Work on the prohibition of torture and inhuman or degrading punishment

The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment works on behalf of all these vulnerable groups in so far as they are liable to be detained or to live in institutional or residential settings. Specifically, it enforces the rights of young people and people with mental health problems held in institutions, prisons, residential centres and detention centres and makes regular visits to such centres and psychiatric institutions in order to examine the treatment of persons deprived of their liberty.

Instruments and mechanisms

The Council works through a number of different routes, mechanisms and documents:

– it enacts legal instruments and holds member states to account through the European Court of Human Rights;

– it makes recommendations and provides guidance on implementation, policy-making and service provision;

– it brings experts and government representatives together to share best practice and create consensus;

– it sets up opportunities for researchers to meet in order to build theory and share methodology;

– the Court adjudicates and creates case-law on the basis of precedent.

This report draws on a range of such documents relating to the abuse of vulnerable groups – children and young people, women, people with disabilities and older people. Through its work in these spheres there can be no doubt that the Council of Europe plays a vital role in enacting, disseminating and guiding member states as to how they can implement legal instruments, bring about legislative change and promote service development in their own countries. Under its aegis, the Council brings together groups of experts and representatives to share best practice and reflect together theoretically, strategically and practically. Moreover, its activities include consultation with NGOs and advocacy groups, ensuring that the voices of vulnerable people are represented at the highest levels of policy-making and government.

Underlying principles

These explicit human rights commitments must be viewed against the backdrop of other important values and principles in policy and service development.

Inclusion

The Council is committed to promoting social inclusion, excellent service provision and a high quality of life for all, but particularly for people who are vulnerable:

> As members of an Organisation that promotes social cohesion we are committed to building a child-friendly society in which parents or those caring for children are able to provide safe, stable and supportive environments for their development. (CDCS (2002) 66, p. 15)

The drive to create inclusive facilities, spaces and places is expressed most fully in relation to disabled people and in the principles of universal design. The term "universal design" is used to convey the idea that public amenities should be designed to be inclusive from the outset and not adapted for disabled people as an afterthought. According to the "Tomar" Resolution[1] (Committee of Ministers Resolution ResAP(2001)1, p. 17):

> Universal design is a strategy, which aims to make the design and composition of different environments and products accessible and understandable to, as well as usable by, everyone, to the greatest extent in the most independent and natural manner possible, without the need for adaptation or specialised design solutions.

Hence the aim is to prevent barriers from being erected before they affect individuals and families who might otherwise have to strive to overcome them.

Mainstreaming

Service provision is also predicated on accessing mainstream public provision: in Scandinavian countries this principle is referred to as providing "sector responsibility" in that the authorities responsible for any given function for disabled people should be the same as for all citizens, ensuring, for example, that the education of disabled children is supervised by the same authorities who manage education for all children and that disabled people

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1. For a comprehensive description of the principle of universal design see Resolution ResAP(2001)1 on the introduction of the principles of universal design into the curricula of all occupations working on the built environment.

receive health care through ordinary health services, but this requires a very proactive approach on the part of these services if inclusion is to be real and provision equitable. "Marketisation" of public services may set up contingencies that work against inclusion of people who are difficult and/or expensive to serve and this needs to be the focus of monitoring, evaluation and regulation (see Bengtsson, 2002).

Participation

Another important principle enacted throughout the work of the Council is that of participation, expressed by one UK agency working with people with intellectual disabilities as "nothing about us without us".[1] The Forum for Children and Families has a children's panel and young people take part in its seminars and are consulted widely.

In two very important areas of its work – domestic violence and corporal punishment – the Council has ensured that the voices of children and young people are heard. Weinehall (1999) presents vivid accounts from children and young people about the daily realities of living with family violence, which include instability and fear, often engendering hatred, suicidal thoughts, escape into fantasy, drugs or alcohol and complicated by other forms of violence with boy/girlfriends or at school. Their only hope seemed to lie in creative expression through writing, art and drama, and in the possibility of encountering adults who are prepared to listen and support them.

Of equal importance was the participation of young people at a recent seminar on corporal punishment to represent children's views and to present research (see, Save the Children, 2001), which strongly counteracted any tendency to minimise the physical and emotional hurt caused by physical punishment. This principle has illuminated other research into areas of concern, for example a recent paper (Sequeira and Halstead, 2002) documented the distressing views and experiences of women with mental health problems who had been subject to control and restraint.

The working groups of the Committee on the Rehabilitation and Integration of People with Disabilities (CD-P-RR) consult with disability networks through the European Disability Forum (EDF), which contributed to recent work on abuse and service provision for people in need of a high level of

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1. Norah Fry Research Centre, University of Bristol.

support, arguing specifically for the introduction of proper advocacy and legal measures to formalise provision for those who are unable to represent themselves in decisions made about their lives.

People who use services or are themselves vulnerable also have views about how the issue of violence and abuse should be addressed in ways that do not inadvertently disempower or further stigmatise them. Many groups are justifiably wary of inviting patronising responses by acknowledging violence committed against them. The European Disability Forum voiced the following priorities in taking action against abuse:

– that abuses be seen in the context of more widespread discrimination against people with disabilities;

– that these should be conceptualised as a basic human rights issue;

– that a sounder knowledge base needs to be built up through the collection of more reliable information and the introduction of more sensitive systems to encourage reporting and advocacy;

– that member states take holistic and systematic steps to challenge all abuse and mistreatment as a matter of principle and urgency (EDF, 1999).

Summary

These important principles form a backdrop to the work of the Council in combating everyday violence against vulnerable people but they also determine the manner in which the Council seeks to implement its policies through:

– action against discrimination at all levels and in all walks of life;

– negotiation with, and participation of, vulnerable people in discussion about policies which affect them;

– encouraging mainstream agencies to adopt inclusive policies and practice;

– assuring representation and equality in the criminal justice system and before the law;

– ensuring that special measures are not applied in ways that diminish or contravene the human rights of individuals or their status as a group within their communities.

II. Defining violence, abuse and vulnerability

Putting boundaries around definitions of abuse and vulnerability

The process of defining "vulnerability", "violence" and "abuse" is not a matter of hair-splitting or academic precision; it is a way of describing and making visible the abuse of people who are often not able to bring their experiences into the public domain or onto a public agenda. Not being "able" in this context may be – but is often not – a direct result of impairment, immaturity or physical or mental frailty but normally has a strong social dimension encompassing the fact that less powerful groups are often actively discouraged or prevented from bringing charges or complaints, and their experiences of violence are minimised or excused.

Deciding which groups are "vulnerable" is clearly complex and value-laden. The groups considered in this report are not at all homogenous. "Vulnerable" people in this context are children and young people, people with disabilities (including mental health problems) and older people. Clearly there is enormous variation between the groups and within them, in relation to the risks of abuse they face and what are appropriate preventative measures and interventions.

Comparing definitions allows us to make important connections and see shared dynamics. Issues of violence and abuse facing disadvantaged groups overlap with those addressed within more generic programmes on violence and crime prevention within the Council of Europe – specifically work on domestic violence against women, as older women and disabled women are also victims of domestic violence. Work on disabled children is in theory part of the work done to protect all children and young people, for example work on violence in schools, in sport, and in urban environments; although it is sometimes difficult to see if they are being included, subsumed or ignored in many texts.

The unequal power that accrues to adults in our society and particularly to adults in care-giving positions is an important factor in conceptualising abuse of children and of vulnerable adults. Both families and institutional settings, with their hierarchical structures and unequal relationships, are identified as sites of physical violence. These groups share heightened risks of being

isolated within their families or of being housed in institutional or residential facilities but despite this common ground there are many differences in approach and priorities.

Defining abuse

Moreover, the risks they face also vary, arising as they do in different relationships and contexts, and out of a range of personal, interpersonal, social and structural dynamics. There is a constant tension about how to draw a boundary around which actions to name as "violent".

The main forms of harm included in the Council's work on safeguards for disabled adults and children (2002) were:

– physical violence, including abusive use of corporal punishment, incarceration including being locked in one's home or not allowed out, and overuse or misuse of medication, medical experimentation or involvement in invasive research without consent;

– sexual abuse and exploitation, including rape, sexual aggression, indecent assault, indecent exposure, and involvement in pornography or prostitution;

– psychological threats and harm usually consisting of verbal abuse, intimidation, harassment, humiliation or threats of punishment or abandonment, emotional blackmail, arbitrariness, withholding adult status and infantilising disabled persons;

– interventions which violate the integrity of the person, including educational, therapeutic and behavioural programmes;

– financial abuse, fraud and theft of belongings, money or property;

– neglect, abandonment and deprivation; this may be physical or emotional and includes an often cumulative lack of health care or negligent risk taking, withdrawal of food or drink or other necessities of daily living, including in the context of educational or behavioural programmes.

The European Disability Forum (1999, paragraph 1.3, p. 7) had previously set out a similar typology.

The Parliamentary Assembly drew up a list of recommendations relating to all children (Recommendation 1371 (1998)) asking that member states

incorporate protection of children against a range of abuses into their national legislation including:

– sexual abuses including paedophilia, exploitation and involvement in pornography, incest and prostitution;

– abuse, including abuse within the family;

– refusal of necessary care;

– inappropriate criminal proceedings;

– abusive sterilisation, violence and mutilation of girls.

Subsequently, it has intensified its focus on corporal punishment and also on the impact of domestic violence on children. Trafficking, whether for sexual exploitation, adoption or commercial trading in body parts, has also been identified in recent work of the Council, with special reference to eastern Europe (see Parliamentary Assembly Recommendation 1526 (2001) and Committee of Ministers Recommendation Rec(2001)16). It must be noted that disabled children are particularly at risk in this regard.

There are particular issues involved in defining sexual abuse while at the same time supporting the equal sexual rights of adults with disabilities and of older people. Sexual acts which are defined as abusive include those which take place in the context of a fiduciary (professional or paid for) relationship or one in which one person holds a position of power – for example, a state official (Valiente, 1999) or clergy (Kennedy, 2002). Sexual acts are also deemed to be abusive if the person cannot give their consent to the act because of their understanding and/or any cognitive impairment and hence mental incapacity; a legal concept itself the subject of guidance from the Council. Assessing "competence" to decide such matters is a shared issue for the young, for older people with mental health problems including dementia, people with serious mental health problems including cyclical conditions, and people with intellectual disabilities some of whom may not be able to make these decisions by, or for, themselves. These considerations also impact on assessment of capacity in relation to financial transactions.

On the same grounds, minors are to be protected from sexual relationships to which they cannot consent even if they appear to do so. As an example, Parliamentary Assembly Recommendation 1371 (1998) urges member states to declare unequivocally that prostitution of minors (under 15) "always constitutes rape or sexual abuse and that, even where money has been handed

over, there is a presumption of violence since a child cannot be regarded as a consenting party". It is hoped that this will act as a deterrent and have the effect of reducing demand for sex which exploits children and women.

Settings

Vulnerable people are at risk in their own homes, their family homes, foster or group living situations, ordinary community situations such as places of leisure or employment, schools, large-scale institutions and day centres, hospitals and nursing homes. Upholding the rights of people with disabilities in prisons and other secure or restricted settings is of particular concern especially when people have mental illnesses or dual diagnoses. Abuse in institutional settings, which affects children and adults, is regarded by many to be endemic and can take place against a pervasive culture of depersonalisation, lack of privacy, inactivity, inadequate food and heating, poorly trained and supervised staff, and isolation from community activities.

Relationships

Vulnerable people may be abused by people they know or by those who are responsible for their care; they may also be abused by their peers, by other young people or by other disabled service users whose abusing behaviour will need to be addressed by responsible authorities. They may also be the target of abuse by strangers, random violence or of hate crimes. The Council has paid particular attention to domestic violence as this affects both women and children: family violence also impacts hugely on older people and people with disabilities whether they are the direct victims of such violence or onlookers. Violence may be differentially dealt with in these different settings with different authorities and agencies responsible. Police may treat domestic violence and street violence differently, while they may treat residential homes and institutions as completely outside their sphere of influence, leading to lesser protection for residents and inmates.

Rules may be in force in institutions which are not in accordance with international law: for example, there may be discrimination on grounds of sexual orientation in the way institutions "allow" relationships between patients; rights to privacy, to receive mail or make telephone calls may be breached routinely; or people may be informally (that is, without due process or independent scrutiny) detained or restrained. Even where these practices are not

explicitly condoned by member states they may still occur on a widespread basis (P-RR-VIA, 2002, p. 24).

Other so-called "professional" practices may be accepted as legitimate without challenge in certain member states, including:

– solitary confinement;

– control and restraint;

– medical castration;

– over-reliance on sedation as a means of control;

– punishment or deprivation as part of a behavioural programme;

– unmodified ECT (that is, without use of anaesthesia).

State-condoned or legitimated violence

There are clearly parallels between the extent to which violence is condoned against children, women, people with disabilities and older people. Only nine countries have fully abolished corporal punishment of children despite rulings from the European Court of Human rights dismissing appeals that to do so contravenes either the right to privacy or religious observance. The Council produced a report in October 2002 summarising progress towards this goal and reporting on the status of countries that have not yet abided by their international obligations in this matter ("Corporal punishment of children").

State-condoned violence against people with disabilities has included and may still include:

– incarceration without due process or avenues for appeal or review;

– enforced sterilisation or compulsory abortions when pregnant;

– not being allowed to marry or engage in sexual relationships, including gay or lesbian relationships;

– not being given assistance to bring up children; or having those children removed without formal assessment or care planning;

– inappropriate groupings and lack of choice about whom to live with or options to leave group settings in which violence is a daily occurrence as highlighted in a number of case studies submitted to the working group;

– being forced to observe religious rules which are not of their choosing because religious organisations are their only source of practical assistance and accommodation; or conversely being hindered from following their religion when it is of their choosing, for example when people with disabilities from ethnic minorities are placed in congregate residential settings;

– exclusion from workplaces and from public places on account of non-accessible public buildings and public transport (adapted from P-RR-VIA, 2002).

Clearer definitions needed for research

Categories may be more or less difficult to define operationally or for research purposes: psychological abuse, for example, might be inferred from verbal abuse. Neglect is more difficult to establish in countries/cultures where there is no consistent reference point for what is expected from parents as regards their children, where children are still conceptualised as possessions of their parents, or where filial responsibilities of adult children to their parents both practically and in terms of financial provision are not set out. This issue is dealt with in Chapter III of this report.

Does a broad definition dilute concern?

There is understandably much debate about whether it is helpful to consider all these types of harm under the same rubric. The imputed violence ranges from direct physical harm and brutality, to deprivation and lack of care or support which, even though culpable, may arise out of stress or distress as well as cruelty. Reports and projects of the Council of Europe have used different and sometimes inconsistent terms to reflect the range of acts and omissions that harm children, women, disabled people and older people. "Violence", "mistreatment", "abuse" and "punishment" are all terms which have been used. The Steering Committee on Social Policy, in its *Violence against elderly people* (p. 16), reviewed terminology ranging from "elder abuse" to "granny bashing" and "battered old person" and, in defining types of abuse, drew a wide circle but omitted sexual abuse.

The work on disability embraced the following issues:

– seriously inadequate care and attention to basic needs including nutrition, health care and access to educational and social opportunities;

– individual acts of cruelty or sexual aggression by care givers;

– breaches of civil liberties such as incarceration without due process, "enforced cohabitation" in group homes or institutions, prohibition of sexual relationships or marriage, lack of privacy or intrusion into, or interruption of, mail or telephone calls or visits, in institutional or family settings and/or continued isolation from sources of support or advocacy;

– acts of bullying or random violence within community settings, some of which may represent more extreme forms of generally held prejudice against people with disabilities or, of greater concern, global ideologies which are inimical to disabled persons;

– practices by individual staff which fall well outside, or below, accepted professional norms;

– abuses by other service users within service settings where attention has not been paid to safe groupings or sufficient supervision to ensure safe placements;

– authorised treatments and interventions which are not in the person's best interests and/or which rest on an inaccurate or incomplete understanding of their condition and needs, for example punitive responses to challenging behaviour, seclusion, ECT without consent, or aversive behavioural programmes;

– abuses caused by the structure of services and abusive treatments, for example through unwarranted detention, inappropriate or enforced treatment, over-medication, use of ECT and loss of civil liberties, of particular concern to people with mental health problems.

It is generally agreed that violence is not only physical and that it is possible to abuse someone verbally, torture them emotionally or punish them psychologically. Hence the term "violence" is open to interpretation and there is a constant tension as to whether a broad approach that aligns physical violence with other forms of mistreatment, including exploitation, neglect and/or extremely poor care, is helpful or if it deflects from an unambiguous focus on, and the awfulness of, physical violence.

Defining thresholds which warrant intervention

Even where there is agreement about the kinds of act or harm that should be considered there are difficult judgments to make about how serious an incident or ongoing abusive relationship would need to be to warrant

intervention. This is in itself highly dependent on the reference point against which the conditions of children, young people, people with disabilities or older people are judged. Often children and adults with disabilities are assessed against quite different norms than their peers, so that very abnormal or inadequate surroundings are judged "normal" for them. This traps them in a cycle of discriminatory expectations from which it is difficult to escape. People with disabilities themselves have highlighted the link between abuse and discrimination and the UK Government included the term "discriminatory abuse" in a recent policy document (Department of Health, 2000).

For children, the universally accepted standard is that the child will sustain "significant harm" as a result of the action or inaction. A number of criteria for assessing seriousness were put forward in the report on disability and these included:

– the vulnerability of the victim, for example their frailty, and the extent of their impairments and/or cognitive or communication difficulties;

– how extensive the abusive act(s) were, for example French criminal law defines physical violence to be a serious offence when it results in at least eight days' sick-leave for the victim";

– whether the abuse was a single incident or part of a long-standing pattern or relationship;

– what impact the abuse had on the vulnerable person;

– whether others in the family or setting were badly affected by, or drawn into, the abuse;

– the intent of the abuser – whether the abuse was intended or inadvertent, arising out of stress or ignorance; or if the abuser had set out to exploit this individual by targeting them specifically on account of their perceived disabilities. A view would need to be taken about whether the abuse was passive or active, wilful or accidental;

– the authority of the abuser and the extent to which they abused a "position of trust", for example where abuse was perpetrated by someone with standing in the community such as a priest, teacher, doctor, nurse or social worker;

– whether the abuse was such that it constituted a criminal offence;

– whether there is a risk of repeated abuse by this abuser towards this victim: for example, sexual crime against either children or adults is more likely to be part of a pattern of serial offending rather than a one-off lapse of good character;

– whether there is a risk that this abuser or this setting will cause harm to other children or vulnerable adults (adapted from the AIMS Project, 1998)

The Steering Committee on Social Policy, in *Violence against elderly people*, also addressed this issue of seriousness in terms of severity, cultural context and also what they termed "density", which they defined as the frequency, duration and intensity of violent acts against the elderly person.

Pragmatic decisions

These dilemmas are usually resolved on pragmatic grounds with attention paid to the different agendas that need to be influenced in relation to different configurations of action and inaction, individual and systemic cruelty or indifference. Sometimes it is helpful to focus on one particular form or context of violence in order to prioritise coherent action in one field or by one agency.

In *Violence against elderly people* a focus on family violence was thought most appropriate, and the Steering Committee on Social Policy defined violence as:

> any act or omission committed within the family by one of its members that undermines the life, the bodily or psychological integrity or the liberty of another member of the same family or that seriously harms the development of his or her personality and/or undermines or damages his or her financial security. (Steering Committee on Social Policy, 1992, p. 21)

Since that time, violence against older people at the hands of paid care workers, neighbours, and in community settings has been more widely acknowledged and theorised.

For the most part, there is agreement that abuse occurs whenever the integrity of any person is violated by another person, physically or psychologically, or in situations where an individual's civil rights are breached, negated or ignored. The following comprehensive definition was offered in *Safeguarding adults and children with disabilities against abuse* (P-RR-VIA, 2002):

> any act, or failure to act, which results in a significant breach of a vulnerable person's human rights, civil liberties, bodily integrity, dignity or well-being;

including exploitative sexual relationships and financial transactions to which the person has not, or cannot, validly consent.

Abuse, whether intended or inadvertent, may be perpetrated by any person (including another person with disabilities) and raises particular concern within a relationship based on:

– a position of trust such as one with legal, professional or authority status;

– unequal physical, economic or social power;

– inequalities of gender, race, religion or sexual orientation;

– responsibility for, and control over, day-to-day care.

From this definition it is clear that while all citizens are at risk of violence, vulnerable people are particularly at risk because they are more likely to be isolated within their families or within various forms of service provision where they may be relatively powerless in relation to those on whom they depend. Understanding the roots of such vulnerability is key to deciding how best to protect and support people in abusive situations and relationships.

Defining vulnerability using a social model of vulnerability

Borrowing from the health field can provide useful models for analysing the vulnerability of individuals and populations. Yodanis and Godenzi (1999) draw on a model in which homicide is construed as "the final outcome of the disease of violence" (p. 118) and the P-RR-VIA (2002, p. 83) analyses options for prevention using a model of health promotion which separates primary prevention (stopping the abuse from occurring at all) from secondary prevention (prompt identification and reporting) and also from tertiary prevention (treatment and amelioration of the effects of abuse and violence).

A structural model of vulnerability focuses away from individual characteristics such as youth, impairment or older age as causes of "weakness", to highlight the impact of inequality in exacerbating the ordinary risks faced by disadvantaged groups, including the discriminatory response to violence and abuse they suffer and the lack of redress and support which others might expect had they suffered similar degrees of harm. This also opens up the possibility of establishing links with programmes exploring violence against other groups that have been made vulnerable by social disadvantage and discrimination: programmes focusing on racial violence, homophobia and crimes against Roma/Gypsy peoples, all of which highlight the social dimensions of such vulnerability.

Minimising

One way in which this discriminatory cycle can be seen is in the way that acts of violence are minimised when carried out against victims from disadvantaged groups. It is clear that the language within which violence and abuses of human rights are framed signal the seriousness with which they are viewed. Disability rights campaigners have argued that the term "abuse" plays down acts that would be treated as crimes if they had been done to non-disabled children or adults. Sexual abuse, for example, would be called "rape" and physical abuse named as an "assault" or as "grievous bodily harm". Similarly, in relation to corporal punishment, children themselves and their advocates point to the way violence against children is downplayed:

> The use of words such as "a good spanking", "whooping" and "licking" are used instead of "hitting". They signal that hitting children is an approved disciplinary strategy. Consequently child maltreatment professionals … have to insist on terms such as "hitting" and "physically attacking" which condemn rather than support such behaviour by parents, just as we found it necessary to rid our culture of terms that implicitly justify inequality between races and between men and women. (Strauss, 2000)

Valiente (1999) notes how the Spanish Penal Code categorised sexual assaults against women as attacks against the purity, decency or chastity of a woman rather than assaults against the woman herself. Specific forms of abuse may also be crimes in member states, for example physical and sexual assaults, theft, deception and false imprisonment. Describing these acts as "abuse" may make them seem less serious or lead to them being dealt with through informal channels or in such a way that they attract less serious penalties or opprobrium than if their victims had been adults or non-disabled.

Clearly the choice of words is of enormous importance and is highly value-laden. Naming abuses as "crimes" may have contradictory consequences, because while it confronts attitudes that tend to minimise offences against vulnerable people it may also lead to under-reporting of incidents. Campaigners in the field have to decide when to amplify the message they are giving by naming acts accurately and when, for example in conversations with research participants or other informers, they may need to tread more gently (see Chapter III which explores language as one of several method-ological issues in research).

Victim blaming

But in addition to the minimising and disguise, which occurs through language, these abuses are also justified both implicitly and explicitly, and thereby made socially acceptable and sometimes legally defensible, because the person who is victimised is from a so-called "vulnerable" group. Hence the notion of "reasonable chastisement" – which is used to justify hitting children and, until relatively recently in many cultures, hitting women – which creates and shores up accepted patterns of dominance and control at the expense of women, children, older people and people with disabilities. Similarly, practices such as "control and restraint" are used to legitimate violence against people with challenging behaviours and mental health problems. These explanations usually have the effect of shifting the focus from the behaviour of the abuser to that of the victim, with a corresponding shift in responsibility and victim blaming.

Undermining credibility

Another occasion on which children and vulnerable people are made more defenceless is when their credibility – which typically depends on status and conformity – is (often spuriously) challenged. In *Violence against elderly people*, a case study was cited in which a woman whose son had been acquitted for lack of evidence would later taunt her whenever she made further complaints to her social worker that no one would believe her. The issue of evidence has over the years led to efforts in many countries to make sure that courtroom practice is not weighted against vulnerable or intimidated witnesses. Practice in relation to child protection has taken the lead in this respect, pioneering video interviews and video-link evidence in chief and cross-questioning. Family courts have proved a more child-friendly place to be and lead the way for cases involving other vulnerable people.

Recognising and respecting difference

Although we have looked for common ground there are also significant differences that should not be glossed over. There are clearly valid issues about the extent to which some individuals are able to understand or take action in their own interests and the complexity of taking decisions in extreme situations to protect someone unable to represent themselves. In its message to the United Nations (2001), the Parliamentary Assembly recognised the vulnerability of children and their entitlement to protection, "Since, due to

their age, they are vulnerable and have special needs, they need specific pro-
tection" (Recommendation 1551 (2002)). People with intellectual disabilities,
including older people with dementia, are accorded special status in some
legislation with different sentencing guidelines on the basis that they are
vulnerable and may not be able to make certain decisions or enter into sexual
relationships or financial transactions.

It is important to distinguish between the impact of physical or sensory
impairments and intellectual disabilities or mental illness, and also to
acknowledge varying degrees of severity of different impairments. While
adults with physical impairments will usually be able to make decisions for
themselves they are often not given adequate practical and financial assis-
tance and access to appropriate information. In contrast, people with signifi-
cant degrees of intellectual disability may need others to make complex
decisions on their behalf as well as to act for them to put these into practice.
Mentally-ill people, or those with disordered thought states, may move in and
out of states of vulnerability and need varying levels of help with decision-
making. An undifferentiated approach to disability may mean that individuals
are offered inappropriate help and/or that they are burdened with inaccurate
stereotypes and accumulated prejudices. People with profound impairments,
including those who are unable to communicate, may require very specific
safeguards.

Nor should the characteristics of victims, such as age, sickness, gender, civil
and marital status, widowhood or dementia be seen necessarily as predisposi-
tions or risk factors since the person may only be at risk in the presence of a
putative abuser or if being served in an abusive setting. These characteristics
may primarily describe the whole population under consideration and not
only those at risk. A rigorous study of elder abuse carried out in the city of
Boston by Pillimer and Finkelhor (1988) showed up counter-intuitive trends
such as that older men are more at risk than older women even though women
vastly outnumber men in the population of older people – a trend linked to
variation in household patterns whereby men are more likely to be living
with another person (spouse or adult child) than women who often live alone
as widows.

A functional definition

Although at the outset a focus on children, older people and those with dis-
abilities might suggest a model of vulnerability as an inherent characteristic

and almost inevitable consequence of impairment, this report takes the view that vulnerability is, at least in part, socially produced to the extent that any personal difficulties are magnified by placing people at additional risk, turning away from any signals that they might be being harmed and then responding with less determined interventions than would be the case for other, more valued and more powerful, citizens.

If a functional approach to definition is taken then these areas of concern might be grouped according to the systems that have responsibility for action rather than arbitrary "types" or descriptors of acts within different settings, relationships and arising out of different dynamics. We can see that vulnerable people face a number of different kinds of risk:

– ordinary risks such as family or domestic violence and street crime just because they are in the same places, neighbourhoods and communities as all citizens;

– special or heightened risks arising out of:

  - discriminatory expectations or access to resources, facilities or services;

  - special situations arising out of the difficulty of caring for them or not knowing how far they need help in making decisions or acting in their own best interests;

  - situations arising specifically out of the conditions in institutions or other forms of group living and service provision;

  - situations in which they are deliberately targeted because they form a distinct and visible minority who can be taken advantage of.

The social model of disability holds that an adult or child is only "handicapped" to the extent that "shortcomings in the environment lead to loss or limitation of opportunities to take part in the life of the community on an equal level with others".[1] We would argue that a person might also only be "vulnerable" to the extent that their rights are not upheld or in so far as they are excluded from, or unable to gain access to, mainstream mechanisms for protection and redress. Hence there is strong resistance to the creation of "special" or segregated legislation as a tactic which runs counter to the

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1. UN World Programme of Action concerning Disabled Persons.

engagement of mainstream agencies in combating vulnerability and empowering people through programmes that appeal to social justice and principles of equality.

One important split emerges from these definitions and that concerns the context of abuse: domestic abuse tends to be treated as a private matter, whether that concerns corporal punishment of children, men beating their wives, or so-called "carers" harming older relatives in their care. Even in relation to sexual abuse, public disapproval is much higher when crimes have been committed by strangers than when it is the same offences perpetrated by family members. "Keeping safe" educational programmes tend to focus more on abuse by strangers than on how to handle abuse at home at the hands of adults who know you and probably know or are part of your family. Evidence is emerging which challenges this neat divide. Elder abuse is shown to be much more a product of mental ill-health, alcohol and debt than of "carer" stress, while some forms of sexual abuse have been shown to have similar patterns within, as outside, the family home.

III. UNDERSTANDING VIOLENCE AND REACHING FOR SOLUTIONS

Different levels of explanation

Explanations of violence come from many different disciplines and discourses. These should be seen as complementary rather than contradictory, ranging from explanations which focus on intra-personal or inter-personal dynamics to those which derive from what Sørensen (1999, p. 146) refers to as a "master narrative" – the sweeping tides of history and nations. Summing up the theoretical inputs to the Seminar on Men and Violence against Women, the rapporteur, Dr Klein (1999), pointed to four levels of explanation:

– internal processes, such as gender identity, social learning and development;

– external circumstances including rapid social change, instability and war;

– analysis of risk factors for both victim and perpetrator;

– deliberate social enterprises such as militarisation and its fall-out on masculine identities.

Inequality is also rife within institutions and other service settings. Zijdel, in her contribution to a conference marking the 1999 European Day of Disabled People, identified factors at all levels including lack of education, isolation, deprivation of information, economic dependence, low self-esteem, and political and legislative unawareness.

In the Council's *Violence against elderly people*, a number of explanatory models were identified from the literature:

– family dynamics and situations where violence is learned as a response to stress;

– reaction to dependence and impairment of the victim;

– psychologically problematic personality traits of the perpetrator in the context of their dependence on the victim;

– prolonged and profound intimacy between adult offspring and elder parents, over-exposure;

– filial crisis category;

– internal and external stress;

– social isolation, and inadequate community services and resources;

– age discrimination and ageism;

– sociocultural changes, for example in mobility and family structure.

Biggs, Phillipson and Kingston (1995, p. 44) synthesise risk factors into intra-individual dynamics (psychopathology of the abuser), dependency and exchange relationships, and social isolation. Older people are also at risk of ordinary crimes by those in their households and networks and may not be able to bring this into the open through "fear of reprisals, shame and financial dependency" (ibid., p. 29). Since that date a clearer focus has been placed on the abuser rather than the older person with growing evidence of problems in the mental health of the "carer", debt, alcohol and marital problems put forward in a report by McCreadie (1996). According to a recent report produced by the WHO using epidemiological studies of violence, about 60% of all violent acts are associated with the consumption of alcohol (Guerrero, 2002, p. 767). Parallel sets of issues arise in relation to other vulnerable and/or discriminated against groups.

Extremes of poverty

An initial reading of the issues tends to favour individualised explanations which focus on the impact of immaturity, old age, impairment, the behaviour of individual offenders or cruelty within particular families. But social factors can be seen to exacerbate these tendencies.

Poverty and inequality contribute, as stressors, to acts of abuse and also at extremes can be considered as a kind of violence:

> There should be no doubt: … the speedy reform of society in Russia has destroyed social guarantees which permitted those with the lowest incomes, the elderly and disabled, orphans and women to survive. These guarantees have not been replaced by other effective means. (Gracheva, 1999, p. 80)

This contributor reported that this economic distress was translated into murders, which increased tenfold within three years, increased rates of domestic violence, suicide, children leaving or being ejected from their family homes and prostitution.

In Romania it was noted that:

> Against the background of the growth in the poverty rate, children represent an extremely vulnerable social category. (Dumitrescu and Penteleiciuc, 1999, p. 73)

but that this has also given rise to violence against other vulnerable groups including "increasing incidence of robbery and violent assaults on elderly people, especially single women in towns and villages".

The Committee of Ministers reported to the United Nations in 2001 its pledge to "promote the well-being of girls and boys and to address, both in Europe and elsewhere, the problems of distress deriving from poverty, discrimination and violence". In his review of the work of the Forum for Children and Families (CS-Forum (2002) 9), Professor Asquith highlights a number of structural issues which fall between committees and/or which merit further work. These are: poverty, parenting, migration, war, environment and making children aware of their rights.

Discrimination and inequality

At these extremes, inequality can be seen not only as a form of violence in itself but also as an important backdrop to, and explanation of, other forms of violence. Inequality works to constrain some groups at the same time as it exonerates others. McWilliams (1998, p. 138), speaking from a Northern Ireland perspective, noted the effects of stressed societies on violence against women, attributing this to "fewer options for women and fewer controls on men".

In addressing specific issues of violence against vulnerable groups, for example corporal punishment or sexual violence, it is impossible not to examine the backdrop of discrimination and limited options that face disempowered groups (P-RR-LADI, 2000). Yfantopoulous (2002), for example, recently spoke of the links between disability, social exclusion and poverty. Nevertheless, violence usually has a more direct and personal face. We have seen how vulnerability is compounded by additional risk, unwillingness to recognise and refusal to take action or provide support, but tendencies towards violence are also exacerbated by a poverty of opportunity, low pay, poor prospects, little knowledge of alternatives or help to question the ingrained values of one's own upbringing. Studies of corporal punishment suggest that its use is linked to family poverty and that it is more common amongst communities whose religion provides a rationale for such behaviour.

Gender and racial inequality

Unequal power is acknowledged to play a significant part in the aetiology of domestic violence, which is thought to account for a quarter of all violent

crime; in most cases it is perpetrated by a man who is known to the woman, and half of all female murder victims are killed by their partner or ex-partner. The report goes on, "Such violence may be linked to unequal relationships between the sexes and to the continuing patriarchal aspects of our societies" (ibid., p. 29)

Some forms of violence, especially those linked to gender inequality, are also sanctioned by powerful social and religious beliefs giving rise to a genuine tension about how far abuse can or should be judged from an "outside" perspective. What happens when the right to bodily integrity is violated as a result of religious teaching, as happens in relation to circumcision and female genital mutilation? How far should member states intervene to outlaw these traditional practices – balancing such intervention with a need to demonstrate cultural plurality and both respect and tolerance of different belief systems?

Inequality in families and care settings

These patterns are deeply ingrained in the culture, and particularly in the gendered expectations which order family life and sexual relationships and determine who does the caring work in society and how social care agencies are organised with their largely male management and female workforce (see, for example, Hanmer and Hearn, 1999, pp. 32-40). Gendered inequality is played out in particular ways in homes, families and care settings, which have at their core common entrenched inequalities leading to the comment that:

> What is common to these is a combination of gender and other power/authority relations, father/husband, professional, state functionary. (Group of Specialists for Combating Violence against Women, 1997, paragraph 2.17, p. 15)

It is ironic that the movement to close institutions for children and adults with disabilities did so as an antidote to the violence endemic in large institutions without sufficiently taking into account the violence endemic in family homes.

Smaller group homes and nursing homes may look more homely and are sited more locally but they may still operate as closed systems with little contact from outside agencies and/or with inadequate accountability. Their hierarchies may reflect sexual or racial inequalities rather than knowledge or experience. Conditions of employment may be poor with staff working long hours

without union representation, proper contracts, benefits or supervision. In some cases, deprofessionalisation has resulted in a casual and unregulated workforce. Care workers are often untrained and poorly paid, and they may be subject to sexual harassment or bullying themselves, recycling this onto their clients. If gender is missed out of the analyses of violence and abuse against vulnerable people these structural inequalities get overlooked leading to interpretations which do not pay attention to the division of emotional labour or the different kinds of caring tasks undertaken differentially by men and women, which in turn affect the stress of the role and the way individuals "perform" or are excused from care giving.

The functions of violence

Men's violence against women may be construed as expressive or instrumental, that is it both reflects the relative powerlessness of women ("their lack of options", McWilliams, 1998) and creates or enforces it; women leaving violent relationships are much more at risk at the point where they decide to do something. The behaviour of carers in relation to older people or people with disabilities similarly reflects their lack of options within service settings but also enforces such passivity. Youth violence may also be expressive and contradictory, (Parliamentary Assembly Recommendation 1532 (2001), p. 3) and does not always aim at "misappropriation but most often is a means of protest and self-assertion. It takes different forms: against oneself (suicide, drug use), within groups (bullying at school, youth gangs in ghettos) or against society at large in the form of 'hate crime'". The Council's recent publication on urban crime prevention remarks:

> Particularly disturbing is the rise in crime linked to intolerance, whether this be linked to foreign cultures, other races, sexual preferences or physical peculiarities. (*Urban crime prevention – A guide for local authorities*, p. 10)

Shared understandings

Also there is common ground between these arenas for violence between the unequal, as Penhale (1999, p. 103) points out:

> The growth of interest in elder abuse shares a number of common features with these other areas of violence [child protection and abuse of people with disabilities] – slow recognition and acceptance, difficulties with definitions and concepts, an emphasis perhaps on stress and pathology as opposed to gender/power and male violence.

But it also manifests itself with distinct forms of oppression and exclusion, for example negative and stigmatising attitudes to aging as a factor in elder abuse. The Council's *Violence against elderly people* (1992, p. 66) concluded that:

> Elderly people's lack of rights in society are highlighted in a special way when they are maltreated .… For true prevention, cultural values respecting the dignity of elderly people need to be well integrated with norms and social institutions.

What is known about the nature and extent of violence?

One large-scale Spanish investigation of parenting revealed that almost half of the parents acknowledged at least the occasional use of corporal punishment and that disabled children were not exempt. Some 6.7% of the children ill-treated by these parents had delayed development or intellectual disabilities and 5.4% behavioural problems (Ortega, González and Cabanillas, 1997). Children are also subject to bullying and harassment in their schools and neighbourhoods.

Domestic violence accounts for one-quarter of all violent crime (British Crime Survey, 1998). In over half of reported domestic violence cases a child witnesses the assault, and one third of children present try to intervene to protect their mother. Domestic violence is rarely a one-off event – 98% of victims are women and it is estimated that it takes a woman, on average, seven to ten years to leave a violent relationship. The psychological sequelae to domestic violence for survivors and children is significant (McGee, 2002).

It is estimated that every three days one woman dies as a result of domestic violence – the consequences for families, particularly children, are very serious in terms of social, financial and psychological damage. Several sources suggest that deaf children and adults are particularly at risk and that deaf women are at greater risk of domestic violence than other women (Merkin and Smith, 1995). Domestic violence often continues into older age merging with elder abuse and abuse of other vulnerable adults, including women with learning disabilities.

Van Berlo's (1995) study in the Netherlands found that of a total population of approximately 100 000 people with intellectual disabilities, 1 100 people had been victims of sexual abuse in the previous two years and a further 1 200 of suspected sexual abuse. Of the victims, four-fifths were women while the perpetrators were predominantly men. As to the perpetrators, one-third in Van Berlo's study were other service users as were one-half of those in the UK

study where they were seen to have offended against more male victims proportionately (see also Van den Bergh, Hoekman and Van der Ploeg, 1997) than other sex offenders. Other offenders included parents, spouses, relatives, neighbours, service personnel, transport and domestic workers, professionals, church workers and educators (ibid.)

Similar patterns of abusing, often featuring active targeting and grooming of potential victims, were reported even where the offenders were learning disabled themselves (see Thompson and Brown, 1997) although there was evidence that learning disabled men were less sophisticated/successful and more likely to be witnessed in their offending behaviour (Brown and Stein, 1997).

Methodological issues

There is clearly much which can be learned about methodology across these fields and it is important that lessons are applied so that the violence which is perpetrated against vulnerable people is made visible in generic statistics and in specific studies.

There are complex methodological difficulties in both quantitative and qualitative studies of abuse, abusing, violence and poor care practice as in studies of any phenomenon which is covert and/or taboo in our communities. A great deal of evidence points to a hidden and submerged pool of incidents only some of which come to public attention or are noted in the public domain. In this respect research into child abuse, elder abuse and abuse of people with disabilities has much in common with research into domestic violence. A study of elder abuse carried out in Massachusetts (Pillimer and Finkelhor, 1988) suggested an incidence figure of 3% of the population aged 65 and over who had been victim of abuse but that only one in fourteen cases were reported to statutory authorities, supporting this "tip of an iceberg" model.

The iceberg metaphor is not only apt in that there is a lot hidden from view, but in that it presents a different face to those approaching from different directions – most data sets will illuminate only certain aspects of the problem under consideration. For example, contrasting UK studies of sexual abuse of adults with intellectual disabilities predominantly revealed abuse by other service users and staff when relying on information from service providers in contrast to another study which reported higher rates of abuse by family members when interviewing women with intellectual disabilities in community settings (Brown, Stein and Turk, 1995; McCarthy and Thompson, 1997).

Using this metaphor, the waterline rises or falls according to the thresholds adopted and studies of reported cases are best read as studies of reporting behaviour rather than as incidence studies. Brown and Stein (1998) analysed reports of abuse against vulnerable adults made to two large local authorities in south-east England, subsequently replicated in ten further authorities (Brown and Stein, 2000). They documented a reporting rate of 20-25 cases per 100 000 of the general population over the age of 18, per annum, of which about one-third of referrals concerned people with intellectual disabilities, one-third were older people and a further one-third of cases covered people with physical, sensory and mental health problems and people who were ill.

Increased risk does not always filter through as increased reporting. In a study by Kvam (2000), sexual abuse of children in Norway was monitored through the paediatric units to which they are referred for medical examination. Drawing on an American study by Crosse, Kaye and Ratnofsky (1993), whose data demonstrated an increased risk of child abuse to disabled children (1.7 times the risk of all children), she had expected to see a higher rate of referrals for disabled children but found instead a much lower rate. Overall disabled children formed 11% of the relevant population and, if increased risk were reflected, would have accounted for about a third of reports but only 6.4% of the total sample of reported cases concerned children with disabilities. The discrepancy was particularly evident for the 4% of the total population of children with severe disabilities who accounted for only 1.7% of referrals. The author suggests that as a group disabled children may be less likely to disclose or to have their disclosures listened to and also that abuse against them is minimised and not taken seriously.

A number of factors are thought to influence whether a particular case is likely to come to the attention of service providers. Wolf and Donglin (1999) suggested that elders were more likely to feature in reports to statutory services if they were poor and already in contact with statutory service providers. These known welfare clients were already under scrutiny from people with a mandate to pass on concerns. Brown and Stein (1998) in their study of reports of all vulnerable adults also found that 80% of referrals concerned people who were already in touch with social services. Paradoxically, high rates of reporting within services or institutions may be a sign of good (namely, alert) services while abusive ones "see no evil" and certainly "report no evil".

These issues were addressed in detail at the Seminar on Men and Violence against Women organised by the Committee for Equality between Women and Men (CDEG) within the Directorate of Human Rights in 1999 (EG/SEM/VIO (99) 21). Sampling is a key issue as important slices of the populations under consideration may be removed from the equation, leading to very significant under-reporting: Walby's contribution mentions the way an insistence on a fixed address in studies of domestic violence excludes women who live in refuges or temporary accommodation from surveys designed to ascertain the extent of domestic violence, but the same might also be said of studies which do not, or cannot, include people with severe intellectual disabilities, people who experience difficulties in communication or older people who have additional mental health problems, when these might be the very people most at risk of the phenomena under examination.

Walby (1999) and the P-RR-VIA (2002) both point to difficulties in quantifying violence or abuse and the simplifications and distortions that take place as a result of recording single incidents rather than patterns over time:

> Most crime surveys are oriented to discrete events, but domestic violence and sexual violence … is more frequently characterised by a series of events rather than a one-off event. (Walby, 1999, p. 17)

This obscures the long-term, and often escalating, patterns of violence, so that only static factors are brought to the surface, which in turn hinders the identification of factors that could lead to more accurate risk assessment.

Skilled interviewing

Walby (op. cit.) also noted the importance of carefully framing the problems of violence in conversations with those who are research subjects. It is important that the topic be explored gradually rather than with one off-putting "gateway" question at the beginning of an interview or survey. She remarks that there is "no commonly available unstigmatised vocabulary" (ibid., p. 15).

Walby also notes the importance of women acting as interviewers and of interviewing women alone and not in the company of someone who might have abused them (a problem which also arises in the context of people with disabilities or older people if they are interviewed in the presence of relatives or paid carers, or who are being invited to complain about a service on which they depend).

Child and adult protection specialists have developed strategies for enabling children who use alternative forms of communication to make statements and testify against their abusers (Marchant and Page, 1992). Skilled interpreters in minority languages and sign language for deaf people should have awareness of the effects of abuse and the demands of the court system so that these groups are not disenfranchised.

Making vulnerable groups visible

For all these reasons, data about disadvantaged groups are often not identifiable in official statistics and returns, for example where figures are compiled about general populations, disabled children and adults may not be identified, or victims from minority ethnic or religious communities might not be visible. In order to facilitate research within countries it is recommended that generic data sets include markers of age, gender and disability, so that vulnerable victims can be identified in these audits and where they are not being reported this should be tackled since it is far more likely to indicate that they are not being helped than that they are not being abused.

This request has been made across several of these fields. For example, routine data arising from child protection registers often does not identify children with disabilities or note the nature of their disability (Cooke, 1999). Yodanis and Godenzi (1999) call for this in relation to violence against women; and this is also recommended within the field of disability in relation to national crime surveys where a minimal adjustment to the routine data set would allow cases involving vulnerable victims to be tracked.

International conventions to aid collaborative research

Detailed research agendas have been attached to many of the Council's reports emphasising the benefits of standardised definitions and data gathering conventions to make cross-national comparisons possible and also identifying areas of the work which would be best carried out at European level. This includes, for example, work on disability related to rare syndromes where new knowledge could facilitate alliances between disabled people themselves, families and professionals and hence provide a stronger lobby (EDF, 2000).

To facilitate international collaboration and comparisons in research it is recommended that the Council of Europe produce a set of standard definitions and conventions to include:

– age-related boundaries, that is the age at which someone stops being a child and starts being an adult, and also the boundary between an ordinary and an "older" adult;

– agreements about which instruments to use as a reference point for defining types and levels of disability;

– definitions of categories and subsets of abuse;

– separation of children's and adults' issues so that disabled children's issues can be addressed in relation to other children and disabled or older adults' issues looked at using ordinary reference points;

– details of the gender, age, ethnicity and disability of both victim and perpetrator.

Funding should be earmarked for more longitudinal studies that focus on the impact of violence and which evaluate different responses and models of intervention. Research centres in this field need to be securely funded so that they can develop and sustain an infrastructure, not only sponsor short-term projects, and thereby foster expertise and commitment to seeking solutions. Accurate and well-designed research serves to make violence against children and vulnerable adults visible. When all other factors conspire to keep it underground, research makes it less possible to ignore.

Reaching for solutions

A range of strategies

Chapter II explored different forms and contexts of violence – including risks of personal and sexual violence which are unfortunately endemic in our communities as well as additional risks which are attendant on the person's particular situation or disadvantages, their dependence on service provision or their exposure to hate crime. Each of these different constellations of violence will require the systematic engagement of different systems:

– ordinary crime requires action from ordinary criminal justice agencies acting with particular sensitivity and skill towards victims who happen to be vulnerable because they are young, old or have a disability. Individual victims or witnesses may require help in facilitating access to the criminal justice system and appropriate courtroom procedures to enable them to participate flexibly without jeopardising the defendant's right to a fair trial;

– discrimination needs to be tackled by proactive advocacy and campaigning;

– special needs and dilemmas must be adjudicated in proper, accountable, multi-disciplinary forums with recourse to judicial review if the issues are sufficiently serious. These interventions are particularly likely in situations involving children or adults who are deemed to lack mental capacity (see below);

– service provision and particular practices and treatments (such as control and restraint or ECT, which should never be given in its unmodified form) need to be properly overseen and regulated by independent bodies;

– hate crime must be treated as hate crime and not minimised or glossed over: it requires concerted and intelligent policing coupled with measures to ensure that unsuitable people are screened out of the workforce.

Nor is it sufficient to focus on victims when the key to preventing abuse and exploitation lies in understanding perpetrators: for example, the recent Parliamentary Assembly recommendation on trafficking in minors acknowledged the need to effect economic and structural change (in this case in Moldova) and at the same time to conduct research into clients of the sex trade and explore options for reducing demand (Recommendation 1526 (2001)).

Different levels and stages

Clearly multiple interventions are needed, each with a different focus and each addressing a different component of the prevention agenda. Dubet and Vettenburg (2000), in work for the Council on violence in schools, commented that:

> Like "violence", "prevention" is a term which has many connotations and therefore needs to be described and defined clearly. (p. 43)

Many social theorists have looked to the model used in health programmes which categorises interventions in terms of different stages:

– at the primary stage, which would prevent violence from happening at all;

– at a secondary stage to ensure that violence is promptly identified and referred to appropriate agencies who will intervene to stop it recurring;

– at the tertiary stage to treat individuals who have been harmed and help them to recover without sustaining long-term problems related to trauma and distress.

But the focus also needs to be at different levels, balancing programmes that assist individuals with those addressing change in the wider community, in

responsible agencies or in government departments aiming to create safer services and communities through structural change.

The Council's report on safeguarding disabled people combined these two dimensions into a matrix against which programmes could be mapped. Examples of the kind of programmes in each part of the grid are noted (adapted from P-RR-VIA, 2002).

Level of the initiative	Stage of intervention		
	Preventing abuse from occurring at all	**Arrangements to ensure a prompt response**	**Treatment and support in the aftermath of abuse**
Individual children and adults	Self-help and assertiveness training	Information about rights Accessible information on how to make a complaint	Individualised programmes of treatment and support
Service providers (including mainstream agencies)	Workforce screening Proper regulation of service provision Staff training	Provision for refuge and investigation Clear routes for referral, investigation and formal decision-making Multi-agency committees and policies	Flexible courtroom procedures Inclusive "sector specific" programmes inclusive for children and adults with physical, mental or intellectual disabilities
Government and community	Positive campaigns about inclusiveness, anti-racism and gender Publicised laws to educate and influence away from family violence Legislation to define mental incapacity and safe proxy decision-making Anti-discriminatory legislation	Public education campaigns such as zero tolerance campaigns	Education and support for people who have been abused Commissioners for children, women or people with disabilities to "join-up" work across government departments Legislative programmes and sentencing policies which underline importance attached to violence against disadvantaged groups including children Ombudsmen schemes to uphold human rights

Countries should aim for a balance of programmes relating to different groups and different contexts. Interventions which focus on helping individuals to report crime might not be perceived as helpful if crime itself continues unabated or if once reported the process of an investigation or a court case is felt to be more abusive than the crime itself (as sometimes is the case for women who have reported sexual assaults). A programme which only addresses the information needs of individuals without addressing how agencies should work together may leave individuals in the aftermath of hurt responsible for finding their way around a complicated and unco-ordinated system.

Dubet and Vettenburg (2000) noted four distinct "prototypes" in the range of preventative strategies submitted:

– situational prevention, by creating environments in which violence is less likely through, for example, the design of establishments or staff supervision;

– punitive prevention, whereby attention to detection, prosecution and appropriately serious punishment sets up a sufficient deterrent;

– treatment-based prevention which conceptualises abuse as a consequence of individual or family dysfunction or prior victimisation of the perpetrator;

– social prevention, which deals with the problem in the broader social context, for example by tackling discrimination, racism and gender inequality.

These different approaches tend to become identified with the remit of specific agencies, which also accounts for tensions in multi-agency working in this context. In particular, sanctions-based approaches and therapeutic/support-based approaches often co-exist but are not synthesised in policy frameworks and public information. Tension can, however, be dynamic and give rise to new ways of working. Parliamentary Assembly Recommendation 1532 (2001) refers (sub-paragraph 16.ii.*d*) to:

– … alternative forms of dispute resolution: alternatives to judicial processes; alternatives to custody; and community-based measures in line with internationally recognised standards for children in the justice system;

– harmonised standards and practices (for example, specialised courts for minors) in all the Council of Europe member states with regard to children who commit, or who are victims of, offences (for example, family violence, sexual abuse).

Dubet and Vettenburg (2000) also pick up on the orientation of the intervention. A defensive (reactive) strategy would be one which seeks to avert

danger, for example by excluding pupils who are potentially violent or limiting the amount of time children are unsupervised or installing CCTV. In contrast, an offensive (proactive) strategy would tackle risks by promoting positives through, for example, enhancing participation in school councils, improving key areas of the curriculum and implementing quality assurance programmes. Dubet and Vettenburg argue that in their field, a set of preferred options have emerged which consist of primary prevention at a structural level with proactive orientation.

This multi-layered approach is also appropriate to protect children where it is recognised that:

> A dynamic social policy for children and adolescents should not only focus on children who offend, who have been abused or who experience poverty, but equally on preventive measures for all children at risk (targeting violent households, poor parental support, negative early life experiences, etc.). (Recommendation 1532 (2001), paragraph 11)

Co-ordinating support for individuals at the level of service provision

Co-ordination is key to both child and adult protection. In relation to elder abuse, the Steering Committee on Social Policy, in *Violence against elderly people*, has suggested policies in common with those for other victims of family violence designed to ensure:

– emergency help to meet immediate needs, including protection against retaliation by the offender;

– continuing medical, psychological, social and material help;

– advice to prevent further victimisation;

– information on the victim's rights;

– assistance during the criminal process, with due respect to the defence;

– assistance in obtaining effective reparation of the damage from the offender, payments from insurance companies or any other agency and when possible compensation by the state.

One critical issue addressed in these policies is to offer guidance about the circumstances within which individual practitioners should and/or must pass on concerns about abuse involving children or vulnerable adults. Mandatory reporting is an established principle in relation to child protection but there is less clarity when victims are adult, even if they are not able to act on their own behalf in relation to abuse. Confidentiality is an important principle enshrined

in human rights law and in professional codes of conduct so that if this is to be set aside in cases of abuse involving vulnerable children or adults it should be as the result of formal processes. There is compelling evidence that this should happen wherever abuse is likely to be serial and therefore to present a future risk as is the case of sexual abuse or financial scams.

There is also an important need to make services safer so that women, in particular, are not at risk once they have entered a refuge or psychiatric service as a result of indiscriminate groupings of patients or residents. Separate spaces for women or other vulnerable groups in asylums and day services are one safeguard against sexual harassment and violence by other service users.

There is clearly much to be learned from child protection, domestic violence services and services for vulnerable adults about the processes of protection and challenge to violent family members to ensure an effective but appropriate response. A feature of the response in many cases involving older people is that the person ends up in more restrictive housing and/or institutional placements: as an outcome this would seem to punish the wrong person and may lead older people to decide against reporting incidents of abusive behaviour towards them.

Co-ordinating support at governmental level

At national level an important set of initiatives have emerged to champion the rights of children, people with disabilities and older people across government departments through the setting up of ombudsman schemes and national commissions. These schemes have varying remits but most include a monitoring or reporting function on behalf of the whole group and some include a role in relation to individuals who need assistance to take legal challenges to court and act on their behalf in relation to official agencies.

Prominence has been given to recommendations urging national governments to institute:

– a national ombudsman for children to foster children's rights and supervise their application;

– a permanent inter-ministerial body at national level with authority to deal with all matters relating to children's rights. Its remit would include co-ordinating a national policy and producing an annual report for discussion in parliament, including the production of "child impact evaluations" (Recommendation 1551 (2002)).

The idea of an ombudsman for citizens to voice their concerns to government originated in Scandinavia in the nineteenth century. In contemporary terms, the role tends to refer to a trusted commissioner who represents and looks after the interests of a particular group. The Council's Forum for Children and Families serves as an informal "observatory" for children's rights and the European Union has set up a Network of Observatories for Child Policy. Commissioners or ombudsmen have had a significant impact on children's well-being in several European countries.

Similarly, the Office of the Commissioner for Human Rights (2001, p. 4) has welcomed the suggestion of a European observatory for older people to allow for exchange of information and good practice including knowledge about the way inspections are undertaken in different countries. Other countries have equivalents to represent the interests of people with disabilities and which are concerned with enforcement, thus securing civil rights for disabled people. These powers might include the conducting of formal investigations, serving non-discriminatory notices, acting against persistent discrimination, providing assistance, issuing codes of practice and conciliating disputes. However, the UK Disability Rights Commission (DRC) also works to promote good practice and educate public opinion.

These schemes operate differently in different countries and jurisdictions. The Children's Rights Alliance for England point to the fact that the establishment of the DRC (in April 2000) "set an important precedent for independent rights-based bodies campaigning for groups whose basic human rights are consistently and seriously ignored or violated". Campaigners in the UK note that whilst on the continent a growing number of countries have set up commissioners with wide-ranging powers to protect the young, developments in the UK are lagging behind.

Unicef highlighted the fact that, whilst Wales appointed its first children's commissioner in May 2000, and both the Scottish Parliament and the Northern Ireland Assembly have indicated that children's rights commissioners will be appointed by 2003, no debate or consultation has taken place with the 11.3 million children in England. They also point out that an independent commissioner would provide a link between government and children, and perform a similar function to that of the Commission for Racial Equality and the DRC.

The significance of the law

The law works at a number of different stages to define, resolve, educate and influence, as well as to punish and recompense. The legal framework and enforcement process plays an important part in the prevention of violence and abuse against all vulnerable people by enshrining rights and safeguards in legislation and by providing important avenues through which they seek redress. The European Convention on Human Rights sets out these principles:

– formal equality of disabled children and adults and entitlement to equivalent treatment in law and health care with whatever assistance they need to pursue and uphold this;

– proportionality and independent scrutiny of any controlling, protective or limiting approaches, for example where detention or restraint is thought to be in the best interests of a disabled person and/or necessary to secure their immediate safety or the protection of others, or where disabled people might be considered to be at risk of exploitation and unable to consent to certain transactions.

Weighing up principles

Recent judgments of the European Court of Human Rights make clear that when it comes to competing principles the rights of children to protection from corporal punishment outweigh, and are not incompatible with, rights to privacy or to religious freedom: the UK defence of "reasonable chastisement" has thereby been discredited. Save the Children (2001, p. 17) cites the United Nations Committee on the Rights of the Child:

> The committee has repeatedly made clear … that the use of corporal punishment does not respect the inherent dignity of the child.

Its Committee on Economic, Social and Cultural Rights confirms that:

> Corporal punishment is inconsistent with the fundamental guiding principle of international human rights law enshrined in the preamble to the Universal Declaration of Human Rights.

Guidance may be needed to spell out the fact that disabled children are included in these directives, to highlight potentially abusive practices and to specify what methods of restraint (as opposed to punishment) are acceptable in different circumstances. This principle should also be extended to adults, especially people with disabilities, but also clearly to practices such as female genital mutilation and circumcision, because a hierarchy of principles has

been established which places bodily integrity above religious belief. Although case-law has not clarified the position to this extent in relation to older people and people with intellectual disabilities, social work and legal professionals should refer to this as a precedent in prioritising welfare and safety from abuse over other principles, particularly when it comes to intervening in relation to violence where choice, consent, privacy or confidentiality are sometimes claimed as equal, not subsidiary, principles.

Inclusion in generic legislation preferred

Although it is generally accepted that children should be treated differentially at law, on the whole there has been a movement (Steering Committee on Social Policy, 1992, p. 40) away from segregated legislation. Where specific offences are defined these may provide additional safeguards for children, for example in countries that have made corporal punishment illegal. Other vulnerable people may be specifically protected or settings and situations, such as those of detention or residential care, regulated. In some countries women and minority ethnic groups may be protected by additional specific legislation. Attitudes to domestic violence vary among member states (see the Swedish Social Services Act 1998, section 8a, which promises support to women who are victims of domestic violence).

Otherwise it should be taken as read that older people and people with disabilities are included, alongside all citizens, in the general criminal code which outlaws personal and sexual violence, theft and other threatening behaviour. A Dutch association of elderly people cited in *Violence against elderly people* said that:

> Elderly people do not consider themselves to be a special category in society and so do not want a policy on the aged … if a policy for a special group is indeed necessary and right, because of a situation of deprivation, this policy should be geared to eliminate this deprivation. Nothing less will suffice.

In some situations and countries, children and people with disabilities are "protected" through differential sentencing policies, or by having their impairment treated as an aggravating factor as it is defined in relation to hate crime. But sometimes the boot is on the other foot and specific sexual offences applying to people with intellectual disabilities carry lesser penalties than their generic equivalents (namely, rape). In other contexts the legal code is underlined in relation to children or vulnerable adults by stricter penalties

especially for sexual offences against children and those who have committed their offences while in a position of trust or authority.

Mandatory reporting

Where violence against people with disabilities is specifically mentioned there may be a responsibility to report concerns to the relevant authorities (see the Swedish Social Services Act 1998, section 71a). Mandatory reporting has been a central plank of the American Vulnerable Adults' Statutes and of child protection systems. What is at issue here is a balancing act between protection, on the one hand, and autonomy and freedom from intrusion, on the other. As stated by the Office of the Commissioner for Human Rights (2001, p. 2), "Growing old is not an illness, and people's age must not be used as justification for restricting their rights in any way". Hence, the Commissioner argues, any restrictions on the rights of older people must be prescribed by law and open to transparent judicial review.

There is undoubtedly a stronger societal mandate to act to protect children than there is for older people or people with disabilities. Consent and capacity legislation works from the position that although older children must be consulted in matters which concern them (European Convention on the Exercise of Children's Rights) the state has a legitimate role in initiating action on their behalf. But even when adults are formally assessed as lacking mental capacity this function may not be exercised on their behalf, except in exceptional circumstances. Most countries have guardianship arrangements to expedite or oversee the management of financial matters on behalf of those unable to act in their own interests, but the role of these bodies is not as clearly defined when it comes to bringing complaints or seeking independent judicial review on their behalf.

But the Commissioner is also clear that provision must be made to report ill-treatment without fear of reprisals and argues that there should be a mandatory obligation for carers to report any abuses. The contingencies of complaining are complex, given the closed nature of many retirement homes or older people's institutions, and the vulnerability that comes from needing personal and intimate care, which can lead to dependence in relation to relatives, paid carers and the managers of homes. Figures vary as to how many older people live at home on their own, with families or in various forms of residential care: in the UK about 40% of older people live in residential care for some time, in France almost half of older people with disabilities receive

help only from their families. Although the situations vary, what they have in common is that they tend to be closed and that creates enormous difficulty if relationships become abusive. In situations of domestic violence, this "sealing off" is created and enforced by abusers as isolation exaggerates dependence and cuts off independent avenues for assistance or protection.

The actuality of reporting abuse is therefore very difficult for older people themselves and their carers who may not know of alternative placements and/or be afraid that singling out their relative by making a complaint might lead them to have a lesser service or be subjected to humiliation or threat. Hence the Commissioner's stance that "Elderly people, for their part, must be free to decide whether or not they wish to report any ill-treatment they suffer" is problematic as this choice may well be made under duress contradicting the notion that they are indeed free to make a complaint without fear.

Whose role is it to bring a prosecution?

Countries vary as to whether it is the role of the victim to bring any prosecution or if the police or public prosecutor brings it on their behalf. Even where there is no question that a person who has been victimised lacks mental capacity to make their own decisions there is contention about whether prosecution should be state-led or victim-led. As Stanko (2000, p. 250) remarks:

> In many cases the burden of responsibility to initiate intervention and then to be steadfastly committed to seeing this intervention through is displaced onto the individuals.

Article 8 of the European Convention on the Exercise of Children's Rights makes it clear that the judicial authority in each country has the power to act on its own motion (that is, to take the initiative in pursuing a case) where the welfare of a child is in "serious danger", while noting that this risks interference in family life and should therefore be limited to the most serious cases.

This is an important principle which might be adapted to the needs of other vulnerable groups who may miss out on justice if they are unable to make a complaint, seek redress or are too intimidated to do so. Police sometimes act as if they have to have the victim's agreement to initiate a prosecution and defer to a frightened person to not proceed against an aggressor, even if by doing so they leave the person in danger and convey the impression that it is safe to offend against vulnerable groups because their rights will not be independently upheld.

This is an area of work that the Council could look into further, including an assessment of the merits of mandatory reporting of abuse of older or vulnerable adults and a review of possible mechanisms for acting independently on behalf of individual older or disabled people in relation to abuse if it crosses a certain threshold of seriousness. The question is whether older people would be better off if service providers and care givers were clear that legal action could be brought irrespective of the vulnerable adult's wishes in cases of serious abuse or whether this would unacceptably infringe their rights.

If it were decided to allocate responsibility to a body or bodies to act in this context then a further consideration might be for them to pursue complaints, justice and applications for compensation on behalf of older people who have died before their case could be concluded. At present nearness to death creates an additional layer of vulnerability in that wilful abusers know the person they are harming will probably die before they could be brought to account.

These dilemmas also arise in relation to people with intellectual disabilities, some of whom will be able to make their own decisions even in the face of serious harm while others may be unable to make decisions and/or be easily pressurised or deceived by someone intent on harming them or someone they perceive to be in a position of authority. Independent advocacy is again of enormous assistance in these situations. People with physical disabilities are well able to make such decisions for themselves and for them the issue is far more likely to be about overcoming prejudice in the court system, the tendency for their credibility to be impugned, the physical barriers to access and communication, and the lack of knowledge on the part of jurors.

The law must also provide safeguards for people who are vulnerable within the criminal justice system by attending to the situation of children and vulnerable adults who have, or are alleged to have, committed offences. The right to a fair trial extends to "unpopular" defendants such as children tried as adults in adult courtrooms even when they are unable to comprehend the proceedings or their implications, and to people with serious mental health problems.

Incapacity legislation

Incapacity legislation has a particular role in relation to vulnerable victims. The notion of valid and informed consent hinges on the capacity to:

– indicate consent in a given situation;

– to be adequately informed and understand enough about the consequences of the decision (for example, the CPT argues that it is not sufficient to tell a patient that they are to have a "sleeping treatment" to ascertain their valid consent to ECT);

– remain free from undue pressure or coercion from others when making the decision, especially when those urging compliance are also those who provide everyday care and/or control.

Clearly this area requires co-ordination of legislation on behalf of those who lack "capacity" to act on their own behalf either in seeking provision or challenging decisions in relation to allocation of benefits, health care or other services; or when complaining about active forms of abuse including physical or sexual violence, financial abuse or negligence. Often these decisions are taken informally and very close to the person by those who know them best and this model is usually, for most decisions, in their best interests but when faced with abuse or violence close to home it may exacerbate problems in intervention and protection.

Many countries are enacting or revising mental incapacity legislation in order to address these issues and the Council has set down formal principles to be adhered to in this legislation (Recommendation No. R (99) 4, Appendix 1). The key principle is that there should be flexibility to appoint a representative with very specific, time-limited powers to act on behalf of a vulnerable person on the basis of a functional assessment of their capacity to make specific decisions and act on their own behalf, but that appointing someone to act on their behalf in one area of their life would not necessarily result in them losing capacity to act in relation to other decisions, which they remain able to manage.

Conclusion: shared agendas for research and development

Research also acts as a lever for change because it makes visible the reality and the impact of violence in the lives of all citizens but particularly of vulnerable citizens. It highlights their differential exposure to risk, the failure of authorities to note and act on indicators of violence and the discriminatory response that they meet in the criminal justice systems of our countries. Research puts violence, including cosy "domestic" violence, onto a public agenda and makes it clear that it is not a private matter. It is a matter of enormous and shared public concern.

The Council is well aware of the interdependence of policies that are designed to bring about social cohesion and a reduction of violence. In its work on vulnerable people the relevant working groups have addressed a wide range of issues that are concerned with improving the environment, service provision, equality of opportunity and the economic position of groups and individuals. Specific attention to issues of protection from violence cannot be detached from these more proactive approaches to securing a good life for those concerned. In relation to children and young people, for example alongside objectives around protection are others that aim to promote healthy lives, access to education and measures to combat HIV/Aids. But it is important that authorities are not allowed to hide behind such aspirations and in doing so to turn away from abuse and violence in the lives of children and vulnerable adults: this colludes with those who wish to see violence as an individual aberration rather than a shared failure to uphold human rights.

Working to promote positives and participation is a necessary but not sufficient condition for the reduction of violence against vulnerable groups. Empowerment and inclusion are both forms of protection but the presence of positives in a person's life does not cancel out the negatives; a woman beaten in a house with hot and cold running water is still a person whose fundamental rights have been abused, as is a person with disabilities living in an ordinary apartment in their community but being sexually abused by a carer paid for with direct payments.

Moreover, although provision must support individuals, prevention must also address the structural inequalities that allow abuse to fester and violence to go unchallenged. This broader agenda requires collaboration within and between governments as well as across the many working groups and activities of the Council of Europe.

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1. These documents have a different status depending on how they were produced and ratified: conventions are legally binding; recommendations adopted by the Committee of Ministers, one of the decision-making bodies of the Council, are not legally binding. They are guidelines addressed to the member states and reflect common policy agreed by the Committee of Ministers. Parliamentary Assembly recommendations are addressed to the Committee of Ministers and its resolutions reflect opinions for which it alone is responsible. Other documents represent consensus and good practice shared through symposia and conferences, or reports from individual committees or working groups.
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