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**Promotion and protection of all human rights, civil,  
political, economic, social and cultural rights,  
including the right to development**

**Report of the Special Rapporteur on violence against women,  
its causes and consequences\***

**Note by the Secretariat**

In the present report, the Special Rapporteur on violence against women, its causes and consequences considers key elements of a human-rights based approach to integrated services and protection measures on violence against women with a focus on shelters and protection orders

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\* The present report was submitted after the deadline in order to reflect the most recent developments.

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## Report of the Special Rapporteur on violence against women, its causes and consequences

### Contents

	<i>Page</i>
I. Introduction .....	3
II. Activities of the Special Rapporteur .....	3
A. Reporting .....	3
B. Cooperation with regional organizations and independent global regional mechanisms .....	3
C. Participation in conferences and other activities.....	4
D. Country visits and communications.....	5
III. Human-rights based approach to integrated services and protection measures on violence against women: a focus on shelters and protection orders .....	5
A. International and regional human rights frameworks on shelters and protection orders.....	5
B. Protection of women's human rights to live free from violence .....	8
C. States' human rights obligations to provide for shelters and protection orders .....	9
D. Shelters and protection orders: gaps, challenges and good practices.....	10
IV. Conclusions and recommendations .....	18

## I. Introduction

1. The present report is submitted pursuant to Human Rights Council (HRC) resolution 23/25. It outlines the activities of the Special Rapporteur on violence against women, its causes and consequences (SRVAW) and contains a thematic analysis of the human rights based approach to integrated services and protection measures on violence against women with focus on shelters and protection orders, a topic listed among the thematic priorities of the SRVAW.<sup>1</sup>

## II. Activities of the Special Rapporteur

### A. Reporting

2. On 23 September 2016, the Rapporteur addressed the General Assembly, at its seventy-first session, pursuant to General Assembly Resolution 69/147 (A/71/398) presenting her thematic report on femicide or the gender-related killing of women in which she proposed modalities for the establishment at the global, regional and national levels of a “femicide watch” or observatories on violence against women.<sup>2</sup> She also presented responses received from global and regional independent mechanisms following her call for input on the issue of the adequacy of the international legal framework on VAW.

3. On 13 March 2017, the mandate holder participated in the 61st session of the Commission on the Status of Women (CSW) and presented an oral report outlining the current priorities of her mandate. She also called on governments and civil society to start the process leading to a fifth UN World Conference on Women with a focus on violence against women as a priority.<sup>3</sup>

4. At that session, the Rapporteur also addressed several panels covering a wide range of issues related to violence against women. She moderated a closed consultation on operationalizing enhanced collaboration between the international and regional mechanisms on women’s rights and violence against women. It was agreed to work on the institutionalization of such cooperation. The experts also decided to further explore possibilities for meetings, sessions and consultations during the Human Rights Council and other inter-governmental bodies where both the international and regional women’s rights mechanisms could participate.

5. The Rapporteur also met with the UN Secretary General, together with the Chair of the CEDAW Committee, the Chair of the GREVIO, a member of the WGDLP and the Coordinator of Thematic Monitoring at the Inter-American Commission on Human Rights. Within the context of this meeting, the mandate holders addressed the key issue of cooperation between independent international and regional mechanisms on women’s rights and violence against women and proposed the institutionalization of such cooperation. The UN SG lent support to this initiative and entrusted his Senior Adviser on Policy to be the focal point in his cabinet to work on this with UN Women and OHCHR .

### B. Cooperation with regional organizations and independent global and regional mechanisms on VAW

6. The Rapporteur participated in the 59th session of the African Commission on Human and Peoples’ Rights held in October 2016 in Banjul. She also held a meeting with Ms Lucy Asuagbor, Special Rapporteur on the Rights of Women in Africa, with a view to further foster cooperation between their mandates<sup>4</sup>

<sup>1</sup> A/HRC/32/42, paras 52-58

<sup>2</sup> <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=20677&LangID=E>

<sup>3</sup> <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=21382&LangID=E>

<sup>4</sup> <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=20768&LangID=E>

7. On 25 November 2016, on the International Day on the Elimination of Violence against Women, the Special Rapporteur issued a call, jointly with all global and regional independent mechanisms on VAW for the intensification of international, regional and national efforts for the prevention of femicide and gender-based violence. They called upon States for full acceptance, incorporation and implementation of global and regional treaties on women's rights and violence against women and for the establishment of a Femicide Watch.<sup>5</sup>

8. During 2015 and 2016, the Rapporteur and the CEDAW Committee, which have established a formal collaboration with a view to updating the General Recommendation (GR) 19 on violence against women<sup>6</sup>, have been working on updating GR No. 19 on violence against women.<sup>7</sup> In that respect, on 30 October 2016, the mandate holder participated in Geneva in a meeting of the CEDAW Working Group on updating GR No. 19 on violence against women and from 2 to 3 February 2017, she participated in a follow-up Expert Group Meeting of the CEDAW Working Group in London.

9. The Rapporteur issued several statements jointly with other human rights mechanisms<sup>8</sup>.

### C. Participation in conferences and consultations and other activities

10. From 23 to 27 May 2016, the Rapporteur participated in the twenty-fifth session of the Commission on Crime Prevention and Criminal Justice in Vienna and delivered an opening statement focusing on the cooperation between the mandate and the CCPCJ in matters of criminal justice and prevention of VAW.<sup>9</sup>

11. On 25 November 2016, in Vienna, she participated in a Gender Symposium on combating femicide, organized by the OSCE Gender unit and UNODC and introduced the mandate's initiative on the establishment of a femicide watch.<sup>10</sup>

12. On 29 November 2016, at the European Parliament in Brussels, she participated in a hearing organized by the Committee on Civil Liberties, Justice and Home Affairs / Committee on Women's Rights and Gender Equality on the EU accession to the Istanbul Convention and called upon Governments to fully endorse and implement the CEDAW and the Istanbul Convention as compatible and mutually reinforcing instruments.<sup>11</sup>

13. On 12-13 December 2016, in Abu Dhabi, she attended the Global Summit of Women Speakers of Parliament, co-hosted by the Inter-parliamentary Union and the UAE Federal National Council of the United Arab Emirates<sup>12</sup>. The summit adopted the Abu Dhabi Declaration "United for Shaping the Future, for a better world" that includes commitment to advance gender equality and women's empowerment<sup>13</sup>.

14. On 13 January 2017, she attended an expert group meeting jointly organized with the Centre for Women, Peace and Security at the London School of Economics and Political Science (LSE) on shelters and protection orders that fed into the present report.

<sup>5</sup> <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=20911&LangID=E>

<sup>6</sup> CEDAW/C/2015/I/CRP, Decision 60/12

<sup>7</sup> CEDAW/C/2015/I/CRP, Decision 65/4

<sup>8</sup> <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=21317&LangID=E>;  
<http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=21304&LangID=E> and  
<http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=21317&LangID=E>

<sup>9</sup> <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=20013&LangID=E>

<sup>10</sup> <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=20953&LangID=E#sthash.1zNmbuRF.dpuf>

<sup>11</sup> <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=20964&LangID=E>

<sup>12</sup> <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=21053&LangID=E>

<sup>13</sup> <http://www.ipu.org/splz-e/abudhabi16/declaration.pdf> ( para 18)

She also issued a call for submissions to feed into this thematic report<sup>14</sup> and received 48 responses.<sup>15</sup>

15. On 7 and 8 February 2017, she attended the meeting of the High-Level Working Group on the Health and Human Rights of Women, Children and Adolescents, jointly convened by OHCHR and WHO.

16. On 4 April 2017, the mandate holder sent a letter to the Executive Director of UN Women, Ms. Phumzile Mlambo-Ngcuka, to further explore with UN Women in its capacity of administrator of the UN Trust Fund to end violence against women, ways and means of cooperation between her mandate and the Trust Fund as envisaged in the Trust Fund's founding resolution<sup>16</sup>.

#### **D. Country visits and communications**

17. Since the last reporting period, the SR visited Israel (A/HRC/35/30/Add.1), the OPT/State of Palestine (A/HRC/35/30/Add.2), Argentina (A/HRC/35/30/Add.3) and Australia. The mandate holder thanks the Governments of Israel, State of Palestine, Argentina, and Australia for their cooperation before and during the visit. Later the Rapporteur will also visit Bulgaria and the Bahamas who have both agreed to a visit. She also sent a visit request to Canada for the first semester of 2018.

18. The Special Rapporteur addressed, also jointly with other mandate holders, a total of over 40 communications relating to issues falling within the scope of her mandate.

### **III. Human-rights based approach to integrated services and protection measures on violence against women: a focus on shelters and protection orders**

#### **A. International and regional human rights frameworks on shelters and protection orders**

19. International and regional human rights and policy instruments set out States' obligations to combat all forms of discrimination against women including VAW and to protect their human rights, including every woman's right to be free from violence. These obligations include States' obligation to protect women against gender-based violence – particularly in the context of domestic violence or intimate partner violence - by ensuring their safety and human rights through access to shelters /refuges and access to protection orders.

20. These obligations are directly or indirectly enshrined in international and regional legal and policy human rights instruments and have been further elaborated by independent mechanisms that monitor their implementation. These mechanisms include the CEDAW Committee and other treaty bodies, regional human rights mechanisms, the Special Rapporteur on violence against women and other Special Procedures mandate holders. As highlighted throughout this report, through their recommendations and jurisprudence these mechanisms have further clarified States' human rights obligation to establish a comprehensive and coordinated national framework to combat and to prevent GBV, including through provision of shelters and protection orders that are essential tools in this framework.

21. The CEDAW Convention and the Declaration on the Elimination of Violence against Women (DEVAW) provide a comprehensive international framework in which

<sup>14</sup> <http://www.ohchr.org/EN/Issues/Women/SRWomen/Pages/OrdersAndShelters.aspx>

<sup>15</sup> All contributions are available at

<http://www.ohchr.org/EN/Issues/Women/SRWomen/Pages/SheltersProtectionOrders.aspx>

<sup>16</sup> See A/RES/50/166

gender-based violence against women is the manifestation of the historical unequal power relationship between women and men. It is defined to constitute discrimination against women and a human rights violation establishing a corresponding obligation of States to prevent, investigate, prosecute and punish acts of gender-based violence and to provide remedies for victims. Closely linked to prevention is the requirement that States provide adequate protection to victims/ survivors and potential victims of violence.

22. The CEDAW Committee's GR No. 19 on violence against women defines gender-based violence against women as "violence that is directed against a woman because she is a woman or that affects women disproportionately". It further explains that such violence "impairs or nullifies the enjoyment by women of human rights and fundamental freedoms under general international law or under human rights conventions"<sup>17</sup>. It emphasize the importance of shelters or "refuges" and specifies that States parties should "establish support services for victims of family violence, rape, sexual assault and other forms of gender-based violence, including refuges, specially trained health workers, rehabilitation and counselling"<sup>18</sup>.

23. This key instrument, which is being updated by the CEDAW Committee in cooperation with the SRVAW, is expected to include additional guidance on measures needed to eradicate gender-based violence. This report is aimed at reflecting important developments in this field and to provide more detailed guidance on the human rights-based approach and States' obligation to protect the human rights of women and their safety by the establishment of shelters /refuge and implementation of protection orders.

24. CEDAW GR No. 33 on women's access to justice recognizes the financial constraints faced by many women victims of violence, and calls on States to guarantee access to financial aid, crisis centers, shelters, hotlines, and medical, psychosocial and counselling services.<sup>19</sup> It further requires States to "take steps to guarantee that women are not subjected to undue delays in applications for protection orders and that all cases of gender-based discrimination under criminal law, including violence, are heard in a timely and impartial manner".<sup>20</sup>

25. The 1993 Declaration on the Elimination of Violence against Women calls States to ensure "that women subjected to violence and, where appropriate, their children have specialized assistance, such as rehabilitation, assistance in child care and maintenance, treatment, counseling, and health and social services, facilities and programmes, as well as support structures, and should take all other appropriate measures to promote their safety and physical and psychological rehabilitation"<sup>21</sup>.

26. In the Beijing Platform for Action, participating States in its area of concern on VAW also affirmed their commitment to "provide well-funded shelters and relief support for girls and women subjected to violence, as well as medical, psychological and other counseling services and free or low-cost legal aid"<sup>22</sup>.

27. The CSW agreed conclusions on VAW adopted of 2013 also call for multidisciplinary and gender-sensitive preventive and protective measures, such as emergency barring orders and protection orders<sup>23</sup> and for access to shelters, in the context of the strengthening of multisectoral services, programmes and responses to VAW. These include State and independent women's shelters and counseling centres, 24-hour hotlines, social aid services, one-stop crisis centres child services, public housing services to provide low threshold, easily accessible and safe assistance for women and children, as well as assistance, protection and support.

<sup>17</sup> para. 7

<sup>18</sup> para 24 (k), see also para 24 r (iii), t (iii)

<sup>19</sup> para 16(b)

<sup>20</sup> para 51 (j)

<sup>21</sup> Article 4 (g)

<sup>22</sup> <http://www.un.org/womenwatch/daw/beijing/platform/>, para 125 (a)

<sup>23</sup> <http://www.unwomen.org/-/media/headquarters/attachments/sections/csw/57/csw57-agreedconclusions-a4-en.pdf?vs=700>, para 34. A (c)

28. The updated Model Strategies and Practical Measures on the Elimination of Violence against Women in the Field of Crime Prevention and Criminal Justice called on States to “establish, fund and coordinate a sustainable network of accessible facilities and services for emergency and temporary residential accommodation, health services, including counselling and psychological care, legal assistance and other basic needs for women and their children who are victims of violence or who are at risk of becoming victims of violence.”<sup>24</sup>

29. The 2030 Agenda for Sustainable Development includes in Goal 5 (2) the elimination of violence against women as a target for the achievement of gender equality and the empowerment of women. However, its related indicators, namely 5.2.1 and 5.2.2., do not concern the collection of data on shelters and protection orders, which would provide relevant information on their availability and reveal the need for additional shelters or protection orders. The Rapporteur also highlights that, currently, there is no indicator on the numbers or on the rate of femicide or gender related killings of women although this extreme form of violence is in many cases directly related to a widespread unavailability of shelters and lack of efficiency or enforceability of protection orders.

30. Regional instruments like the Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women (Belém do Pará Convention) and the Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention) specifically address violence against women and as such have explicit and detailed provisions on services and protection measures including on shelters and protection orders. All these regional instruments were adopted after the CEDAW Convention and are compatible instruments that build on the Convention and provide more detailed guidance. This is specifically the case of the Istanbul Convention which is the most recent regional instrument, adopted in 2011 and supplementing the CEDAW framework and the jurisprudence of all other regional mechanisms.<sup>25</sup>

31. The Istanbul Convention contains explicit provisions on shelters and protection orders. In relation to shelters, article 23 requires States parties to take the "necessary legislative or other measures to provide for the setting up of appropriate, easily accessible shelters in sufficient numbers to provide safe accommodation for and to reach out proactively to victims, especially women and their children". In relation to protection orders it regulates "go" or emergency barring orders for victims of domestic violence in Article 52 that calls on States to “ensure that competent authorities are granted the power to order, in situations of immediate danger, a perpetrator of domestic violence to vacate the residence of the victim". Article 53 regulates protection orders for victims of all forms of violence and calls for their immediate protection without undue financial and administrative burdens; specific time frame; ex parte issuance and availability irrespective of other proceedings. It also calls for criminalization of their breaches.

32. The Belém do Pará Convention of 1994 was the first regional instrument on VAW. Its article 8 (d) calls upon State Parties to "undertake progressively specific measures, including programs to provide appropriate specialized services for women who have been subjected to violence, through public and private sector agencies, including shelters, counselling services for all family members where appropriate, and care and custody of the affected children". On protection orders, article 7(d) requires States to “adopt legal measures to require the perpetrator to refrain from harassing, intimidating or threatening the woman or using any method that harms or endangers her life or integrity, or damages her property.”

33. Though not as specific, the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, (Maputo Protocol) also addresses violence against women. Article 4 para 2 (f) provides that State Parties shall “establish mechanisms

<sup>24</sup> Idem, para 19 (a)

<sup>25</sup> See Dubravka Simonovic, Global and Regional Standards on Violence Against Women : The Evolution and Synergy of the CEDAW and Istanbul Conventions , Human Rights Quarterly 36 , number 3, (2014) 590–607

and accessible services for effective information, rehabilitation and reparation for victims of violence against women.”

## **B. Protection of women’s human rights to live free from violence**

34. International and regional women's human rights instruments contain important guiding human rights norms recognizing violence against women as a human rights violation. Additionally the Vienna Declaration and Program of Action reaffirmed that women's rights are human rights and that the human rights of women and of the girl-child are an inalienable, integral and indivisible part of universal human rights. It also called for the creation of the SRVAW which was established in 1994 with the aim to further integrate VAW into the human rights framework and agenda. Furthermore the Beijing Declaration and Platform for Action of 1995 specifically addressed VAW as human rights violation.

35. The women's human rights framework relies on gender-specific or gendered human rights principles that are applicable to VAW, including on services and measures like shelters and protection orders. These principles include the principle of non-discrimination based on sex/ gender; the principle of substantive equality between men and women, women’s empowerment, State responsibility including due diligence responsibility and the right to live a life free from violence, that encompass other human rights.

36. States have human rights obligations to combat and prevent all forms of discrimination and violence against women through prohibiting and sanctioning sex/gender-based discrimination in all its forms including gender-based violence against women (articles 1 and 2 CEDAW) and to this end to embody and realize the principle of equality between men and women (article 2 CEDAW) and to empower women (article 3 CEDAW) by undertaking measures to ensure women’s full development and advancement.

37. The States’ obligation to protect women’s right to live free from violence requires protection of their human rights. The CEDAW Committee in its General Recommendation 19 enumerates some of those rights in an open ended list: protection of the right to life; (b) the right not to be subject to torture or to cruel, inhuman or degrading treatment or punishment; (c) the right to equal protection according to humanitarian norms in time of international or internal armed conflict; (d) the right to liberty and security of person; (e) the right to equal protection under the law; (f) the right to equality in the family; (g) the right to the highest standard attainable of physical and mental health; (h) the right to just and favourable conditions of work.

38. Furthermore, the CEDAW Convention specifically requires States to take all appropriate measures to eliminate discrimination against rural women, and to ensure their enjoyment of adequate living conditions and adequate housing (CEDAW article 14.2).

39. All those human rights and fundamental freedoms that could be violated in cases of VAW are constituting women’s human rights to life free from violence. This was explicitly expressed in the Belém do Para Convention that States that "violence against women constitutes a violation of their human rights and fundamental freedoms". Under rights protected, article 3 recognizes that "every woman has the right to be free from violence in both the public and private spheres."

40. The Istanbul Convention in article 4(1) also explicitly refers to VAW as a human rights violation and protects “the right for everyone, particularly women, to live free from violence in both the public and the private sphere”.

41. This recognition of women's right to live free from violence determines States’ human rights obligation to protect women victims or potential victims of VAW by adopting laws and practical measures to prevent and combat VAW, providing a comprehensive set of services such as shelters and measures, including protection orders. States should ensure that services facilitate women’s recovery from violence and enable them to overcome the multiple consequences of violence to rebuild their lives. This requires gendered provision of accessible, affordable, appropriate, acceptable and quality access to services and protection measures.



42. They must be victim-centered and focused on women's human rights, safety and empowerment of the victim and aimed at avoiding secondary victimization” of women and children<sup>26</sup>. Such a holistic approach has to apply to all the phases related to the provision of the protection measures, with a view to preventing, protecting and prosecuting GBV and ensuring victims’ rehabilitation from violence and thus their empowerment.

43. The State obligation to ensure access to shelter for women with children was addressed by the CEDAW Committee in *A.T. v. Hungary* where it found that the State” failed in its obligations when the applicant was unable to flee to a shelter because none was equipped to accept her with her children, one of whom was disabled”. It further recalled that failure to provide shelters for a woman with disabled child is a breach of women’s rights under Article 2 (a) (b) and (e) of the CEDAW<sup>27</sup>. This case presents clear recognition of woman's human rights violation in a case where shelters are not available and accessible.

44. In a case before the ECtHR *Opuz v Turkey*, the Court refers to life at risk of violence and obligation of States to undertake protective measures: “Furthermore, in the light of the State’s positive obligation to take preventive operational measures to protect an individual whose life is at risk, it might have been expected that the authorities, faced with a suspect known to have a criminal record of perpetrating violent attacks, would take special measures consonant with the gravity of the situation with a view to protecting the applicant’s mother (...).”<sup>28</sup>

45. In *V.K. v. Bulgaria*, the CEDAW Committee further highlights that when assessing whether a protection order should be granted, the courts should take account of all forms of violence against women, not just life-threatening violence. Furthermore, the standard of proof that an applicant must discharge in order to be awarded with an order should not be the standard of criminal proof, “beyond reasonable doubt.” Courts should also be aware that many forms of violence, particularly domestic violence, are courses of conduct which take place over time, and should not therefore impose strict time-limit restrictions on access to protection orders<sup>29</sup>

46. The Special Rapporteur on the right to adequate housing has identified the relevance of the provision of shelters in the context of the right to adequate housing and noted that “domestic violence can greatly increase women’s vulnerability to homelessness, especially when there is a lack of protection by law enforcement officials, or by the legal system itself.”<sup>30</sup>

### **C. States’ human rights obligations to provide for shelters and protection orders**

47. States have human rights obligation to ensure that both State and non-State agents refrain from engaging in any act of discrimination against women (article 2 CEDAW). States have a direct responsibility concerning violence perpetrated by the State party itself. Article 2(d) CEDAW requires States, including their national bodies and agents, to refrain from engaging in any act or practice or direct or indirect discrimination against women, and to ensure that public authorities and institutions act in conformity with this obligation.

48. States also have a due diligence obligation related to discrimination and violence against women perpetrated by non-State actors, including private persons. The due diligence principle<sup>31</sup> framing States’ obligation with respect to violence committed by private persons is set out in CEDAW article 2 (e), which requires States “to take all appropriate measures to eliminate discrimination against women committed by a person, an

<sup>26</sup> González Carreño v. Spain, CEDAW/C/58/D/47/2012

<sup>27</sup> *A.T. v. Hungary*, CEDAW/C/36/D/2/2003, para 9.3

<sup>28</sup> *Opuz v. Turkey*, European Court of Human Rights, Application 33401/02, para 148

<sup>29</sup> *V.K. v. Bulgaria*, CEDAW/C/49/D/20/2008, para 9.9

<sup>30</sup> E/CN.4/2006/118, para. 33

<sup>31</sup> [http://www.theadvocatesforhumanrights.org/uploads/bip\\_report\\_january\\_2016.pdf](http://www.theadvocatesforhumanrights.org/uploads/bip_report_january_2016.pdf)

organization or an enterprise”. Therefore, States are responsible for the actions of non-State actors, including individuals, when they fail to meet their due diligence obligations.

49. The CEDAW Committee in its GR 19 further explained that " States may also be responsible for private acts if they fail to act with due diligence to prevent violations of rights or to investigate and punish act of violence and for providing compensation. "

50. Article 4(c) of DEVAW urges states to “exercise due diligence to prevent, investigate and, in accordance with national legislation, punish acts of violence against women”.

51. Article 7 (b) the Belém do Pará Convention includes among the duty of the States that they condemn all forms of violence against women and agree “to pursue, by all appropriate means and without delay, policies to prevent, punish and eradicate such violence and to apply due diligence to prevent, investigate and impose penalties for violence against women.”

52. Article 5 (2) of the Istanbul Convention requires States to take all the necessary legislative and other measures to exercise due diligence to prevent, investigate and punish and provide reparations for acts of violence against women and girls perpetrated by non – State actors.

53. States responsibility for acts of private persons includes the obligation of modifying or adopting domestic legislation to protect women from gender-based violence committed by non-State actors and to provide services and measures to protect them from such violence. This due diligence obligation also includes adequate implementation of such laws and robust criminal justice responses involving the cooperation of all state actors who should adhere to the State Party’s due diligence obligation.

54. The CEDAW Committee has further elaborated on the due diligence obligation in two femicide cases<sup>32</sup> in which women victims of domestic violence were murdered by their husbands at a time when they had protection orders: “[I]n order for the individual woman victim of domestic violence to enjoy the practical realization of the principle of equality of men and women and of her human rights and fundamental freedoms, the political will that is expressed in the aforementioned comprehensive system of Austria must be supported by State actors, who adhere to the State party’s due diligence obligations.”<sup>33</sup> In both cases, the Committee considered that the authorities (public prosecutor) should have been aware of the high threshold of violence that both perpetrators had crossed and that they should not have denied police requests to arrest and detain them, as the perpetrators’ rights could not have superseded women’s human rights to life and physical and mental integrity.<sup>34</sup>

## D. Shelters and protection orders

### 1. Definitions

55. A “shelter”<sup>35</sup> or “refuge” is generally denoted to mean emergency and temporary ‘safe accommodation for women and children who have been exposed to, or are at risk of (usually male) violence in a domestic context’<sup>36</sup>. Shelters provide temporary and

<sup>32</sup> Şahide Goekce (deceased) v. Austria, CEDAW/C/39/D/5/2006 and Fatma Yildirim (deceased) v. Austria, CEDAW/C/39/D/6/2006

<sup>33</sup> Para 12.1.5 and 12.3 (b) of both decisions above

<sup>34</sup> Para 12.1.2 of both decisions above

<sup>35</sup> The term ‘refuge’ is more widely used in European contexts and “shelter” is more commonly used in North America and Australia, while Some States also use terms such as “safe house” or other terms. In this report the term shelter is used inclusively to accommodate different terms used but with the same meaning. On the history of women’s sheltering, see: Canada Network of Women’s Shelters & Transition Houses, UN Women, “Shelter for Women and Girls at Risk of or Survivors of Violence”, 2011

<sup>36</sup> Away from Violence. Guidelines for Setting up and Running a Women’s Refuge (Women Against Violence in Europe 2004).

emergency safety but usually they do not offer long term solutions. They are often associated with refugees from domestic violence but can also provide support for women and girls who have been subjected to, or are at risk of, other forms of violence, for instance trafficked persons, migrants and asylum seekers, and those fleeing from conflict to refugee and IDP camps, where the risk of gender-based violence is high.<sup>37</sup>

56. Types of shelters vary significantly across states, regions, and communities. There are examples of shelters established and run by independent civil society organizations autonomously without support from the State and those that are supported through some licensing system or grants allocated for a specific period. Some civil society organizations have developed guidelines for setting up shelters<sup>38</sup>. There are also State-owned and operated shelters but usually they have proven to fall short in their delivery of services.

57. Establishment and support for shelters also involve consideration of cultural barriers and gender stereotypes and States' economic constraints. In recent years, social services, such as public housing and access to shelters, have been undermined by austerity policies and budgetary cuts.

58. There are no UN global or regional data on the numbers and types of shelters in UN Member States or agreed global standards on the numbers of places needed. The CSOs have established the Global Network of Women's Shelters<sup>39</sup> and organized three World Conferences and published in total five Global Shelters Data Count reports, the last one containing information on 46 countries<sup>40</sup>.

59. The need for more women's shelters was documented by a survey carried out in 27 European states by WAVE41 in 2001 that found at least a few women's shelters and support organizations in each country. A group of experts has recommended one shelter/refuge place for every 10, 000 inhabitants, providing safe emergency accommodation, qualified counselling and assistance in finding long-term accommodation<sup>42</sup>.

60. In some States there are no shelters, in others, there are only daily shelters without overnight stay. Also, there are different types of shelters, some States having CSOs run shelters and other State run shelters or a combination of both. In many States, their form is determined by the availability and amount of funding available (either from the State or external donors), as well as on whether funding is sustainable<sup>43</sup>.

61. Protection orders aim to ensure safety through a "go" order which requires a perpetrator to leave a shared home, and to keep at a certain distance from the victim (barring orders). Protection orders can impose a range of restraints on the person subject to the order. For example, they require a perpetrator of domestic violence to vacate the residence of the victim or to stay away from the shared home, from specific places (e.g. the victim's workplace or her children's school) or to refrain from contacting the victim or person at risk. Some jurisdictions permit additional orders to, for example, require a perpetrator to pay rent for the family home or child support, or to surrender weapons in his possession.

62. In most cases, protection orders are issued by a court, a prosecutor or by the police, to protect an individual from harassment or violence, or fear of violence by a named individual. They may be ordered independently by a civil court or they may be part of civil or criminal legal processes protecting the safety of the victim while other processes go

<sup>37</sup> CEDAW, General recommendation No 30, on women in conflict prevention, conflict and post-conflict situations, para 57.

<sup>38</sup> Away from Violence

<sup>39</sup> <http://www.gnws.org/en/>

<sup>40</sup> <http://gnws.org/en/work/global-data-count.html>

<sup>41</sup> <https://www.wave-network.org/>

<sup>42</sup> UN Handbook for Legislation on Violence against Women, page 31

<sup>43</sup> See Canada Network of Women's Shelters & Transition Houses, UN Women, "Shelter for Women and Girls at Risk of or Survivors of Violence", 2011  
<http://www.endvawnow.org/uploads/modules/pdf/1363538451.pdf>

forward. States should “ensure that criminal and civil remedies are utilized in cases where the perpetrator in a domestic violence situation poses a dangerous threat to the victim”.<sup>44</sup>

## 2. Intersection between shelters and protection orders

63. There is a significant intersection between shelter and protection orders, even though they are provided by different actors or parts of a State System. Experience shows that shelters continue to be necessary even when effective legislative protection against violence exists. Not every victim of violence wishes to turn to the police and the judicial system and bring legal charges or seek protection orders, some prefer to go to a refuge. There are cases where women who are at high risk need safe accommodation during the separation process, because the law and protection orders are not capable of providing complete protection against violence. Some women cannot or do not wish to remain at home due to the trauma they have been through, or because their husband’s relatives live next door, or because the lease has been terminated or is not in their name<sup>45</sup>.

64. Shelters and protection orders are necessary and complementary protection measures that could be used cumulatively. However, such complementarity is usually not followed in practice since the bureaucratic divide between social services and the justice system often result in protection gap caused by insufficient co-ordination.

65. In many cases, weak and uncoordinated State interventions in persistent, long-term patterns of violence create a protection gap and end in tragedy: the killing of a woman<sup>46</sup>and/or the killing her children.<sup>47</sup> Such femicides or gender-related killings are preventable, if such violence is treated as a serious crime and States fulfil their human rights obligations to combat and prevent these crimes. This includes the provision of the full range of protection services to victims or potential victims like shelters, longer-term housing and protective orders. These measures need to be readily available and easily accessible to women and girls.

## 3. Gaps, challenges and good practices

66. The mandate of the SRVAW has gained a unique experience and gathered information on shelters and protection orders during country visits that included visits to a number of shelters and collection of firsthand information from survivors of VAW, services providers and concerned authorities. Gaps and challenges linked to shelters and protection orders have also been drawn from the work of the CEDAW committee and other relevant mandate holders.

67. Overall, the mandate has encountered a general lack of understanding of States’ human rights obligation to combat and prevent gender based violence and to provide protection services like shelters and protection measures under this obligation<sup>48</sup>.

68. The mandate’s experience shows that today many States tend to perceive the establishment of shelters or support for NGOs running shelters as voluntary commitments and not as part of their human rights obligations based on international human rights treaties. This is related to the lack of full incorporation and implementation of the CEDAW Convention and lack of adoption of comprehensive and holistic approaches to integrated services to combat and prevent VAW. In addition to this, often criminal law and criminal procedure laws are not sufficiently aligned with such laws and their gender neutral approach, coupled with the unavailability of statistical data on VAW and existing stereotypes result in the denial of VAW and its tolerance or normalization and in systematic gaps related to protection provided by shelters and protection orders.

<sup>44</sup> Fatma Yildirim (deceased) v. Austria, para 12.3 (b).

<sup>45</sup> Footnote 50, page 16

<sup>46</sup> See Opuz v Turkey,

<sup>47</sup> See Gonzales Carreno v Spain (CEDAW) and Lenahan/Gonzales v USA (Inter-American Commission)

<sup>48</sup> For a summary and compilation of the mandate’s findings drawn from country visits, see <http://www.ohchr.org/Documents/Issues/Women/SR/Shelters/CountryVisitExperience.pdf>

### *Shelters*

69. From its establishment in 1994, the mandate of the Rapporteur has included visiting women's shelters during country visits and the information collected during its 23 years of such experience has been used to identify specific gaps and challenges with respect to shelters. In the first preliminary report, the mandate recognized that the aim of shelters was to provide battered women with a safe haven and somewhere to go, providing survival, safety, support, self-esteem and information. In that early report the mandate recommended that "shelter or refuge system must be viewed only as a component of a coordinated and multifaceted approach to domestic violence"<sup>49</sup>.

70. Among the most common issues raised as a serious matter of concern related to shelters there are:

#### *Availability, accessibility and funding of shelters and safe alternative housing*

71. The lack of or insufficient number, as well as unavailability of shelters and alternative safe houses, are issues of concerns which are commonly raised. In many instances shelters are either not available or the service provided is inadequate to respond to VAW. There is also a lack of equitable territorial allocation of shelters, especially in rural areas.<sup>50</sup>

72. Despite some recognition that domestic violence forces women and children to relocate for safety, too often national governments do not provide national planning or funding to establish sufficient numbers, capacity or distribution around the country.<sup>51</sup> Many shelters receive some funding support from States but usually in an unsustainable manner and only for a specific period of time that does not allow shelters to develop, plan or provide the required services. Good practice shows that State funding needs to be secure, sustained and adequate and that shelters should be jointly funded from central government budgets and from regional or provincial budgets. The State's obligation in protecting women from violence has to be reflected also in the allocation of adequate financial resources for shelters and protection measures.

73. A major challenge in several contexts is ensuring access to safe and affordable housing options to women and children leaving a shelter. Many women who have fled from domestic violence are forced to return to their homes and to face further violence due to the lack of second-stage shelter facilities. The access to safe and affordable housing for survivors is insufficient and often inadequate to meet the demand.

#### *Security/Confidentiality*

74. The mandate has encountered tension between the notion of security and secrecy of shelters<sup>52</sup>. Good practice is that the location of shelters should be kept confidential from the general public and only known by those who may provide women with access. States providing resources and licenses to shelters run by civil society organisations could conduct monitoring and evaluation to determine what is required but by preserving the confidentiality and security of the shelter. However, in some situations especially in rural areas, confidentiality may act as a barrier between a woman in a shelter and her supportive family members – there need to be methods to ensure that contact be maintained without prejudicing the safety and confidentiality of the refuge. Accordingly, appropriate safety measures must be implemented and kept under scrutiny. "To this end, the security situation of each victim should be assessed and an individual security plan should be drawn up on the basis of that assessment. The technical security of the building is another key issue for shelters as violent attacks by perpetrators are a threat, not only to the women and their

<sup>49</sup> E/CN.4/1995/42, para 139

<sup>50</sup> See for example A/HRC/32/42/Add.2 para 69 (South Africa, 2016);

<sup>51</sup> Janet C. Bowstead "Why women's domestic violence refuges are not local services, Quilgars and Pleace, 2010; See also A/HRC/11/6/Add.2, para 84 (Tajikistan, 2009); A/HRC/23/49/Add.3 para 101 h (Bosnia and Herzegovina, 2013)

<sup>52</sup> See for example A/HRC/11/6/Add.4, para 72&83 h (Moldova, 2009)

children, but also to the staff and others in the surrounding area. Moreover, effective co-operation with the police on security issues is indispensable.”<sup>53</sup>

75. The mandate visited some countries where women are detained in shelters in a form of administrative detention or “protective custody,”<sup>54</sup> ostensibly to ensure their safety against forms of violence such as honour killings but, in reality, it serves as a punishment for actual or suspected transgression of social norms. In other countries, the use of shelters was used for pre-trial detention purposes, owing to the lack of female pre-trial facilities<sup>55</sup>

#### *Access and referral*

76. Women’s need for emergency shelter can occur at any time, especially during night hours and it is important to secure immediate access to shelters. The mandate has encountered different barriers - like the requirement of formal recognition of victim status<sup>56</sup>. In many cases women may not be able to refer themselves to a shelter. Requirements that referral be through a bureaucratic committee of service providers can therefore act as a barrier to women accessing shelters.

77. In some contexts, adolescent and boys above a specific age are excluded from shelters, separating them from their mothers or preventing mothers from seeking a refuge. Alternative solutions should be sought to exclusion based on concerns about privacy or bathroom facilities, such as providing shelter to a mother and her son(s) in a self-contained apartment.

78. Some women may also be excluded from shelters by law. For instance, in some countries there is a law of no recourse to public funds for women without legal status preventing them from accessing public services<sup>57</sup> Undocumented migrant women and migrant workers who are particularly vulnerable to violence perpetrated by abusive employers, husbands or other relatives are excluded from access to shelters.<sup>58</sup>

#### *Length of stay*

79. While shelters do not constitute a long-term solution, from SRVAW visits experience they generally provide support for at least 3 to 6 months, with the possibility of extending the period of accommodation when necessary. Shelters that are only available for shorter or specified periods (a few days) of time do not provide adequate assistance and may expose victims to an escalation of violence as a reprisal for seeking protection with their return to a situation of danger. The length of stay in emergency shelters is typically short, and this may not offer women enough time to decide the kind of housing they need or to choose and secure an adequate space before leaving the shelter. Furthermore, State efforts to broaden the availability of housing are often made without taking into consideration the specific safety needs of women escaping from violence (i.e. through careful risk assessment, safety planning, housing security precautions ), which further affects women’s capacity of choosing stable options.

#### *Lack of services to empower women in shelters*

80. Many shelters, due to limited resources, provide only safety and some services related to physical and mental health Very often services like free health care, psychosocial and counselling support, access to justice and legal advice are not provided by shelters.<sup>59</sup>

81. Women in shelters should be able ‘to deal with their traumatic experiences, to end the violence, to regain their self-esteem, and to lay the foundations for a self-determined

<sup>53</sup> Istanbul Convention, Explanatory Memorandum, 24

<sup>54</sup> See for ex A/HRC/26/38/Add.2, para 64 (Bangladesh); A/HRC/20/16/Add.1, para 27-28 (Jordan)

<sup>55</sup> See for ex A/HRC/29/27/Add.3, para 53 (Afghanistan, 2015 )

<sup>56</sup> A/HRC/32/42/Add.3 , paras 57, 84 &88 (Georgia)

<sup>57</sup> CEDAW C/GBR/CO/7, para (iv)56,

<sup>58</sup> CEDAW General Recommendation No. 26, para 26 (c) (iv)

<sup>59</sup> For ex. A/HRC/26/38/Add.3, para 68 (Azerbaijan, 2014); A/HRC/20/16/Add.3, para 10 (Somalia, 2012); 75; A/HRC/17/26/Add.4, para 81 (Zambia, 2011)

and independent life<sup>60</sup>. In many cases this is coupled with the inability of women to leave the shelter owing to lack of employment, family support or any means to support themselves and their children. In some shelters children living with their mothers are forced out of school for the entire duration of the mother's stay, without being offered any suitable alternatives.

#### 4. Protection orders

##### *Non-recourse to protection orders or lack of their enforceability*

82. The Special Rapporteur has noted that there are some pervasive cultural assumptions about a woman's need to "leave" a violent household - as opposed to the need to remove a violent partner that undermines women's enjoyment of the right to adequate housing.<sup>61</sup>

83. The CEDAW Committee noted that States should "ensure that criminal and civil remedies are utilized in cases where the perpetrator in a domestic violence situation poses a dangerous threat to the victim."<sup>62</sup>

84. The Rapporteur also highlights that in many jurisdiction protection orders are not issued immediately and on *ex parte* basis. Also police do not inform women that they have the right to apply for a protection order and that too often, authorities decline to issue protective orders, even when the law explicitly provides for this protection and victims apply for it.<sup>63</sup>

85. Also authorities delay the issuance of protective orders for so long that they become ineffective and the process in fact increases the risk to the victim. Too often also, protective orders are not effectively enforced and their breach is not criminalized. Breaches of orders may indicate an increased level of danger for a woman or her children. Criminal accountability of perpetrators for the breach of an order must be delivered alongside all other initiatives, including the provision of domestic violence shelters and protection orders.<sup>64</sup> Indeed, several cases at the international level show that, perpetrators who continue to breach protection orders can eventually kill their victims.<sup>65</sup> This points out that it is absolutely necessary that breaches of orders are criminalized to enable police to arrest the perpetrator.<sup>66</sup>

86. The Rapporteur is also concerned about the approach of judges towards protective measures that, too frequently, focuses on treatment for perpetrators rather than the protection of victims<sup>67</sup>. Other concerns linked to protection orders include: when they are not issued immediately, orders that are ineffective due to their short duration or they lack clear directives on the distance abusers should stay from the victim.

87. Lack of co-ordination between different branches of the legal system, for instance between family courts and criminal courts<sup>68</sup> can impede women's access to safety. In some jurisdictions, victims must choose between a civil protection order remedy or criminal sanctions while good practice is that both should simultaneously be available to victims. Very often there is a lack of effective coordination mechanisms,<sup>69</sup> a need for police or criminal justice officials to quickly determine whether such an order is in force. In the case

<sup>60</sup> Away from Violence

<sup>61</sup> See for ex. A/HRC/29/27/Add.3, para 44 (Afghanistan, 2015)

<sup>62</sup> Sahide Goekce (deceased) v. Austria, para 12.3, b

<sup>63</sup> See for ex. A/HRC/29/27/Add.1, para 36, 78, 85 (Honduras, 2015); A/HRC/29/27/Add.2, para 101 (United Kingdom of Great Britain and Northern Ireland, 2015); A/HRC/17/26/Add.5, para 110 d (United States of America, 2011)

<sup>64</sup> Lenahan (Gonzales) paragraph 168, citing Maria da Penha v. Brazil, Inter-American Commission on Human Rights, 2000. IACHR, Report N° 54/01, Case 12.051, 16 April 2001, para. 56: Also cited at paragraph 86 Opuz v Turkey.

<sup>65</sup> See for ex. two cases cited above

<sup>66</sup> UN Handbook for Legislation on Violence against Women, page 50

<sup>67</sup> See for example A/HRC/23/49/Add.4, para 65 (Croatia, 2013)

<sup>68</sup> See for ex, CEDAW /C/PRT/CO/8-9, para 22.

<sup>69</sup> Jessica Lenahan (Gonzales) v. the United States, paragraph 215(4)

of federal States, laws and protection orders are different in the different States' jurisdictions and often are not mutually recognized and uniformly enforced across all jurisdictions while a good practice would be their automatic enforceability across jurisdictions.

88. Jurisprudence of CEDAW and the IACHR in cases of femicide show that protection orders are only effective if they are diligently enforced and if cases of breach are subject to criminal penalties.<sup>70</sup> As women seek protection through enforcement of protection orders, police should treat them in a speedy manner, while respecting their rights.<sup>71</sup>

*Third party application for protection order*

89. A key issue to consider is whether or not a third party is able to apply for a protection order.<sup>72</sup> While ensuring that the agency of the complainant/survivor is respected, other actors, such as State actors, family members, and relevant professionals should be allowed to have standing in such applications<sup>73</sup>. Jurisprudence on this issue has established that the request to an order should not only lie on the woman at risk<sup>74</sup>; when considering evidence relating to a prosecution, prosecutors should ascertain the protection needs of the victim and take action on their own initiative.

*Practice of issuance of reciprocal protection orders*

90. The Special Rapporteur observed that very often, restraining orders are issued reciprocally what often signal a problem of de-gendered application of domestic violence legislation<sup>75</sup>. They are predicated on equal treatment of all forms of violence in a gender neutral manner: mild forms of reactive violence or verbal quarrel are treated in the same manner as serious gender based violence. As a result, women victims of violence are also under protection order issued to protect the perpetrator and are in some cases held in detention for breaching such reciprocal order.

## **5. Protection orders and shelters as part of an integrated approach to services and protection measures**

*Lack of integrated approach to specialized services and protection measures*

91. The Special Rapporteur often encounters a lack of integrated, comprehensive and co-ordinated approach to violence against women, including in relation all specialized services and protection measures is key.

92. An important good practice which has been endorsed by the CEDAW Committee and the SRVAW is the "one-stop shop" – an institution, which provides a variety of important services for women, including a range of legal<sup>76</sup>, health and social services. These include the provision of legal advice but also medical care for immediate injuries; access to emergency contraception and HIV prophylaxis, in cases of rape; medico-legal evidence gathering and reporting; counselling; referrals to other service provision, for example, shelters in cases of domestic violence; and assistance with making reports to the police.<sup>77</sup>

93. There are examples of free 24/7 telephone help lines established by NGOs and in some cases supported by States but in general there is a lack of free, sustainable and State supported 24/7 helplines.

<sup>70</sup> Ibid,163

<sup>71</sup> Ibid, paragraph 215(4).

<sup>72</sup> See for example A/HRC/11/6/Add.4, para 49 (Moldova, 2009)

<sup>73</sup> UN Handbook for Legislation on Violence against Women, page 48.

<sup>74</sup> Opuz v. Turkey, paragraph 148

<sup>75</sup> <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=21243&LangID=E>

<sup>76</sup> CEDAW General Comment 13, paragraph 21

<sup>77</sup> Committee on the Rights of the Child General Comment 13 paragraph 20(b)



*Attitudes of law enforcement professionals*

94. The Special Rapporteur also expressed serious concern about the persistence of gender stereotypes among the police, which is reflected in various forms of misconduct. Police routinely dismiss complaints, either refusing to believe the woman's allegations or failing to recognize intra-family violence as a crime. Police officers, especially in rural areas, still issue 'warning letters' or simply record a written declaration, devoid of any legal value, through which perpetrators commit to not exercise violence against their partner.<sup>78</sup> In numerous cases, the police do not provide adequate support and information on shelters or protection orders to the victims of domestic violence and investigations are halted as soon as a victim withdraws her statement. Such biased attitudes frequently mean that women's complainants are turned away and, at times, victims are even intimidated or warned against attempting to file charges, exacerbating the issue of the under-reporting of violence against women.

*Lack of risk assessment and management*

95. As it emerges from the mandate's country visit experience, one of the first problem concerning the issuing of protection measures and the protection and prosecution of GBV is the lack risk management and assessment of the related lethality risk<sup>79</sup> done by police and other relevant officers.<sup>80</sup>

*Language barriers for ethnic minorities*

96. The mandate holder also highlights that services provided for the protection of female victims of violence are often not available in the languages spoken by all the ethnic minorities, impeding them to report cases of violence and therefore to seek adequate protection.

*Mandatory reconciliation/mediation*

97. Women victims of GBV are often by national law required to enter into mediation processes with the men who were violent to them, especially in cases of family-related violence or cases of divorce or child custody disputes. Social stigma and pressure to keep families together, as well as women's lack of economic empowerment heavily influence a woman's decision to reconcile with those who have inflicted violence against her. Law enforcement also tend to minimize offences in the belief that domestic violence is a private matter and discourage victims from pursuing cases and promote conciliation<sup>81</sup>. Therefore, negotiation and mediation can have dangerous effects, especially in those cases where those hosting or supervising the negotiation are not familiar with the methods of psychological threat and control that perpetrators use alongside physical violence.

*Lack of training for law enforcement personnel*

98. The SRVAW and CEDAW Committee have also addressed the lack of and the need for training of judges and law enforcement personnel on the realities of the various forms of GBV<sup>82</sup>, as well as on the relevant national and international laws and jurisprudence. It requires mandatory training for judges, lawyers and law enforcement personnel on the application of national laws on VAW and on the CEDAW Convention and its Optional Protocol the Committee's general recommendations, and in particular its jurisprudence.<sup>83</sup>

<sup>78</sup> See for example A/HRC/32/42/Add.3 (Georgia); A/HRC/26/38/Add.3 (Azerbaijan ) and X. and Y. v. Georgia CEDAW/C/61/D/24/2009

<sup>79</sup> A/HRC/32/42/Add.2 (South Africa, 2016)

<sup>80</sup> <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2465770/>

<sup>81</sup> A/HRC/17/26/Add.2 (El Salvador, para 59)

<sup>82</sup> A/HRC/11/6/Add.3), para 70 c (Saudi Arabia, 2009)

<sup>83</sup> V.K. v Bulgaria, para. 9.16 (b) (IV)

*Children witnessing GBVAW*

99. Children witnessing or being exposed to acts of family violence have been described by the Committee on the Rights of the Child (CRC) and by the CEDAW Committee as subjects both to a form of neglect and mental violence<sup>84</sup>. The CEDAW Committee made a number of determinations about the standards required for protection orders with respect to a child's safety in the case of Angela González Carreño against Spain. The case concerns a seven-year-old girl who was murdered by her father during a court-approved visit in a context where her mother had repeatedly sought protection against her husband for threatening and physically abusing them. The Committee observed that the authorities did not conduct a comprehensive evaluation of possible benefits or harms of this regime to a child; on the contrary, they indicate a pattern of action which responds to a stereotyped conception of visiting rights that is based on formal equality.<sup>85</sup>

## VI. Conclusions and recommendations

100. The persistence of systemic gender based violence against women even in States that have proclaimed "zero tolerance" on VAW, indicates that GBV is deeply entrenched in our still predominantly patriarchal societies and accepted as "just the way things are". Prevention and eradication of Violence against women requires transformation and adoption of comprehensive, integrated and coordinated policies and laws on combating and preventing VAW based on international and regional human rights law commitments. Establishment of safe women's shelters and efficient and immediate protection orders should be seen as human rights obligation that uphold a woman's right to life free from violence.

### A. Specific Recommendations addressed to States

#### *Human rights based approach and integrated and coordinated laws and policies*

101. When formulating and implementing national laws on VAW and DV, States should apply a human rights based approach provided by the CEDAW Convention and regional instruments to prevent VAW, protect women's right to live free from violence and prosecute perpetrators. States need to establish a coherent legal framework of aligned laws addressing protection services including shelters and protection measures including protection orders, as well as effective mechanisms for cooperation and coordination between and across different mandates of the State system dealing with violence against women. These include police, public prosecutors, judiciary and social services, healthcare professionals, NGOs and other relevant organization providing frontline services and multi-agency cooperation for appropriate raise handling of cases of VAW.

#### *Financial and human resources*

102. States shall allocate adequate financial and human resources for the adequate implementation of integrated policies, measures and programmes to prevent and combat GBVAW including appropriate financial and human resources for the establishment and the running of shelters including those operated by non-governmental organizations.

#### *Risk assessment and management*

103. States shall ensure that police officers and other professionals carry out an assessment of the lethality risk, the seriousness of the situation and the risk of repeated violence in order to manage the risk and provide safety and support to

<sup>84</sup> CRC, General Comment 13, para 20(b) and para 21

<sup>85</sup> González Carreño v. Spain, para. 9.4. See also Istanbul Convention article 31

victims. States shall take the necessary measures to ensure that such assessments are duly taken into account at all stages of the investigation and application of protective measures and that they duly take into account possession or access to firearms by perpetrators. Relevant authorities must be also aware of the increased risk of reprisals that women face when they seek official assistance from the authorities, the courts or police.

#### *Integrated child safety approaches*

104. Children witnessing GBVAW have a right to be heard and to have their best interests taken into account by all decisions makers as a primary consideration, taking also into account the existence of a context of domestic violence.<sup>86</sup> States must create institutional methods of assessing whether children have witnessed violence against women, and provide the appropriate resources to identify prevent and react to violence against children; it is a breach of State obligations when State agents disregard the best interests of children.<sup>87</sup> Visitation by the violent parent must be carefully regulated to ensure that victims and their children are safe. An integrated child safety approach needs to be taken into account in the provision of shelters and enforceability of protection orders.

105. Boys, including adolescent boys, are sometimes in the care of their mothers when they seek access to shelters. Where there are concerns about, for example, privacy of bathrooms because of the presence of boys, shelters should provide appropriate accommodation to keep these families together, for example, self-contained housing units with private bathroom facilities. All children residing with their mothers in shelters should be provided with support and assistance so that they can continue their education with the least possible interruption.

#### *Training of professionals*

106. States should ensure that training on gender-based violence is mainstreamed into the basic professional training for all professions, including police officers, lawyers, judges, social workers and medical professionals. Police officers should especially be trained in order to eliminate police mistreatment and bias against female victims of violence including on issuance of reciprocal protection orders when they are not necessary.

#### *24/7 telephone help line*

107. States should establish round-the-clock national toll free telephone helplines for victims free of charge which would provide advice, confidentially or with due regard for the victim's anonymity as their first point of contact and which would be able to handle emergency admission.

#### *Secure shelters*

108. States should provide for a sufficient number of safe and confidential shelters (both State and non-state funded), adequately funded, and allocated within all the State's territory, including in rural areas. States should map and plan adequate number of shelters. At least one shelter capable of admitting women and children around the clock should be available in every region of each State, including rural areas while one shelter place for every 10 000 inhabitants could serve as benchmark. Every woman should be able to reach a shelter quickly. Transport must also be available to take women and children to the nearest refuge.

109. States should ensure sufficient access to shelters for any woman or girl who needs protection (children, disadvantaged women). Access should be available also on an emergency basis, even during the night – 24 hour, 7 days per week access should be

<sup>86</sup> CRC General Comment 13, paragraph 3(e)

<sup>87</sup> CRC General Comment 13, paragraph 32

the norm. Women should be able to refer themselves to these services and be able to stay as long as their safety is not ensured.

110. Shelters should be places for empowerment for women. They should be oriented to victims' rehabilitation and women's empowerment. Support should be given to help women live independently in long-term, sustainable, adequate housing solutions and to guarantee their rehabilitation and empowerment (see also right to work, right to education, access to justice).

111. Shelters should never be used by the State as a form of protective custody and that measures taken to ensure women's safety are taken in full consultation and with consent of the woman involved.

*Efficient protection orders*

112. States shall make the necessary amendments to domestic legislation to ensure that protection orders are duly enforced by public officials and easily obtainable.

a) States shall ensure that competent authorities are granted the power to issue protection orders for all forms of violence against women. They must be easily available and enforced in order to protect the well-being and safety of those under its protection, including children.

b) Protection orders for immediate protection in case of immediate danger of violence (emergency orders) should be available also *ex parte* and remain in effect until the longer-term protection orders comes into effect after a court-hearing. They should be available on the statement or live evidence of the victim, as seeking further evidence may lead to delays which put the victim at more risk. They typically should order a perpetrator to vacate the residence of the victim for a sufficient period of time and prohibit the perpetrator from entering the residence or contacting the victim.

c) The availability of protection orders must be: i) irrespective of, or in addition to, other legal proceedings such as criminal or divorce proceeding against the perpetrator; ii) not be dependent on the initiation of a criminal case iii) allowed to be introduced in subsequent legal proceedings. Many forms of violence, particularly domestic violence, being courses of conduct which take place over time, strict time-limit restrictions on access to protection orders should not be imposed. The standard of proof that an applicant must discharge in order to be awarded with an order should not be the standard of criminal proof.

d) In terms of content, protection orders may order the perpetrator to vacate the family home, stay a specified distance away from the victim and her children (and other people if appropriate) and some specific places and prohibit the perpetrator from contacting the victim. Since protection orders should be issued without undue financial or administrative burdens placed on the victim, protection orders can also order the perpetrator to provide financial assistance to the victim.

e) In terms of standing, while ensuring that the agency of victim is respected, other actors, such as State actors, family members, and relevant professionals should be allowed to have standing in application for a protection order, while ensuring that the victim's agency is respected.

f) In criminal proceedings, all protection measures available to the competent authorities should be used to ensure the safety of victims. In particular, States should guarantee that a proper risk assessment and child safety approach are integrated into the provision of protection orders.

g) Provide appropriate criminal sanctions for perpetrators' non-compliance with protection orders.

h) Ensure regular monitoring of the implementation of protection orders and their automatic enforceability across jurisdictions.

113. States should also guarantee that in all cases of gender-based violence, such cases are heard in a timely and impartial manner and that *ex officio* prosecution is

duly exercised and that proceedings may continue even when victim withdraws her complaint.

114. States should also avoid mandatory reconciliation in cases of VAW.

## **B. General Recommendations to States**

115. States should consider developing additional indicators on the implementation of SDG 5 (2) the elimination of violence against women, namely on data on shelters and protection orders.

116. States should collect data on all forms of VAW and establish a “femicide watch” or “gender-related killing of women watch” and collect and publish annual data on the number of femicides and to analyse each case of femicide in order to prevent femicide.

## **C. General Recommendations to UN Women and other relevant stakeholders**

117. UN Women may under its work on VAW and administration of the UN Trust Fund on VAW, and in cooperation with the SRVAW and other stakeholders, establish and maintain a global data base on numbers and types of shelters in States and provide adequate support for their establishment.

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