

Compendium of International and National Legal Frameworks on Domestic Violence

Volume I of V — International Legal Framework

FIRST EDITION, JANUARY 2019



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The Compendium is a working document intended as a reference tool for anyone interested in the topic of Domestic Violence (development practitioners, lawyers, community leaders, academics, researchers, students, etc.). It does not constitute an exhaustive treatment of the legal framework on Domestic Violence and may be updated from time to time.

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Volume I of V

This compendium on domestic violence is divided in five volumes. Each volume should be observed as a part of the whole.

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FOREWORD

It is undisputed that domestic violence against women and girls remains one of the most extreme forms of gender inequality, a violation of human rights, and a development issue. Domestic violence against women and girls takes many forms, including physical, sexual, emotional, and economic. As a result, women and girls' lives are endangered with negative consequences not only for them, but also for their households, their communities, and society as a whole. It is an epidemic that leads to girls dropping out of school and affects women's ability to acquire more and better jobs; it increases absenteeism at work and limits mobility that hinder productivity and earnings. Altogether, domestic violence impedes women and girls from thriving, and takes away their voice, agency, rights and opportunities. This in turn affects every country's growth and development.

The international community recognizes that domestic violence is an important development challenge, and strides have been made to support countries in acquiring the tools and resources needed to end it along with other forms of discriminatory practices. Twenty-five years ago, the United Nations Declaration on the Elimination of Violence Against Women first called upon States to adopt legislation which prohibits domestic violence and to provide legal protection to end all forms of violence and harmful practices against women and girls in public and private spheres. More recent efforts have called for stronger action to address the underlying structural causes that increase the risks of domestic violence.

The share of countries with laws on domestic violence increased from 70.9 percent to 75.9 percent thanks to legal reforms in seven countries over the last four years, but more remains to be done, as 49 countries still do not have specific laws against domestic violence. Laws are an important step that countries can and should take towards ending violence against women and girls. We must support and strengthen the tools and means to end domestic violence everywhere.

I am pleased to share the following Compendium of International and National Legal Frameworks on Domestic Violence. In it you will find international and regional instruments that address domestic violence, and national legislations adopted to prevent and prosecute such crimes. This is a practical online legal tool to empower those fighting domestic violence and help shape change for the elimination of domestic violence.

We hope this responds to the needs of all persons and professionals interested in this subject as well as those who work with and support women and girls affected or at risk.

Sandie Okoro
Senior Vice President and General Counsel
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INTRODUCTION, DISCLAIMER AND LIMITATIONS

Domestic Violence (DV) is a universal phenomenon that affects millions of women of all social strata worldwide. It is the most pervasive, common, underrecognized, underestimated and underreported type of violence against women. It reflects discriminatory social norms, stereotypes, impunity and gender inequality. It is all too often considered as a “private, family issue”, widely accepted and minimized although it impairs the full enjoyment of life and fundamental rights and freedoms by victims and survivors who are overwhelmingly women.

Domestic Violence (DV) is a development challenge and has a high economic and social cost, including health and medical costs, death, suicide, depression, lost productivity, lost income, , psychological consequences and trauma, increased stress, reactive violence, reduced ability to study or find and hold a job, judicial and prison costs, economic insecurity and abuse, debt, housing instability, homelessness, *inter alia*¹. Beyond data and statistics, DV undermines autonomy and represents an enormous loss in terms of wellbeing not only for the women affected but also for the men who share their lives, for their children, their families and their societies.

The Compendium on International and National Legal Frameworks on Domestic Violence (the “Compendium”) provides a survey of the key international and regional instruments as well as national legislation as they relate to domestic violence.

In this Compendium, DV is understood and defined as gender-specific violence, commonly directed against women, occurring in the family and in interpersonal intimate relationships², and can encompass different types of abuse. As such, it includes legislation addressing DV as any type of violence (physical, sexual, psychological/emotional or financial/economic) committed by an intimate partner or family member. A number of countries have adopted legislation on DV against women specifically while others have not defined the gender of the victim or survivor.

The Compendium is a working document intended as a reference tool for anyone interested in the topic of DV – survivors, advocates, development practitioners, lawyers, policy makers, academics, among others. It does not constitute an exhaustive treatment of the legal framework on DV and may be updated from time to time.

The Compendium consists of topical chapters with jump links to source documents, such as United Nations conventions, regional treaties, and national legislations³. It is based on information available online, offline or both, and relies on research conducted, verified and

¹ Some research shows that DV costs USD 460 billion each year in the USA and USD 4.3 trillion internationally.
https://www.washingtonpost.com/opinions/the-cost-of-domestic-violence-is-astonishing/2018/02/22/f8c9a88a-0cf5-11e8-8b0d-891602206fb7_story.html?noredirect=on&utm_term=.00059cae58fd;

² Based on several United Nations documents, including the United Nations General Assembly, Declaration on the Elimination of Violence against Women, December 20, 1993; United Nations Economic and Social Council 1996; UNHCR 2005; United Nations 2010.

³ Jump links are in bold colored font and can be accessed by clicking on the link which will take the reader to the source document.

updated as of December 2018⁴. The hyperlinked references are not under the control of the World Bank, nor is the World Bank responsible for the accuracy of the content provided through these references. The content of the Compendium does not necessarily reflect the views of the World Bank, its Board of Executive Directors, or the governments they represent. Furthermore, the World Bank does not guarantee the accuracy of the data included in this work.

The research on country-level DV legislation builds on the *Women Business and the Law*⁵ database and includes additional legislation found during the course and time-frame for compiling the research. The Compendium is limited to countries that have adopted specific laws or provisions addressing DV⁶ and includes legislation from almost 160 countries; as such, the absence of a country's name may be due to the fact that no DV legislation has yet been enacted or that no information was available online⁷.

Ending all forms of gender-based violence, including domestic violence, is a critical development objective and comprehensive legislation addressing DV is a key first step towards ensuring prevention and protection. It is also a *sine qua non* condition for any effective strategy to address the problem. Nonetheless, many countries worldwide have yet to adopt laws against DV, while many others have adopted legislation that fails to comprehensively offer protection for the different types of survivors and against the different forms of abuse.

We hope the Compendium will contribute to this urgent and important debate.

Isabella Micali Drossos
Maya Goldstein-Bolocan
Paula Tavares

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⁴ Because it was developed primarily based on information publicly available online, the Compendium includes references to more than several hundred URLs and links to available treaties, laws and electronically published documents. All referenced URLs and links were verified and active at the time they were inserted. There is no guarantee as to their future accessibility nor as to the continued accuracy of the information contained therein after the last date on which they were last accessed and verified.

⁵ See more at <http://wbl.worldbank.org/en/data/exploretopics/protecting-women-from-violence>

⁶ Specific provisions addressing DV may include those in domestic violence laws, criminal codes, or laws on gender-based violence or violence against women more generally, provided they address violence or abuse between spouses, within the family or members of the same household, or in interpersonal relationships, including intimate partner violence.

⁷ When legislative information was not available online but was found by the team of authors, these have been attached as annexes to the Compendium.

VOLUME I

1. INTERNATIONAL LEGAL FRAMEWORK

1.1. [Universal Declaration on Human Rights](#)⁸

Article 1

All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.

Article 2

Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.

Article 3

Everyone has the right to life, liberty and security of person.

Article 5

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

Article 7

All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.

Article 8.

Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.

1.2. [International Covenant on Civil and Political Rights](#)⁹

Article 2

1. Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

2. Where not already provided for by existing legislative or other measures, each State Party to the present Covenant undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to adopt such laws or other measures as may be necessary to give effect to the rights recognized in the present Covenant.

3. Each State Party to the present Covenant undertakes:

- (a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;
- (b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy; (c) To ensure that the competent authorities shall enforce such remedies when granted.

⁸ UN General Assembly, Universal Declaration of Human Rights, 10 December 1948, available at <http://www.un.org/en/universal-declaration-human-rights/index.html> (last visited December 30, 2018).

⁹ UN General Assembly, International Covenant on Civil and Political Rights, 16 December 1966, United Nations, available at <http://www.refworld.org/docid/3ae6b3aa0.html> (last visited December 30, 2018).

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Article 3

The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all civil and political rights set forth in the present Covenant.

Article 6

1. Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life. [...]

Article 7

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.

Article 9

1. Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law. [...]

Article 17

1. No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.

2. Everyone has the right to the protection of the law against such interference or attacks.

Article 23

1. The family is the natural and fundamental group unit of society and is entitled to protection by society and the State. [...]

4. States Parties to the present Covenant shall take appropriate steps to ensure equality of rights and responsibilities of spouses as to marriage, during marriage and at its dissolution. In the case of dissolution, provision shall be made for the necessary protection of any children.

Article 26

All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

1.3. [International Covenant on Economic, Social and Cultural Rights](#)¹⁰

Article 2

1. Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.

2. The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.[...]

Article 12

1. The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health. [...]

¹⁰ UN General Assembly, International Covenant on Economic, Social and Cultural Rights, 16 December 1966, <https://www.ohchr.org/EN/ProfessionalInterest/Pages/CESCR.aspx> (last visited December 30, 2018).

1.4. [Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment](#)¹¹

Article 2:

1. Each State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction.
2. No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture.
3. An order from a superior officer or a public authority may not be invoked as a justification of torture.

1.5. [Convention on the Elimination of All Forms of Discrimination Against Women \(CEDAW\)](#)¹²

PART I

Article I

For the purposes of the present Convention, the term "discrimination against women" shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.

Article 2

States Parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women and, to this end, undertake:

- (a) To embody the principle of the equality of men and women in their national constitutions or other appropriate legislation if not yet incorporated therein and to ensure, through law and other appropriate means, the practical realization of this principle;
- (b) To adopt appropriate legislative and other measures, including sanctions where appropriate, prohibiting all discrimination against women;
- (c) To establish legal protection of the rights of women on an equal basis with men and to ensure through competent national tribunals and other public institutions the effective protection of women against any act of discrimination;
- (d) To refrain from engaging in any act or practice of discrimination against women and to ensure that public authorities and institutions shall act in conformity with this obligation;
- (e) To take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise;
- (f) To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women;
- (g) To repeal all national penal provisions which constitute discrimination against women.

Article 3

States Parties shall take in all fields, in particular in the political, social, economic and cultural fields, all appropriate measures, including legislation, to ensure the full development and advancement of women, for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men.

Article 5

States Parties shall take all appropriate measures:

- (a) To modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women;

¹¹ UN General Assembly, Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 10 December 1984, available at <https://www.ohchr.org/EN/ProfessionalInterest/Pages/CAT.aspx> (last visited December 30, 2018).

¹² UN General Assembly, Convention on the Elimination of All Forms of Discrimination Against Women, 18 December 1979, available at <https://www.ohchr.org/EN/ProfessionalInterest/Pages/CEDAW.aspx> (last visited December 30, 2018).

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(b) To ensure that family education includes a proper understanding of maternity as a social function and the recognition of the common responsibility of men and women in the upbringing and development of their children, it being understood that the interest of the children is the primordial consideration in all cases.

PART II

Article 14

1. States Parties shall take into account the particular problems faced by rural women and the significant roles which rural women play in the economic survival of their families, including their work in the non-monetized sectors of the economy, and shall take all appropriate measures to ensure the application of the provisions of the present Convention to women in rural areas. [...]

PART III

Article 16

1. States Parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular shall ensure, on a basis of equality of men and women:

- (a) The same right to enter into marriage;
- (b) The same right freely to choose a spouse and to enter into marriage only with their free and full consent;
- (c) The same rights and responsibilities during marriage and at its dissolution;
- (d) The same rights and responsibilities as parents, irrespective of their marital status, in matters relating to their children; in all cases the interests of the children shall be paramount;
- (e) The same rights to decide freely and responsibly on the number and spacing of their children and to have access to the information, education and means to enable them to exercise these rights;
- (f) The same rights and responsibilities with regard to guardianship, wardship, trusteeship and adoption of children, or similar institutions where these concepts exist in national legislation; [...]
- (g) The same personal rights as husband and wife, including the right to choose a family name, a profession and an occupation;
- (h) The same rights for both spouses in respect of the ownership, acquisition, management, administration, enjoyment and disposition of property, whether free of charge or for a valuable consideration. [...]

1.6. CEDAW Committee General Recommendations

1.6.1. [CEDAW Recommendation No. 19: Violence against Women](#) ¹³

General comments

6. The Convention in article 1 defines discrimination against women. The definition of discrimination includes gender-based violence, that is, violence that is directed against a woman because she is a woman or that affects women disproportionately. It includes acts that inflict physical, mental or sexual harm or suffering, threats of such acts, coercion and other deprivations of liberty. Gender-based violence may breach specific provisions of the Convention, regardless of whether those provisions expressly mention violence.

7. Gender-based violence, which impairs or nullifies the enjoyment by women of human rights and fundamental freedoms under general international law or under human rights conventions, is discrimination within the meaning of article 1 of the Convention. These rights and freedoms include:

- (a) 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;

¹³ UN Committee on the Elimination of Discrimination General Recommendation No. 19: Violence against women, 1992, available at http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/1_Global/INT_CEDAW_GEC_3731_E.pdf (last visited December 30, 2018).

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- (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.

8. The Convention applies to violence perpetrated by public authorities. Such acts of violence may breach that State's obligations under general international human rights law and under other conventions, in addition to breaching this Convention.

9. It is emphasized, however, that discrimination under the Convention is not restricted to action by or on behalf of Governments (see articles 2(e), 2(f) and 5). For example, under article 2(e) the Convention calls on States parties to take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise. Under general international law and specific human rights covenants, 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 acts of violence, and for providing compensation.

Comments on specific articles of the Convention

Articles 2 and 3

10. Articles 2 and 3 establish a comprehensive obligation to eliminate discrimination in all its forms in addition to the specific obligations under articles 5-16.

Articles 2(f), 5 and 10(c)

11. Traditional attitudes by which women are regarded as subordinate to men or as having stereotyped roles perpetuate widespread practices involving violence or coercion, such as family violence and abuse, forced marriage, dowry deaths, acid attacks and female circumcision. Such prejudices and practices may justify gender based violence as a form of protection or control of women. The effect of such violence on the physical and mental integrity of women is to deprive them the equal enjoyment, exercise and knowledge of human rights and fundamental freedoms. While this comment addresses mainly actual or threatened violence the underlying consequences of these forms of gender-based violence help to maintain women in subordinate roles and contribute to the low level of political participation and to their lower level of education, skills and work opportunities. [...]

Article 16 (and article 5)

23. Family violence is one of the most insidious forms of violence against women. It is prevalent in all societies. Within family relationships women of all ages are subjected to violence of all kinds, including battering, rape, other forms of sexual assault, mental and other forms of violence, which are perpetuated by traditional attitudes. Lack of economic independence forces many women to stay in violent relationships. The abrogation of their family responsibilities by men can be a form of violence, and coercion. These forms of violence put women's health at risk and impair their ability to participate in family life and public life on a basis of equality.

Specific recommendations

24. In light of these comments, the Committee on the Elimination of Discrimination against Women recommends that:
- (a) States parties should take appropriate and effective measures to overcome all forms of gender-based violence, whether by public or private act;
 - (b) States parties should ensure that laws against family violence and abuse, rape, sexual assault and other gender-based violence give adequate protection to all women, and respect their integrity and dignity. Appropriate protective and support services should be provided for victims. Gender-sensitive training of judicial and law enforcement officers and other public officials is essential for the effective implementation of the Convention; [...]
 - (i) Effective complaints procedures and remedies, including compensation, should be provided; [...]
 - (k) States parties should establish or 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; [...]
 - (o) States parties should ensure that services for victims of violence are accessible to rural women and that where necessary special services are provided to isolated communities; [...]
 - (r) Measures that are necessary to overcome family violence should include:
 - (i) Criminal penalties where necessary and civil remedies in cases of domestic violence;
 - (ii) Legislation to remove the defence of honour in regard to the assault or murder of a female family member;
 - (iii) Services to ensure the safety and security of victims of family violence, including refuges, counselling and rehabilitation programmes;
 - (iv) Rehabilitation programmes for perpetrators of domestic violence;

- (v) Support services for families where incest or sexual abuse has occurred;
- (s) States parties should report on the extent of domestic violence and sexual abuse, and on the preventive, punitive and remedial measures that have been taken;
- (t) States parties should take all legal and other measures that are necessary to provide effective protection of women against gender-based violence, including, inter alia:
 - (i) Effective legal measures, including penal sanctions, civil remedies and compensatory provisions to protect women against all kinds of violence, including inter alia violence and abuse in the family, sexual assault and sexual harassment in the workplace;
 - (ii) Preventive measures, including public information and education programmes to change attitudes concerning the roles and status of men and women;
 - (iii) Protective measures, including refuges, counselling, rehabilitation and support services for women who are the victims of violence or who are at risk of violence;
- (u) States parties should report on all forms of gender-based violence, and such reports should include all available data on the incidence of each form of violence and on the effects of such violence on the women who are victims;
- (v) The reports of States parties should include information on the legal, preventive and protective measures that have been taken to overcome violence against women, and on the effectiveness of such measures.

1.6.2. [CEDAW Recommendation No. 28: The Core Obligations of States Parties under Article 2 of CEDAW](#) ¹⁴

19. Discrimination against women on the basis of sex and gender comprises, as stated in general recommendation No. 19 on violence against women, gender-based violence, namely, violence that is directed against a woman because she is a woman or violence that affects women disproportionately. It is a form of discrimination that seriously inhibits women's ability to enjoy and exercise their human rights and fundamental freedoms on the basis of equality with men. It includes acts that inflict physical, mental or sexual harm or suffering, threats of such acts, coercion and other deprivations of liberty, the violence that occurs within the family or domestic unit or within any other interpersonal relationship, or violence perpetrated or condoned by the State or its agents regardless of where it occurs. Gender-based violence may breach specific provisions of the Convention, regardless of whether those provisions expressly mention violence. States parties have a due diligence obligation to prevent, investigate, prosecute and punish such acts of gender-based violence.

1.6.3. [CEDAW Recommendation No. 35 on Gender-based Violence Against Women, updating General Recommendation No. 19](#) ¹⁵

I. Introduction

1. General recommendation No. 19 on violence against women, adopted by the Committee at its eleventh session in 1992, states that discrimination against women –as defined in article 1 of the Convention- includes gender-based violence, that is, 'violence which is directed against a woman because she is a woman or that affects women disproportionately', and, as such, is a violation of their human rights.

2. For over 25 years, the practice of States parties has endorsed the Committee's interpretation. The *opinio juris* and State practice suggest that the prohibition of gender-based violence against women has evolved into a principle of customary international law. General recommendation No. 19 has been a key catalyst for this process. [...]

6. Despite these advances, gender-based violence against women, whether committed by States, intergovernmental organisations or non-state actors, including private persons and armed groups, remains pervasive in all countries of the world, with high levels of impunity. It manifests in a continuum of multiple, interrelated and recurring forms, in a range of settings, from private to public [...]

7. In many states, legislation addressing gender-based violence against women remains non-existent, inadequate and/or poorly implemented. An erosion of legal and policy frameworks to eliminate gender-based discrimination or violence, often

¹⁴ UN Committee on the Elimination of Discrimination Against Women (CEDAW), General Recommendation No. 28 on the Core Obligations of States Parties under Article 2 of the Convention on the Elimination of All Forms of Discrimination against Women, 16 December 2010, CEDAW/C/GC/28, available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G10/472/60/PDF/G1047260.pdf?OpenElement> (last visited December 30, 2018).

¹⁵ UN Committee on the Elimination of Discrimination Against Women (CEDAW), General recommendation No. 35 on gender-based violence against women, updating general recommendation No. 19, 14 July 2017, CEDAW/C/GC/35, available at http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/1_Global/CEDAW_C_GC_35_8267_E.pdf (last visited December 30, 2018).

justified in the name of tradition, culture, religion or fundamentalist ideologies, and significant reductions in public spending, often as part of “austerity measures” following economic and financial crises, further weaken the state responses [...]

II. Scope

8. This document complements and updates the guidance to States parties set out in general recommendation No. 19, and should be read in conjunction with it.

9. The concept of ‘violence against women’ in general recommendation No. 19 and other international instruments and documents has emphasised that this violence is gender- based. Accordingly, this document uses the expression ‘gender-based violence against women’, as a more precise term that makes explicit the gendered causes and impacts of the violence. This expression further strengthens the understanding of this violence as a social - rather than an individual- problem, requiring comprehensive responses, beyond specific events, individual perpetrators and victims/survivors. [...]

15. Women’s right to a life free from gender-based violence is indivisible from and interdependent with other human rights, including the right to life, health, liberty and security of the person, the right to equality and equal protection within the family, freedom from torture, cruel, inhumane or degrading treatment, freedom of expression, movement, participation, assembly and association.

16. Gender-based violence against women, may amount to torture or cruel, inhuman or degrading treatment in certain circumstances, including in cases of rape, domestic violence or harmful practices, among others. [...]

III. General obligations of States parties under the Convention relating to gender-based violence against women

21. Gender-based violence against women constitutes discrimination against women under article 1 and therefore engages all of the obligations in the Convention. Article 2 establishes that the overarching obligation of States parties is to pursue by all appropriate means and without delay a policy of eliminating discrimination against women, including gender-based violence against women. This is an obligation of an immediate nature; delays cannot be justified on any grounds, including on economic, cultural or religious grounds. [...]

Responsibility for acts or omissions of non-State actors

24. Under general international law, as well as under international treaties, a private actor’s acts or omissions may engage the international responsibility of the State in certain cases. These include: [...]

b.) Due diligence obligations for acts and omissions of non-State actors.

Article 2 (e) of the Convention explicitly provides that States parties are required to take all appropriate measures to eliminate discrimination against women by any person, organisation or enterprise. This obligation, frequently referred to as an obligation of due diligence, underpins the Convention as a whole and accordingly States parties will be responsible if they fail to take all appropriate measures to prevent as well as to investigate, prosecute, punish and provide reparation for acts or omissions by non-State actors which result in gender-based violence against women.[...] Under the obligation of due diligence, States parties have to adopt and implement diverse measures to tackle gender-based violence against women committed by non-State actors. They are required to have laws, institutions and a system in place to address such violence. Also, States parties are obliged to ensure that these function effectively in practice, and are supported and diligently enforced by all State agents and bodies. The failure of a State party to take all appropriate measures to prevent acts of gender-based violence against women when its authorities know or should know of the danger of violence, or a failure to investigate, prosecute and punish, and to provide reparation to victims/survivors of such acts, provides tacit permission or encouragement to acts of gender-based violence against women. These failures or omissions constitute human rights violations. [...]

26. The general obligations described in the paragraphs above encompass all areas of State action, including the legislative, executive and judicial branches, at the federal, national, sub-national, local and decentralised levels as well as privatised services. [...] In general terms, and without prejudice to the specific recommendations provided in the following section, these obligations include:

- a) At the legislative level, according to article 2 (b), (c), (e), (f) and (g) and article 5 (a), States are required to adopt legislation prohibiting all forms of gender-based violence against women and girls, harmonising domestic law with the Convention.[...]

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- b) At the executive level, according to article 2 (c), (d) and (f) and article 5 (a), States are obliged to adopt and adequately budget diverse institutional measures, in coordination with the relevant State branches.
- c) At the judicial level, according to articles 2 (d), (f) and 5 (a), all judicial bodies are required to refrain from engaging in any act or practice of discrimination or gender-based violence against women; and to strictly apply all criminal law provisions punishing this violence, ensuring all legal procedures in cases involving allegations of gender-based violence against women are impartial and fair, and unaffected by gender stereotypes or discriminatory interpretation of legal provisions, including international law. The application of preconceived and stereotyped notions of what constitutes gender-based violence against women, what women's responses to such violence should be and the standard of proof required to substantiate its occurrence can affect women's right to the enjoyment of equality before the law, fair trial and the right to an effective remedy established in articles 2 and 15 of the Convention.

IV. Recommendations

General legislative measures

29. Ensure that all forms of gender-based violence against women in all spheres, which amount to a violation of their physical, sexual, or psychological integrity, are criminalized and introduced, without delay, or strengthen legal sanctions commensurate with the gravity of the offence as well as civil remedies.
30. Ensure that all legal systems, including plural legal systems, protect victims/survivors of gender-based violence against women and ensure they have access to justice and to an effective remedy in line with the guidance provided in the Committee's general recommendation No. 33 (2015).
31. Repeal all legal provisions that discriminate against women, and thereby enshrine, encourage, facilitate, justify or tolerate any form of gender-based violence against them; including in customary, religious and indigenous laws. In particular, repeal: [...]
- b) Discriminatory evidentiary rules and procedures, including procedures allowing for women's deprivation of liberty to protect them from violence, practices focused on 'virginity' and legal defences or mitigating factors based on culture, religion or male privilege, such as the so-called 'defence of honour', traditional apologies, pardons from victims/survivors' families or the subsequent marriage of the victim/survivor of sexual assault to the perpetrator, procedures that result in the harshest penalties, including stoning, lashing and death being often reserved to women, as well as judicial practices that disregard a history of gender-based violence to the detriment of women defendants.
 - c) All laws that prevent or deter women from reporting gender-based violence, such as guardianship laws that deprive women of legal capacity or restrict the ability of women with disabilities to testify in court; the practice of so-called "protective custody"; [...] laws allowing for dual arrests in cases of domestic violence, or for prosecution of women when the perpetrator is acquitted among others. [...]
33. [...] Ensure that the definition of sexual crimes, including marital and acquaintance/date rape is based on lack of freely given consent, and takes account of coercive circumstances. Any time limitations, where they exist, should prioritise the interests of the victims/survivors and give consideration to circumstances hindering their capacity to report the violence suffered to competent services/authorities.

Prevention

34. Adopt and implement effective legislative and other appropriate preventive measures to address the underlying causes of gender-based violence against women, including patriarchal attitudes and stereotypes, inequality in the family and the neglect or denial of women's civil, political, economic, social and cultural rights, as well as to promote women's empowerment, agency and voice.
38. Provide mandatory, recurrent and effective capacity-building, education and training for the judiciary, lawyers and law enforcement officers, including forensic medical personnel, legislators, health-care professionals. [...] This education and training should include:
- a) The impact of gender stereotypes and bias, leading to gender-based violence against women and inadequate responses to it;
 - b) The understanding of trauma and its effects, the power dynamics that characterise intimate partner violence, the varying situations of women experiencing diverse forms of gender-based violence; this shall include the intersectional discrimination affecting specific groups of women, as well as adequate ways to address women and eliminate factors that re-victimise them and weaken their confidence in State institutions and agents; and,

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c) Domestic legal provisions and institutions on gender-based violence against women, legal rights of victims/survivors, international standards and associated mechanisms and their responsibilities in this context; this shall include due coordination and referrals among diverse bodies and the adequate documentation of this violence, with due respect for women's privacy and confidentiality and with the victims/survivors' free and informed consent.

Protection

40. Adopt and implement effective measures to protect and assist women complainants and witnesses of gender-based violence before, during and after legal proceedings, including through:

- a) Protecting their privacy and safety, in line with general recommendation No. 33, including through gender-sensitive court procedures and measures, bearing in mind the victim/survivor's, witnesses' and defendant's due process rights.
- b) Providing appropriate and accessible protection mechanisms to prevent further or potential violence, without the precondition for victims/survivors to initiate legal actions [...]. This should include immediate risk assessment and protection, comprising a wide range of effective measures and, where appropriate, the issuance and monitoring of eviction, protection, restraining or emergency barring orders against alleged perpetrators, including adequate sanctions for non-compliance. Protection measures should avoid imposing an undue financial, bureaucratic or personal burden on women victims/survivors. Perpetrators or alleged perpetrators' rights or claims during and after judicial proceedings, including with respect to property, privacy, child custody, access, contact and visitation, should be determined in the light of women's and children's human rights to life and physical, sexual and psychological integrity, and guided by the principle of the best interests of the child.
- c) Ensuring access to financial aid and free or low-cost high quality legal aid, medical, psychosocial and counselling services, education, affordable housing, land, child care, training and employment opportunities for women victims/survivors and their family members. [...] States should provide specialist women's support services such as free of charge 24-hour helplines, and sufficient numbers of safe and adequately equipped crisis, support and referral centres, as well as adequate shelters for women, their children, and other family members as required;
- e) Establishing and implementing appropriate multi-sectoral referral mechanisms to ensure effective access of women survivors to comprehensive services, ensuring full participation of and cooperation with non-governmental women's organizations.

41. Ensuring all legal proceedings, protection and support measures and services to women's victims/survivors of gender-based violence respect and strengthen their autonomy. They should be accessible to all women, in particular to those affected by intersecting forms of discrimination, and take account of any specific needs of their children and other dependent persons. They should be available in the whole territory of the State party, and provided irrespective of women's residence status and their ability or willingness to cooperate in proceedings against the alleged perpetrator. States should also respect the principle of non-refoulement.

43. Developing and disseminating accessible information aimed at women, in particular those affected by intersecting forms of discrimination such as those who live with a disability, are illiterate, or have no or limited knowledge of the official languages of the country, of the legal and social resources available to victims/survivors of gender-based violence against women, including reparation, through diverse and accessible media and community dialogue.

Prosecution and punishment

44. Ensure effective access of victims to courts and tribunals; ensure authorities adequately respond to all cases of gender-based violence against women, including by applying criminal law and as appropriate ex officio prosecution to bring the alleged perpetrators to trial in a fair, impartial, timely and expeditious manner and imposing adequate penalties. Fees or court charges should not be imposed on victims/survivors.

45. Ensure that gender-based violence against women is not mandatorily referred to alternative dispute resolution procedures, including mediation and conciliation. The use of these procedures should be strictly regulated and allowed only when a previous evaluation by a specialised team ensures the free and informed consent by the affected victim/survivor and that there are no indicators of further risks for the victim/survivor or their family members. These procedures should empower the women victims/survivors and be provided by professionals specially trained to understand and adequately intervene in cases of gender-based violence against women, ensuring an adequate protection of women's and children's rights as well as an intervention with no stereotyping or re-victimisation of women. These alternative procedures should not constitute an obstacle to women's access to formal justice.

46. Provide effective reparation to women victims/survivors of gender-based violence. Reparation should include different measures, such as monetary compensation and the provision of legal, social and health services including sexual,

reproductive and mental health for a complete recovery, and satisfaction and guarantees of non-repetition in line with general recommendations No. 28, 30 and 33. Such reparations should be adequate, promptly attributed, holistic and proportionate to the gravity of the harm suffered.

47. States parties should establish specific reparation funds, or include allocations for gender-based violence against women within existing funds, including under transitional justice mechanisms. States parties should implement administrative reparations schemes without prejudice to victims/survivors' rights to seek judicial remedies. [...]

1.6.4. [CEDAW Recommendation No. 32 on the Gender-related Dimensions of Refugee Status, Asylum, Nationality and Statelessness of Women](#)¹⁶

IV. Application of non-discrimination and gender equality to international refugee law

A. General comments

13. The Committee notes that asylum seekers seek international protection on the basis that they cannot return to their country of origin because they have a well founded fear of persecution or are at risk of being ill-treated or subjected to other serious harm. It also notes that under article 1A(2) of the 1951 Convention relating to the Status of Refugees the reasons for persecution must be linked to one of the five grounds listed therein: race, religion, nationality, membership of a particular social group or political opinion. Gender-related persecution is absent from the text. The present general recommendation is intended to ensure that States parties apply a gender perspective when interpreting all five grounds, use gender as a factor in recognizing membership of a particular social group for purposes of granting refugee status under the 1951 Convention and further introduce other grounds of persecution, namely sex and/or gender, into national legislation and policies relating to refugees and asylum seekers. [...]

15. Gender-related forms of persecution are forms of persecution that are directed against a woman because she is a woman or that affect women disproportionately. The Committee observes that understanding the way in which women's rights are violated is critical to the identification of those forms of persecution. The Committee notes that violence against women that is a prohibited form of discrimination against women is one of the major forms of persecution experienced by women in the context of refugee status and asylum. Such violence, just as other gender-related forms of persecution, may breach specific provisions of the Convention. Such forms are recognized as legitimate grounds for international protection in law and in practice. They may include the threat of female genital mutilation, forced/early marriage, threat of violence and/or so-called "honour crimes", trafficking in women, acid attacks, rape and other forms of sexual assault, *serious forms of domestic violence* [...]

B. Principle of non-refoulement

23. The Committee is therefore of the view that States parties have an obligation to ensure that no woman will be expelled or returned to another State where her life, physical integrity, liberty and security of person would be threatened, or where she would risk suffering serious forms of discrimination, including serious forms of gender-based persecution or gender-based violence. What amounts to serious forms of discrimination against women, including gender-based violence, will depend on the circumstances of each case. [...]

37. States parties should adopt legislation and other measures to respect the principle of non-refoulement, in accordance with existing obligations under international law, and take all measures necessary to ensure that victims of serious forms of discrimination, including gender-related forms of persecution, who are in need of protection, regardless of their status or residence, are not returned under any circumstance to any country in which their life would be at risk or where they might be subjected to serious forms of discrimination, including gender-based violence, or to torture or inhuman or degrading treatment or punishment.

¹⁶ UN Committee on the Elimination of Discrimination Against Women (CEDAW), General Recommendation No. 32 on the Gender-related Dimensions of Refugee Status, Asylum, Nationality and Statelessness of women, 14 November 2014, CEDAW/C/GC/32, available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N14/627/90/PDF/N1462790.pdf?OpenElement> (last visited December 30, 2018).

1.6.5. [CEDAW Recommendation No. 33 on Women's Access to Justice](#) ¹⁷

II. General issues and recommendations on women's access to justice

A. Justiciability, availability, accessibility, good-quality, provision of remedies and accountability of justice systems.
[...]

15. On justiciability, the Committee recommends that States parties:

[...]

(c) Ensure that the professionals of justice systems handle cases in a gender sensitive manner;

16. On availability of justice systems, the Committee recommends that State parties:

[...]

(b) In cases of violence against women, ensure access to financial aid, crisis centres, shelters, hotlines, and medical, psychosocial and counselling services; [...]

17. On accessibility of justice systems, the Committee recommends that State parties:

[...]

(f) Establish justice access centres, such as "one-stop centers", which include a range of legal and social services, in order to reduce the number of steps that a woman has to take to access justice. Such centres could provide legal advice and aid, start the legal proceedings and coordinate support services for women across such areas as violence against women, family matters, health [...]. They must be accessible to all women including those living in poverty and/or in rural and remote areas; and [...]

18. On good quality of justice systems, the Committee recommends that State parties:

[...]

(d) Provide, in a timely fashion, appropriate and effective remedies that are enforced and that lead to sustainable gender-sensitive dispute resolution for all women;

(e) Implement mechanisms to ensure that evidentiary rules, investigations and other legal and quasi-judicial procedures are impartial and not influenced by gender stereotypes or prejudice;

(f) When necessary to protect women's privacy, safety, and other human rights, ensure that, in a manner consistent with due process and fair proceedings, legal proceedings can be held privately in whole or in part, or testimony be given remotely or via communication equipment, in a way that only the concerned parties are able to access their content.[...]; and

(g) Protect women complainants, witnesses, defendants and prisoners against threats, harassment and other harm before, during and after legal proceedings [...]

20. On accountability of justice systems, the Committee recommends that State parties:

[...]

(b) Ensure that cases of identified discriminatory practices and acts by justice professionals are effectively addressed through disciplinary and other measures;

C. Stereotyping and gender bias in the justice system and the importance of capacity building [...]

29. The Committee recommends that State Parties:

(a) Take measures, including awareness-raising and capacity-building for all actors of justice systems and for law students to eliminate gender stereotyping and incorporate a gender perspective in all aspects of the justice system;

(b) Include other professionals, in particular health professionals and social workers, who can play an important role in cases of violence against women and in family matters, in these awareness raising and capacity building programmes;

(c) Ensure that capacity-building programmes address in particular:

(i) The issue of the credibility and weight given to women's voices, arguments and testimonies, as parties and witnesses;

(ii) The inflexible standards often developed by judges and prosecutors on what they consider as appropriate behaviour for women; [...]

¹⁷ UN Committee on the Elimination of Discrimination Against Women (CEDAW), General Recommendation No. 33 on Women's Access to Justice, 23 July 2015, CEDAW/C/GC/33, available at http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/1_Global/CEDAW_C_GC_33_7767_E.pdf (last visited December 30, 2018).

- (e) Raise awareness on the negative impact of stereotyping and gender bias and encourage advocacy related to stereotyping and gender bias in justice systems, especially in gender-based violence cases; and
- (f) Provide capacity building to judges, prosecutors, lawyers and law enforcement officials on the application of international legal instruments related to human rights, including the CEDAW Convention and the jurisprudence of the CEDAW Committee, and on the application of legislation prohibiting discrimination against women. [...]

III. Recommendations for specific areas of law

D. Criminal Law

51. The Committee recommends that States parties:

- (a) Exercise due diligence to prevent, investigate, punish and provide reparation for all crimes committed against women, whether such crimes were perpetrated by State or non-State actors; [...]
- (c) Take effective measures to protect women against secondary victimization in their interactions with law enforcement and judicial authorities. Consider establishing specialized gender units within law enforcement, penal and prosecution systems; [...]
- (i) *Improve their criminal justice response to domestic violence*, what can be done through recording of emergency calls, taking photographic evidence of destruction of property as well as signs of violence; and reports from doctors or social workers, which can show how violence, even if committed without witnesses, has material effects on the victims' physical, mental and social well-being;
- (j) 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;
- (k) *Develop protocols for police and healthcare providers* for the collection and preservation of forensic evidence in cases of violence against women; and train sufficient numbers of police and legal and forensic staff to competently conduct criminal investigations; [...]

IV. Recommendations for specific mechanisms

B. Alternative dispute resolution processes

58. The Committee recommends that States parties: [...]

- (c) Ensure that cases of violence against women, including domestic violence, are under no circumstances referred to any alternative dispute resolution procedures.

1.6.6. [CEDAW Recommendation No. 34 on the Rights of Rural Women](#) ¹⁸

25. States parties should prevent and eliminate all forms of violence against rural women and girls, and, in line with GR 19 on violence against women and GR 33 on access to justice:

- (a) Sensitize rural women and men, girls and boys, as well as local, religious and community leaders, on the rights of rural women and girls, with the aim of eliminating discriminatory social attitudes and practices, particularly those which condone gender-based violence;
- (b) Take effective measures aimed at preventing, investigating, prosecuting and punishing acts of violence against rural women and girls, including migrant rural women and girls, whether perpetrated by the State, non-State actors, or private persons;
- (c) Ensure that victims living in rural areas have effective access to justice, including legal aid, as well as compensation and other forms of redress/reparation, and that authorities at all levels in rural areas, including the judiciary, judicial administrators and civil servants, have the resources needed and political will to respond to violence against rural women and girls, and protect them against retaliation when reporting abuses;
- (d) Ensure that integrated services for victims, including emergency shelters and comprehensive health services, are accessible to women and girls in rural areas. Such services should avoid stigmatization and protect victim privacy and dignity; [...]

¹⁸UN Committee on the Elimination of Discrimination Against Women (CEDAW), General recommendation No. 34 on the rights of rural women, 4 March 2016, CEDAW/C/GC/34, available at http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/1_Global/INT_CEDAW_GEC_7933_E.pdf (last visited December 30, 2018).

1.6.7. [CEDAW Recommendation No. 24 – Art. 12: Women and Health](#)¹⁹

12. States parties should report on their understanding of how policies and measures on *health care* address the health rights of women from the perspective of women's needs and interests and how it addresses distinctive features and factors which differ for women in comparison to men, such as: [...]

(b) [...] Girl children and adolescent girls are often vulnerable to sexual abuse by older men and family members, placing them at risk of physical and psychological harm and unwanted and early pregnancy. [...]

15. The obligation to *protect rights* relating to women's health requires States parties, their agents and officials to take action to prevent and impose sanctions for violations of rights by private persons and organizations. Since gender-based violence is a critical health issue for women, States parties should ensure:

(a) The enactment and effective enforcement of laws and the formulation of policies, including health care protocols and hospital procedures to address violence against women and abuse of girl children and the provision of appropriate health services;

(b) Gender-sensitive training to enable health care workers to detect and manage the health consequences of gender-based violence; [...]

18. The issues of HIV/AIDS and other sexually transmitted disease are central to the rights of women and adolescent girls to sexual health. [...] Harmful traditional practices, such as female genital mutilation, polygamy, as well as marital rape, may also expose girls and women to the risk of contracting HIV/AIDS and other sexually transmitted diseases. [...] States parties should ensure, without prejudice and discrimination, the right to sexual health information, education and services for all women and girls [...]

2. REGIONAL LEGAL FRAMEWORK

[European Convention on Human Rights and Fundamental Freedoms](#)²⁰

SECTION I - RIGHTS AND FREEDOMS

Article 2: Right to life

1. Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.

2. Deprivation of life shall not be regarded as inflicted in contravention of this Article when it results from the use of force which is no more than absolutely necessary:

(a) in defence of any person from unlawful violence;

(b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;

(c) in action lawfully taken for the purpose of quelling a riot or insurrection.

Article 3: Prohibition of torture

No one shall be subjected to torture or to inhuman or degrading treatment or punishment.

Article 5: Right to liberty and security

1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law: [...]

Article 8: Right to respect for private and family life

1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

¹⁹ UN Committee on the Elimination of Discrimination Against Women (CEDAW), General Recommendation No. 24: Article 12 of the Convention (Women and Health), 1999, A/54/38/Rev.1, chap. I, available at <http://www.refworld.org/docid/453882a73.html> (last visited December 30, 2018).

²⁰ Council of Europe, European Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocols Nos. 11 and 14, 4 November 1950, ETS 5, available at https://www.echr.coe.int/Documents/Convention_ENG.pdf (last visited December 30, 2018). The European Court of Human Rights (ECtHR) has addressed domestic violence in the context of various provisions of the European Convention on Human Rights. The ECtHR has found violations in cases involving articles 2 (right to life), 3 (prohibition of inhuman and degrading treatment), 6 (right to a fair trial), 8 (right to respect for private and family life), 14 (prohibition of discrimination). For an overview of the case-law of the ECtHR in the area of domestic violence, see European Court of Human Rights, Factsheet-Domestic Violence, January 2018, available at https://www.echr.coe.int/Documents/FS_Domestic_violence_ENG.pdf (last visited December 30, 2018).

Article 13: Right to an effective remedy

Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.

Article 14: Prohibition of discrimination

The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

- 2.1. [Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence \(Istanbul Convention\)](#) ²¹

Chapter I – Purposes, definitions, equality and non-discrimination, general obligations

Article 1 – Purposes of the Convention

The purposes of this Convention are to:

- a. protect women against all forms of violence, and prevent, prosecute and eliminate violence against women and domestic violence;
- b. contribute to the elimination of all forms of discrimination against women and promote substantive equality between women and men, including by empowering women;
- c. design a comprehensive framework, policies and measures for the protection of and assistance to all victims of violence against women and domestic violence;
- d. promote international co-operation with a view to eliminating violence against women and domestic violence;
- e. provide support and assistance to organisations and law enforcement agencies to effectively co-operate in order to adopt an integrated approach to eliminating violence against women and domestic violence.

2. In order to ensure effective implementation of its provisions by the Parties, this Convention establishes a specific monitoring mechanism.

Article 2 – Scope of the Convention

1. This Convention shall apply to all forms of violence against women, including domestic violence, which affects women disproportionately.
2. Parties are encouraged to apply this Convention to all victims of domestic violence. Parties shall pay particular attention to women victims of gender-based violence in implementing the provisions of this Convention.
3. This Convention shall apply in times of peace and in situations of armed conflict.

Article 3 – Definitions

For the purpose of this Convention:

- a. “violence against women” is understood as a violation of human rights and a form of discrimination against women and shall mean all acts of gender-based violence that result in, or are likely to result in, physical, sexual, psychological or economic harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life;
- b. “domestic violence” shall mean all acts of physical, sexual, psychological or economic violence that occur within the family or domestic unit or between former or current spouses or partners, whether or not the perpetrator shares or has shared the same residence with the victim;
- c. “gender” shall mean the socially constructed roles, behaviours, activities and attributes that a given society considers appropriate for women and men;
- d. “gender-based violence against women” shall mean violence that is directed against a woman because she is a woman or that affects women disproportionately;
- e. “victim” shall mean any natural person who is subject to the conduct specified in points a and b;
- f. “women” includes girls under the age of 18.

²¹ Council of Europe, Council Of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence, 11 May 2011, available at <https://www.coe.int/en/web/conventions/full-list/-/conventions/rms/090000168008482e> (last visited December 30, 2018).

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Article 5 – State obligations and due diligence

1. Parties shall refrain from engaging in any act of violence against women and ensure that State authorities, officials, agents, institutions and other actors acting on behalf of the State act in conformity with this obligation.
2. Parties shall take the necessary legislative and other measures to exercise due diligence to prevent, investigate, punish and provide reparation for acts of violence covered by the scope of this Convention that are perpetrated by non-State actors.

Chapter III – Prevention

Article 12 – General obligations

1. Parties shall take the necessary measures to promote changes in the social and cultural patterns of behaviour of women and men with a view to eradicating prejudices, customs, traditions and all other practices which are based on the idea of the inferiority of women or on stereotyped roles for women and men.
 2. Parties shall take the necessary legislative and other measures to prevent all forms of violence covered by the scope of this Convention by any natural or legal person.
 3. Any measures taken pursuant to this chapter shall take into account and address the specific needs of persons made vulnerable by particular circumstances and shall place the human rights of all victims at their centre.
 4. Parties shall take the necessary measures to encourage all members of society, especially men and boys, to contribute actively to preventing all forms of violence covered by the scope of this Convention.
 5. Parties shall ensure that culture, custom, religion, tradition or so-called “honour” shall not be considered as justification for any acts of violence covered by the scope of this Convention.
 6. Parties shall take the necessary measures to promote programmes and activities for the empowerment of women.
- [...]

Article 15 – Training of professionals

1. Parties shall provide or strengthen appropriate training for the relevant professionals dealing with victims or perpetrators of all acts of violence covered by the scope of this Convention, on the prevention and detection of such violence, equality between women and men, the needs and rights of victims, as well as on how to prevent secondary victimisation.
2. Parties shall encourage that the training referred to in paragraph 1 includes training on co-ordinated multi-agency co-operation to allow for a comprehensive and appropriate handling of referrals in cases of violence covered by the scope of this Convention.

Chapter IV – Protection and support

Article 18 – General obligations

1. Parties shall take the necessary legislative or other measures to protect all victims from any further acts of violence.
2. Parties shall take the necessary legislative or other measures, in accordance with internal law, to ensure that there are appropriate mechanisms to provide for effective co-operation between all relevant state agencies, including the judiciary, public prosecutors, law enforcement agencies, local and regional authorities as well as non-governmental organisations and other relevant organisations and entities, in protecting and supporting victims and witnesses of all forms of violence covered by the scope of this Convention, including by referring to general and specialist support services as detailed in Articles 20 and 22 of this Convention.
3. Parties shall ensure that measures taken pursuant to this chapter shall:
 - be based on a gendered understanding of violence against women and domestic violence and shall focus on the human rights and safety of the victim;
 - be based on an integrated approach which takes into account the relationship between victims, perpetrators, children and their wider social environment;
 - aim at avoiding secondary victimisation;
 - aim at the empowerment and economic independence of women victims of violence;
 - allow, where appropriate, for a range of protection and support services to be located on the same premises;
 - address the specific needs of vulnerable persons, including child victims, and be made available to them.
4. The provision of services shall not depend on the victim’s willingness to press charges or testify against any perpetrator.

Chapter V – Substantive law

Article 29 – Civil lawsuits and remedies

1. Parties shall take the necessary legislative or other measures to provide victims with adequate civil remedies against the perpetrator.
2. Parties shall take the necessary legislative or other measures to provide victims, in accordance with the general principles of international law, with adequate civil remedies against State authorities that have failed in their duty to take the necessary preventive or protective measures within the scope of their powers.

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Article 30 – Compensation

1. Parties shall take the necessary legislative or other measures to ensure that victims have the right to claim compensation from perpetrators for any of the offences established in accordance with this Convention.
2. Adequate State compensation shall be awarded to those who have sustained serious bodily injury or impairment of health, to the extent that the damage is not covered by other sources such as the perpetrator, insurance or State-funded health and social provisions. This does not preclude Parties from claiming regress for compensation awarded from the perpetrator, as long as due regard is paid to the victim's safety.
3. Measures taken pursuant to paragraph 2 shall ensure the granting of compensation within a reasonable time.

Article 31 – Custody, visitation rights and safety

1. Parties shall take the necessary legislative or other measures to ensure that, in the determination of custody and visitation rights of children, incidents of violence covered by the scope of this Convention are taken into account.
2. Parties shall take the necessary legislative or other measures to ensure that the exercise of any visitation or custody rights does not jeopardise the rights and safety of the victim or children.

Article 33 – Psychological violence

Parties shall take the necessary legislative or other measures to ensure that the intentional conduct of seriously impairing a person's psychological integrity through coercion or threats is criminalised.

Article 34 – Stalking

Parties shall take the necessary legislative or other measures to ensure that the intentional conduct of repeatedly engaging in threatening conduct directed at another person, causing her or him to fear for her or his safety, is criminalised.

Article 35 – Physical violence

Parties shall take the necessary legislative or other measures to ensure that the intentional conduct of committing acts of physical violence against another person is criminalised.

Article 36 – Sexual violence, including rape

1. Parties shall take the necessary legislative or other measures to ensure that the following intentional conducts are criminalised:
 - a. engaging in non-consensual vaginal, anal or oral penetration of a sexual nature of the body of another person with any bodily part or object;
 - b. engaging in other non-consensual acts of a sexual nature with a person;
 - c. causing another person to engage in non-consensual acts of a sexual nature with a third person.
2. Consent must be given voluntarily as the result of the person's free will assessed in the context of the surrounding circumstances.
3. Parties shall take the necessary legislative or other measures to ensure that the provisions of paragraph 1 also apply to acts committed against former or current spouses or partners as recognised by internal law.[...]

Article 42 – Unacceptable justifications for crimes, including crimes committed in the name of so-called "honour"

1. Parties shall take the necessary legislative or other measures to ensure that, in criminal proceedings initiated following the commission of any of the acts of violence covered by the scope of this Convention, culture, custom, religion, tradition or so-called "honour" shall not be regarded as justification for such acts. This covers, in particular, claims that the victim has transgressed cultural, religious, social or traditional norms or customs of appropriate behaviour. [...]

Article 43 – Application of criminal offences

The offences established in accordance with this Convention shall apply irrespective of the nature of the relationship between victim and perpetrator.

Article 46 – Aggravating circumstances

Parties shall take the necessary legislative or other measures to ensure that the following circumstances, insofar as they do not already form part of the constituent elements of the offence, may, in conformity with the relevant provisions of internal law, be taken into consideration as aggravating circumstances in the determination of the sentence in relation to the offences established in accordance with this Convention:

- a. the offence was committed against a former or current spouse or partner as recognised by internal law, by a member of the family, a person cohabiting with the victim or a person having abused her or his authority;
- b. the offence, or related offences, were committed repeatedly;
- c. the offence was committed against a person made vulnerable by particular circumstances;

Article 48 – Prohibition of mandatory alternative dispute resolution processes or sentencing

1. Parties shall take the necessary legislative or other measures to prohibit mandatory alternative dispute resolution processes, including mediation and conciliation, in relation to all forms of violence covered by the scope of this Convention. [...]

Article 46 – Aggravating circumstances

Parties shall take the necessary legislative or other measures to ensure that the following circumstances, insofar as they do not already form part of the constituent elements of the offence, may, in conformity with the relevant provisions of internal law, be taken into consideration as aggravating circumstances in the determination of the sentence in relation to the offences established in accordance with this Convention:

- a. the offence was committed against a former or current spouse or partner as recognised by internal law, by a member of the family, a person cohabiting with the victim or a person having abused her or his authority;
- b. the offence, or related offences, were committed repeatedly;
- c. the offence was committed against a person made vulnerable by particular circumstances;
- d. the offence was committed against or in the presence of a child;
- e. the offence was committed by two or more people acting together;
- f. the offence was preceded or accompanied by extreme levels of violence;
- g. the offence was committed with the use or threat of a weapon;
- h. the offence resulted in severe physical or psychological harm for the victim;
- i. the perpetrator had previously been convicted of offences of a similar nature.

Chapter VI – Investigation, prosecution, procedural law and protective measures

Article 49 – General obligations

1. Parties shall take the necessary legislative or other measures to ensure that investigations and judicial proceedings in relation to all forms of violence covered by the scope of this Convention are carried out without undue delay while taking into consideration the rights of the victim during all stages of the criminal proceedings. [...]

Article 50 – Immediate response, prevention and protection

1. Parties shall take the necessary legislative or other measures to ensure that the responsible law enforcement agencies respond to all forms of violence covered by the scope of this Convention promptly and appropriately by offering adequate and immediate protection to victims.
2. Parties shall take the necessary legislative or other measures to ensure that the responsible law enforcement agencies engage promptly and appropriately in the prevention and protection against all forms of violence covered by the scope of this Convention, including the employment of preventive operational measures and the collection of evidence.

Article 51 – Risk assessment and risk management

1. Parties shall take the necessary legislative or other measures to ensure that an assessment of the lethality risk, the seriousness of the situation and the risk of repeated violence is carried out by all relevant authorities in order to manage the risk and if necessary to provide co-ordinated safety and support.
2. Parties shall take the necessary legislative or other measures to ensure that the assessment referred to in paragraph 1 duly takes into account, at all stages of the investigation and application of protective measures, the fact that perpetrators of acts of violence covered by the scope of this Convention possess or have access to firearms.

Article 52 – Emergency barring orders

Parties shall take the necessary legislative or other measures to ensure that the 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 or person at risk for a sufficient period of time and to prohibit the perpetrator from entering the residence of or contacting the victim or person at risk. Measures taken pursuant to this article shall give priority to the safety of victims or persons at risk.

Article 53 – Restraining or protection orders

1. Parties shall take the necessary legislative or other measures to ensure that appropriate restraining or protection orders are available to victims of all forms of violence covered by the scope of this Convention.
2. Parties shall take the necessary legislative or other measures to ensure that the restraining or protection orders referred to in paragraph 1 are:
 - available for immediate protection and without undue financial or administrative burdens placed on the victim;
 - issued for a specified period or until modified or discharged;

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- where necessary, issued on an *ex parte* basis which has immediate effect;
 - available irrespective of, or in addition to, other legal proceedings;
 - allowed to be introduced in subsequent legal proceedings.
3. Parties shall take the necessary legislative or other measures to ensure that breaches of restraining or protection orders issued pursuant to paragraph 1 shall be subject to effective, proportionate and dissuasive criminal or other legal sanctions.

Article 55 – *Ex parte* and *ex officio* proceedings

1. Parties shall ensure that investigations into or prosecution of offences established in accordance with Articles 35, 36, 37, 38 and 39 of this Convention shall not be wholly dependant upon a report or complaint filed by a victim if the offence was committed in whole or in part on its territory, and that the proceedings may continue even if the victim withdraws her or his statement or complaint.
2. Parties shall take the necessary legislative or other measures to ensure, in accordance with the conditions provided for by their internal law, the possibility for governmental and non-governmental organisations and domestic violence counsellors to assist and/or support victims, at their request, during investigations and judicial proceedings concerning the offences established in accordance with this Convention.

Article 56 – Measures of protection

1. Parties shall take the necessary legislative or other measures to protect the rights and interests of victims, including their special needs as witnesses, at all stages of investigations and judicial proceedings, in particular by:
 - a. providing for their protection, as well as that of their families and witnesses, from intimidation, retaliation and repeat victimisation;
 - b. ensuring that victims are informed, at least in cases where the victims and the family might be in danger, when the perpetrator escapes or is released temporarily or definitively;
 - c. informing them, under the conditions provided for by internal law, of their rights and the services at their disposal and the follow-up given to their complaint, the charges, the general progress of the investigation or proceedings, and their role therein, as well as the outcome of their case;
 - d. enabling victims, in a manner consistent with the procedural rules of internal law, to be heard, to supply evidence and have their views, needs and concerns presented, directly or through an intermediary, and considered;
 - e. providing victims with appropriate support services so that their rights and interests are duly presented and taken into account;
 - f. ensuring that measures may be adopted to protect the privacy and the image of the victim;
 - g. ensuring that contact between victims and perpetrators within court and law enforcement agency premises is avoided where possible;
 - h. providing victims with independent and competent interpreters when victims are parties to proceedings or when they are supplying evidence;
 - i. enabling victims to testify, according to the rules provided by their internal law, in the courtroom without being present or at least without the presence of the alleged perpetrator, notably through the use of appropriate communication technologies, where available.
2. A child victim and child witness of violence against women and domestic violence shall be afforded, where appropriate, special protection measures taking into account the best interests of the child.

Article 57 – Legal aid

Parties shall provide for the right to legal assistance and to free legal aid for victims under the conditions provided by their internal law.

Article 60 – Gender-based asylum claims

1. Parties shall take the necessary legislative or other measures to ensure that gender-based violence against women may be recognised as a form of persecution within the meaning of Article 1, A (2), of the 1951 Convention relating to the Status of Refugees and as a form of serious harm giving rise to complementary/subsidiary protection.
2. Parties shall ensure that a gender-sensitive interpretation is given to each of the Convention grounds and that where it is established that the persecution feared is for one or more of these grounds, applicants shall be granted refugee status according to the applicable relevant instruments.
3. Parties shall take the necessary legislative or other measures to develop gender-sensitive reception procedures and support services for asylum-seekers as well as gender guidelines and gender-sensitive asylum procedures, including refugee status determination and application for international protection.

Article 61 – Non-refoulement

1. Parties shall take the necessary legislative or other measures to respect the principle of non-refoulement in accordance with existing obligations under international law.
2. Parties shall take the necessary legislative or other measures to ensure that victims of violence against women who are in need of protection, regardless of their status or residence, shall not be returned under any circumstances to any country where their life would be at risk or where they might be subjected to torture or inhuman or degrading treatment or punishment.

[Explanatory Report to the Council of Europe Convention on preventing and combating violence against women and domestic violence](#) ²²

Chapter I – Purposes, definitions, equality and non-discrimination, general obligations

Article 2 – Scope of the Convention

36. Paragraph 1 states that the focus of this Convention is on all forms of violence against women which includes domestic violence committed against women. The drafters considered it important to emphasise that the majority of victims of domestic violence are women.

Article 3 – Definitions

40. The definition of “violence against women” makes clear that, for the purpose of the Convention, violence against women shall be understood to constitute a violation of human rights and a form of discrimination. This is in line with the purpose of the Convention set out in Article 1 (b) and needs to be borne in mind when implementing the Convention. The second part of the definition is the same as contained in Council of Europe Recommendation Rec(2002) 5 of the Committee of Ministers to member states on the protection of women against violence, the CEDAW Committee General Recommendation No. 19 on violence against women (1992), as well as in Article 1 of the United Nations Declaration on the Elimination of All Forms of Violence against Women. The drafters have, however, expanded it to include the notion of “economic harm” which can be related to psychological violence.

Definition of “domestic violence”

41. Article 3 (b) provides a definition of domestic violence that covers acts of physical, sexual, psychological or economic violence between members of the family or domestic unit, irrespective of biological or legal family ties. In line with what is mentioned in paragraph 40, economic violence can be related to psychological violence. Domestic violence includes mainly two types of violence: intimate-partner violence between current or former spouses or partners and inter-generational violence which typically occurs between parents and children. It is a gender neutral definition that encompasses victims and perpetrators of both sexes.

42. Domestic violence as intimate-partner violence includes physical, sexual, psychological or economic violence between current or former spouses as well as current or former partners. It constitutes a form of violence which affects women disproportionately and which is therefore distinctly gendered. Although the term “domestic” may appear to limit the context of where such violence can occur, the drafters recognised that the violence often continues after a relationship has ended and therefore agreed that a joint residence of the victim and perpetrator is not required. Inter-generational domestic violence includes physical, sexual, psychological and economic violence by a person against her or his child or parent (elderly abuse) or such violence between any other two or more family members of different generations. Again, a joint residence of the victim and perpetrator is not required.

Article 5 – State obligations and due diligence

59. Against the backdrop of these developments in international law and jurisprudence, the drafters considered it important to enshrine a principle of due diligence in this Convention. It is not an obligation of result, but an obligation of means. Parties are required to organise their response to all forms of violence covered by the scope of this Convention in a way that allows relevant authorities to diligently prevent, investigate, punish and provide reparation for such acts of violence. Failure to do so incurs state responsibility for an act otherwise solely attributed to a non-state actor. As such, violence against women perpetrated by non-state actors crosses the threshold of constituting a violation of human rights as referred to in Article 2 insofar as Parties have the obligation to take the legislative and other measures necessary to exercise due diligence to prevent, investigate, punish and provide reparation for acts of violence covered by the scope of this Convention, as well as to provide

²² Explanatory Report to the Council of Europe Convention on preventing and combating violence against women and domestic violence Istanbul, 11 May 2011, available at <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016800d383a> (last visited December 30, 2018).

protection to the victims, and that failure to do so violates and impairs or nullifies the enjoyment of their human rights and fundamental freedoms.

Chapter III – Prevention

Article 15 – Training of professionals

98. The training and sensitisation of professionals to the many causes, manifestations and consequences of all forms of violence covered by the scope of this Convention provides an effective means of preventing such violence. Training not only allows to raise awareness among professionals on violence against women and domestic violence, but contributes to changing the outlooks and the conduct of these professionals with regard to the victims. Furthermore, it significantly improves the nature and quality of the support provided to victims. [...]

100. The relevant professionals may include professionals in the judiciary, in legal practice, in law enforcement agencies and in the fields of health care, social work and education. When providing training for professionals involved in judicial proceedings (in particular judges, prosecutors and lawyers), Parties must take account of requirements stemming from the independence of the judicial professions and the autonomy they enjoy in respect of the organisation of training for their members. [...]

101. The content of paragraph 2 is linked to the greater aim of the Convention to establish a comprehensive approach to prevent and combat all forms of violence covered by its scope. This provision requires Parties to encourage that the training referred to in paragraph 1 also includes training on coordinated multi-agency co operation, complementing in this way the obligations laid down in Article 7 of this Convention. Consequently, professionals should also be taught skills in multi-agency working, equipping them to work in co-operation with other professionals from a wide range of fields.

Chapter VI – Investigation, prosecution, procedural law and protective measures

Article 52 – Emergency barring orders

264. In situations of immediate danger, the most effective way of guaranteeing the safety of a domestic violence victim is by achieving physical distance between the victim and the perpetrator. In many cases, this requires one of the two to leave, for a certain period of time, the joint residence or the perpetrator to leave the victim's residence. [...] Therefore, this provision establishes the obligation of equipping the competent authorities, with the power to order, a perpetrator of domestic violence to leave the residence of the victim and to bar him or her from returning or contacting the victim. The immediate danger must be assessed by the relevant authorities.

265. The term "immediate danger" refers to any situations of domestic violence in which harm is imminent or has already materialised and is likely to happen again.

Article 53 – Restraining or protection orders

267. This provision sets out the obligation to ensure that national legislation provides for restraining and/or protection orders for victims of all forms of violence covered by the scope of this Convention. Furthermore, it establishes a number of criteria for such orders to ensure that they serve the purpose of offering protection from further acts of violence.

273. The fourth indent seeks to ensure the possibility for victims to obtain a restraining or protection order whether or not they choose to set in motion any other legal proceedings. [...] Standing to apply for a restraining or protection order shall therefore not be made dependent on the institution of criminal proceedings against the same perpetrator. Similarly, they should not be made dependent on the institution of divorce proceedings, etc. [...]

275. Paragraph 3 aims at ensuring respect for restraining and protection orders by requiring "effective, proportionate and dissuasive" sanctions for any breach of such orders. These sanctions may be of a criminal law or other legal nature and may include prison sentences, fines or any other legal sanction that is effective, proportionate and dissuasive.

Article 57 – Legal aid

294. In the immediate aftermath of violence many victims of violence against women and domestic violence may be forced to leave all their belongings or jobs behind on a moment's notice. Judicial and administrative procedures are often highly complex and victims need the assistance of legal counsel to be able to assert their rights satisfactorily. In these cases, it might be difficult for victims to effectively access legal remedies because of the high costs which can be involved in seeking justice. For this reason the drafters believed it essential to place an obligation on Parties to provide for the right to legal assistance and to free legal aid for victims under the conditions provided by their internal law. [...]

Chapter VII – Migration and asylum

Article 60 – Gender-based asylum claims

310. Asylum law has long failed to address the difference between women and men in terms of why and how they experience persecution. This gender blindness in the establishment of refugee status and of international protection has resulted in situations where claims of women fleeing from gender-based violence have gone unrecognised. In the past decade, however, developments in international human rights law and standards as well as in case law, have led an increasing number of Council of Europe member states to recognise some forms of violence against women as a form of gender-related persecution within the meaning of Article 1 A(2) of the 1951 Convention relating to the Status of Refugees. There is no doubt that rape and other forms of gender-related violence, such as female genital violence, dowry related violence, serious domestic violence, or trafficking, are acts which have been used as forms of persecution, whether perpetrated by state or non-state actors.

311. Although paragraph 1 consecrates what is already being undertaken in practice, the drafters considered it important to include the obligation of Parties to take the necessary legislative or other measures to ensure that gender-based violence against women may be recognised as a form of persecution within the meaning of Article 1 A(2) and as a form of serious harm. In other words, Parties to the Convention are required to recognise that gender specific violence may amount to persecution, and lead to the granting of refugee status. The recognition of gender-based violence as a form of persecution within the meaning of Article 1 A(2) implies recognising that a woman may be persecuted because of her gender, i.e. because of her identity and status as a woman. [...]

2.2. EU Charter of Fundamental Rights ²³

CHAPTER I - DIGNITY

Article 1 Human dignity

Human dignity is inviolable. It must be respected and protected.

Article 2 Right to life

1. Everyone has the right to life. [...]

Article 3 Right to the integrity of the person

1. Everyone has the right to respect for his or her physical and mental integrity.
2. In the fields of medicine and biology, the following must be respected in particular: the free and informed consent of the person concerned, according to the procedures laid down by law, the prohibition of eugenic practices, in particular those aiming at the selection of persons, the prohibition on making the human body and its parts as such a source of financial gain, the prohibition of the reproductive cloning of human beings.

Article 4 Prohibition of torture and inhuman or degrading treatment or punishment

No one shall be subjected to torture or to inhuman or degrading treatment or punishment.

Article 6 Right to liberty and security

Everyone has the right to liberty and security of person.

Article 7 Respect for private and family life

Everyone has the right to respect for his or her private and family life, home and communications.

CHAPTER III - EQUALITY

Article 20 Equality before the law

Everyone is equal before the law.

Article 21 Non-discrimination

1. Any discrimination based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation shall be prohibited. [...]

²³ European Union, Charter of Fundamental Rights of the European Union, 26 October 2012, 2012/C 326/02, available at http://www.europarl.europa.eu/charter/pdf/text_en.pdf (last visited December 30, 2018). The Charter became legally binding on the EU with the entry into force of the Treaty of Lisbon, in December 2009.

Article 23 Equality between men and women

Equality between men and women must be ensured in all areas, including employment, work and pay. The principle of equality shall not prevent the maintenance or adoption of measures providing for specific advantages in favour of the under-represented sex.

CHAPTER VI - JUSTICE

Article 47 Right to an effective remedy and to a fair trial

Everyone whose rights and freedoms guaranteed by the law of the Union are violated has the right to an effective remedy before a tribunal in compliance with the conditions laid down in this Article. [...]

Legal aid shall be made available to those who lack sufficient resources in so far as such aid is necessary to ensure effective access to justice.

2.3. [EU Directive 2012/29 establishing standards on the rights, support and protection of victims of crime](#) ²⁴

Chapter 4 - Protection of victims and recognition of victims with specific protection needs

Article 18

Right to protection

Without prejudice to the rights of the defence, Member States shall ensure that measures are available to protect victims and their family members from secondary and repeat victimisation, from intimidation and from retaliation, including against the risk of emotional or psychological harm, and to protect the dignity of victims during questioning and when testifying. When necessary, such measures shall also include procedures established under national law for the physical protection of victims and their family members.

Article 22

Individual assessment of victims to identify specific protection needs

1. Member States shall ensure that victims receive a timely and individual assessment, in accordance with national procedures, to identify specific protection needs and to determine whether and to what extent they would benefit from special measures in the course of criminal proceedings, as provided for under Articles 23 and 24, due to their particular vulnerability to secondary and repeat victimisation, to intimidation and to retaliation.

2. The individual assessment shall, in particular, take into account:

- (a) the personal characteristics of the victim;
- (b) the type or nature of the crime; and
- (c) the circumstances of the crime.

3. In the context of the individual assessment, particular attention shall be paid to victims who have suffered considerable harm due to the severity of the crime; victims who have suffered a crime committed with a bias or discriminatory motive which could, in particular, be related to their personal characteristics; *victims whose relationship to and dependence on the offender make them particularly vulnerable. In this regard, victims of terrorism, organised crime, human trafficking, gender-based violence, violence in a close relationship, sexual violence, exploitation or hate crime, and victims with disabilities shall be duly considered.*

4. For the purposes of this Directive, child victims shall be presumed to have specific protection needs due to their vulnerability to secondary and repeat victimisation, to intimidation and to retaliation. [...]

5. The extent of the individual assessment may be adapted according to the severity of the crime and the degree of apparent harm suffered by the victim.

6. Individual assessments shall be carried out with the close involvement of the victim and shall take into account their wishes including where they do not wish to benefit from special measures as provided for in Articles 23 and 24.

7. If the elements that form the basis of the individual assessment have changed significantly, Member States shall ensure that it is updated throughout the criminal proceedings.

Article 23

Right to protection of victims with specific protection needs during criminal proceedings

²⁴ European Union: Council of the European Union, Directive 2012/29/EU of the European Parliament and of the Council of October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA, 14 November 2012, L 315/57, available at <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32012L0029&from=en> (last visited December 30, 2018).

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1. Without prejudice to the rights of the defence and in accordance with rules of judicial discretion, Member States shall ensure that victims with specific protection needs who benefit from special measures identified as a result of an individual assessment provided for in Article 22(1), may benefit from the measures provided for in paragraphs 2 and 3 of this Article. A special measure envisaged following the individual assessment shall not be made available if operational or practical constraints make this impossible, or where there is an urgent need to interview the victim and failure to do so could harm the victim or another person or could prejudice the course of the proceedings.
2. The following measures shall be available during criminal investigations to victims with specific protection needs identified in accordance with Article 22(1): [...]
 - (d) *all interviews with victims of sexual violence, gender-based violence or violence in close relationships, unless conducted by a prosecutor or a judge, being conducted by a person of the same sex as the victim, if the victim so wishes, provided that the course of the criminal proceedings will not be prejudiced.*
3. The following measures shall be available for victims with specific protection needs identified in accordance with Article 22(1) during court proceedings:
 - (a) measures to avoid visual contact between victims and offenders including during the giving of evidence, by appropriate means including the use of communication technology;
 - (b) measures to ensure that the victim may be heard in the courtroom without being present, in particular through the use of appropriate communication technology;
 - (c) measures to avoid unnecessary questioning concerning the victim's private life not related to the criminal offence; and
 - (d) measures allowing a hearing to take place without the presence of the public.

2.4. [African Charter on Human and Peoples' Rights](#)²⁵

Article 2

Every individual shall be entitled to the enjoyment of the rights and freedoms recognized and guaranteed in the present Charter without distinction of any kind such as race, ethnic group, color, sex, language, religion, political or any other opinion, national and social origin, fortune, birth or other status.

Article 3

1. Every individual shall be equal before the law.
2. Every individual shall be entitled to equal protection of the law.

Article 4

Human beings are inviolable. Every human being shall be entitled to respect for his life and the integrity of his person. No one may be arbitrarily deprived of this right.

Article 5

Every individual shall have the right to the respect of the dignity inherent in a human being and to the recognition of his legal status. All forms of exploitation and degradation of man particularly slavery, slave trade, torture, cruel, inhuman or degrading punishment and treatment shall be prohibited.

Article 6

Every individual shall have the right to liberty and to the security of his person. No one may be deprived of his freedom except for reasons and conditions previously laid down by law.

Article 18

1. The family shall be the natural unit and basis of society. It shall be protected by the State which shall take care of its physical health and moral.
2. The State shall have the duty to assist the family which is the custodian of morals and traditional values recognized by the community.
3. The State shall ensure the elimination of every discrimination against women and also ensure the protection of the rights of the woman and the child as stipulated in international declarations and conventions. [...]

Article 28

²⁵ Organization of African Unity, African Charter on Human and Peoples' Rights ("Banjul Charter"), 27 June 1981, CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), entered into force 21 October 1986), available at http://www.achpr.org/files/instruments/achpr/banjul_charter.pdf (last visited December 30, 2018).

Every individual shall have the duty to respect and consider his fellow beings without discrimination, and to maintain relations aimed at promoting, safeguarding and reinforcing mutual respect and tolerance.

Article 29

The individual shall also have the duty:

1. To preserve the harmonious development of the family and to work for the cohesion and respect of the family; to respect his parents at all times, to maintain them in case of need; [...]

2.5. [Protocol to the African Charter on Human and Peoples' Rights on the Right of Women in Africa \(Maputo Protocol\)](#)²⁶

Article 2 Elimination of Discrimination Against Women

1. States Parties shall combat all forms of discrimination against women through appropriate legislative, institutional and other measures. In this regard they shall:
 - a) include in their national constitutions and other legislative instruments, if not already done, the principle of equality between women and men and ensure its effective application;
 - b) enact and effectively implement appropriate legislative or regulatory measures, including those prohibiting and curbing all forms of discrimination particularly those harmful practices which endanger the health and general well-being of women;
 - c) integrate a gender perspective in their policy decisions, legislation, development plans, programmes and activities and in all other spheres of life;
 - d) take corrective and positive action in those areas where discrimination against women in law and in fact continues to exist;
 - e) support the local, national, regional and continental initiatives directed at eradicating all forms of discrimination against women.
2. States Parties shall commit themselves to modify the social and cultural patterns of conduct of women and men through public education, information, education and communication strategies, with a view to achieving the elimination of harmful cultural and traditional practices and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes, or on stereotyped roles for women and men.

Article 3 Right to Dignity

1. Every woman shall have the right to dignity inherent in a human being and to the recognition and protection of her human and legal rights.
2. Every woman shall have the right to respect as a person and to the free development of her personality.
3. States Parties shall adopt and implement appropriate measures to prohibit any exploitation or degradation of women.
4. States Parties shall adopt and implement appropriate measures to ensure the protection of every woman's right to respect for her dignity and protection of women from all forms of violence, particularly sexual and verbal violence.

Article 4 The Rights to Life, Integrity and Security of the Person

1. Every woman shall be entitled to respect for her life and the integrity and security of her person. All forms of exploitation, cruel, inhuman or degrading punishment and treatment shall be prohibited.
2. States Parties shall take appropriate and effective measures to:
 - a) enact and enforce laws to prohibit all forms of violence against women including unwanted or forced sex whether the violence takes place in private or public;
 - b) adopt such other legislative, administrative, social and economic measures as may be necessary to ensure the prevention, punishment and eradication of all forms of violence against women;
 - c) identify the causes and consequences of violence against women and take appropriate measures to prevent and eliminate such violence;
 - d) actively promote peace education through curricula and social communication in order to eradicate elements in traditional and cultural beliefs, practices and stereotypes which legitimise and exacerbate the persistence and tolerance of violence against women;
 - e) punish the perpetrators of violence against women and implement programmes for the rehabilitation of women victims;
 - f) establish mechanisms and accessible services for effective information, rehabilitation and reparation for victims of violence against women;

²⁶ African Union, Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa, 11 July 2003, available at http://www.achpr.org/files/instruments/women-protocol/achpr_instr_proto_women_eng.pdf (last visited December 30, 2018).

- i) provide adequate budgetary and other resources for the implementation and monitoring of actions aimed at preventing and eradicating violence against women; [...]

Article 8 Access to Justice and Equal Protection before the Law

Women and men are equal before the law and shall have the right to equal protection and benefit of the law. States Parties shall take all appropriate measures to ensure:

- a) effective access by women to judicial and legal services, including legal aid;
- b) support to local, national, regional and continental initiatives directed at providing women access to legal services, including legal aid;
- c) the establishment of adequate educational and other appropriate structures with particular attention to women and to sensitise everyone to the rights of women;
- d) that law enforcement organs at all levels are equipped to effectively interpret and enforce gender equality rights;
- e) that women are represented equally in the judiciary and law enforcement organs;
- f) reform of existing discriminatory laws and practices in order to promote and protect the rights of women.

2.6. [American Convention on Human Rights](#)²⁷

Article 4. Right to Life

1. Every person has the right to have his life respected. This right shall be protected by law and, in general, from the moment of conception. No one shall be arbitrarily deprived of his life. [...]

Article 5. Right to Humane Treatment

- 1. Every person has the right to have his physical, mental, and moral integrity respected.
- 2. No one shall be subjected to torture or to cruel, inhuman, or degrading punishment or treatment. All persons deprived of their liberty shall be treated with respect for the inherent dignity of the human person. [...]

Article 7. Right to Personal Liberty

- 1. Every person has the right to personal liberty and security.
- 2. No one shall be deprived of his physical liberty except for the reasons and under the conditions established beforehand by the constitution of the State Party concerned or by a law established pursuant thereto. [...]

Article 11. Right to Privacy

- 1. Everyone has the right to have his honor respected and his dignity recognized.
- 2. No one may be the object of arbitrary or abusive interference with his private life, his family, his home, or his correspondence, or of unlawful attacks on his honor or reputation.
- 3. Everyone has the right to the protection of the law against such interference or attacks.

Article 17. Rights of the Family

- 1. The family is the natural and fundamental group unit of society and is entitled to protection by society and the state. [...]
- 4. The States Parties shall take appropriate steps to ensure the equality of rights and the adequate balancing of responsibilities of the spouses as to marriage, during marriage, and in the event of its dissolution. In case of dissolution, provision shall be made for the necessary protection of any children solely on the basis of their own best interests. [...]

Article 24. Right to Equal Protection

All persons are equal before the law. Consequently, they are entitled, without discrimination, to equal protection of the law.

Article 25. Right to Judicial Protection

- 1. Everyone has the right to simple and prompt recourse, or any other effective recourse, to a competent court or tribunal for protection against acts that violate his fundamental rights recognized by the constitution or laws of the state concerned or by this Convention, even though such violation may have been committed by persons acting in the course of their official duties.
- 2. The States Parties undertake:
 - a. to ensure that any person claiming such remedy shall have his rights determined by the competent authority provided for by the legal system of the state;

²⁷ Organization of American States (OAS), American Convention on Human Rights, "Pact of San Jose", Costa Rica, 22 November 1969, available at <https://www.cidh.oas.org/basicos/english/basic3.american%20convention.htm> (last visited December 30, 2018).

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- b. to develop the possibilities of judicial remedy; and
- c. to ensure that the competent authorities shall enforce such remedies when granted.

2.7. [Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women \(Belem do Para\)](#)²⁸

CHAPTER I
DEFINITION AND SCOPE OF APPLICATION

Article 1

For the purposes of this Convention, violence against women shall be understood as any act or conduct, based on gender, which causes death or physical, sexual or psychological harm or suffering to women, whether in the public or the private sphere.

Article 2

Violence against women shall be understood to include physical, sexual and psychological violence:

- a. that occurs within the family or domestic unit or within any other interpersonal relationship, whether or not the perpetrator shares or has shared the same residence with the woman, including, among others, rape, battery and sexual abuse;
- b. that occurs in the community and is perpetrated by any person, including, among others, rape, sexual abuse, torture, trafficking in persons, forced prostitution, kidnapping and sexual harassment in the workplace, as well as in educational institutions, health facilities or any other place; and
- c. that is perpetrated or condoned by the state or its agents regardless of where it occurs.

CHAPTER II
RIGHTS PROTECTED

Article 3

Every woman has the right to be free from violence in both the public and private spheres.

Article 4

Every woman has the right to the recognition, enjoyment, exercise and protection of all human rights and freedoms embodied in regional and international human rights instruments. These rights include, among others:

- a. The right to have her life respected;
- b. The right to have her physical, mental and moral integrity respected;
- c. The right to personal liberty and security;
- d. The right not to be subjected to torture;
- e. The rights to have the inherent dignity of her person respected and her family protected;
- f. The right to equal protection before the law and of the law;
- g. The right to simple and prompt recourse to a competent court for protection against acts that violate her rights;
- h. The right to associate freely;
- i. The right of freedom to profess her religion and beliefs within the law; and
- j. The right to have equal access to the public service of her country and to take part in the conduct of public affairs, including decision-making.

Article 5

Every woman is entitled to the free and full exercise of her civil, political, economic, social and cultural rights, and may rely on the full protection of those rights as embodied in regional and international instruments on human rights. The States Parties recognize that violence against women prevents and nullifies the exercise of these rights.

Article 6

The right of every woman to be free from violence includes, among others:

- a. The right of women to be free from all forms of discrimination; and
- b. The right of women to be valued and educated free of stereotyped patterns of behavior and social and cultural practices based on concepts of inferiority or subordination.

CHAPTER III

²⁸ Organization of American States (OAS), Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women ("Convention of Belem do Para"), 9 June 1994, available at <http://www.oas.org/juridico/english/treaties/a-61.html> (last visited December 30, 2018).

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DUTIES OF THE STATES

Article 7

The States Parties 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 undertake to:

- a. refrain from engaging in any act or practice of violence against women and to ensure that their authorities, officials, personnel, agents, and institutions act in conformity with this obligation;
- b. apply due diligence to prevent, investigate and impose penalties for violence against women;
- c. include in their domestic legislation penal, civil, administrative and any other type of provisions that may be needed to prevent, punish and eradicate violence against women and to adopt appropriate administrative measures where necessary;
- d. 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;
- e. take all appropriate measures, including legislative measures, to amend or repeal existing laws and regulations or to modify legal or customary practices which sustain the persistence and tolerance of violence against women;
- f. establish fair and effective legal procedures for women who have been subjected to violence which include, among others, protective measures, a timely hearing and effective access to such procedures;
- g. establish the necessary legal and administrative mechanisms to ensure that women subjected to violence have effective access to restitution, reparations or other just and effective remedies; and
- h. adopt such legislative or other measures as may be necessary to give effect to this Convention.

Article 8

The States Parties agree to undertake progressively specific measures, including programs:

- a. to promote awareness and observance of the right of women to be free from violence, and the right of women to have their human rights respected and protected;
- b. to modify social and cultural patterns of conduct of men and women, including the development of formal and informal educational programs appropriate to every level of the educational process, to counteract prejudices, customs and all other practices which are based on the idea of the inferiority or superiority of either of the sexes or on the stereotyped roles for men and women which legitimize or exacerbate violence against women;
- c. to promote the education and training of all those involved in the administration of justice, police and other law enforcement officers as well as other personnel responsible for implementing policies for the prevention, punishment and eradication of violence against women;
- d. to provide appropriate specialized services for women who have been subjected to violence, through public and private sector agencies, including shelters, counseling services for all family members where appropriate, and care and custody of the affected children;
- e. to promote and support governmental and private sector education designed to raise the awareness of the public with respect to the problems of and remedies for violence against women;
- f. to provide women who are subjected to violence access to effective readjustment and training programs to enable them to fully participate in public, private and social life;
- g. to encourage the communications media to develop appropriate media guidelines in order to contribute to the eradication of violence against women in all its forms, and to enhance respect for the dignity of women;
- h. to ensure research and the gathering of statistics and other relevant information relating to the causes, consequences and frequency of violence against women, in order to assess the effectiveness of measures to prevent, punish and eradicate violence against women and to formulate and implement the necessary changes; and
- i. to foster international cooperation for the exchange of ideas and experiences and the execution of programs aimed at protecting women who are subjected to violence.

Article 9

With respect to the adoption of the measures in this Chapter, the States Parties shall take special account of the vulnerability of women to violence by reason of, among others, their race or ethnic background or their status as migrants, refugees or displaced persons. Similar consideration shall be given to women subjected to violence while pregnant or who are disabled, of minor age, elderly, socioeconomically disadvantaged, affected by armed conflict or deprived of their freedom. [...]

3. CONSENSUS DOCUMENTS: RECOMMENDATIONS, RESOLUTIONS AND GUIDELINES

3.1. INTERNATIONAL

3.1.1. [Vienna Declaration and Programme of Action \(World Conference on Human Rights\)](#)²⁹

36. The World Conference on Human Rights urges the full and equal enjoyment by women of all human rights and that this be a priority for Governments and for the United Nations. [...]

38. In particular, the World Conference on Human Rights stresses the importance of working towards the elimination of violence against women in public and private life, the elimination of all forms of sexual harassment, exploitation and trafficking in women, the elimination of gender bias in the administration of justice and the eradication of any conflicts which may arise between the rights of women and the harmful effects of certain traditional or customary practices, cultural prejudices and religious extremism. The World Conference on Human Rights calls upon the General Assembly to adopt the draft declaration on violence against women and urges States to combat violence against women in accordance with its provisions. [...]

3.1.2. [Beijing Declaration and Platform for Action of the Fourth World Conference on Women](#)³⁰

Chapter IV
STRATEGIC OBJECTIVES AND ACTIONS

D. Violence against women

113. Violence against women is an obstacle to the achievement of the objectives of equality, development and peace. Violence against women both violates and impairs or nullifies the enjoyment by women of their human rights and fundamental freedoms. The long-standing failure to protect and promote those rights and freedoms in the case of violence against women is a matter of concern to all States and should be addressed.[...] In all societies, to a greater or lesser degree, women and girls are subjected to physical, sexual and psychological abuse that cuts across lines of income, class and culture. [...]

114. The term "violence against women" means any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or private life. Accordingly, violence against women encompasses but is not limited to the following:

(a) Physical, sexual and psychological violence occurring in the family, including battering, sexual abuse of female children in the household, dowry related violence, marital rape, female genital mutilation and other traditional practices harmful to women, non-spousal violence and violence related to exploitation; [...]

(c) Physical, sexual and psychological violence perpetrated or condoned by the State, wherever it occurs.[...]

Strategic objective D.1. Take integrated measures to prevent and eliminate violence against women. Actions to be taken

125. By Governments:

(a) Condemn violence against women and refrain from invoking any custom, tradition or religious consideration to avoid their obligations with respect to its elimination as set out in the Declaration on the Elimination of Violence against Women;

(b) Refrain from engaging in violence against women and exercise due diligence to prevent, investigate and, in accordance with national legislation, punish acts of violence against women, whether those acts are perpetrated by the State or by private persons;

(c) Enact and/or reinforce penal, civil, labour and administrative sanctions in domestic legislation to punish and redress the wrongs done to women and girls who are subjected to any form of violence, whether in the home, the workplace, the community or society;

(d) Adopt and/or implement and periodically review and analyse legislation to ensure its effectiveness in eliminating violence against women, emphasizing the prevention of violence and the prosecution of offenders; take measures to ensure the protection of women subjected to violence, access to just and effective remedies, including compensation and indemnification and healing of victims, and rehabilitation of perpetrators; [...]

(h) Provide women who are subjected to violence with access to the mechanisms of justice and, as provided for by national legislation, to just and effective remedies for the harm they have suffered and inform women of their rights in seeking redress through such mechanisms;

²⁹ UN General Assembly, Vienna Declaration and Programme of Action, 12 July 1993, A/CONF.157/23, available at <http://www.refworld.org/docid/3ae6b39ec.html> (last visited December 30, 2018).

³⁰ United Nations, Beijing Declaration and Platform of Action, adopted at the Fourth World Conference on Women, 27 October 1995, available at <http://www.refworld.org/docid/3dde04324.html> (last visited December 30, 2018).

(i) Enact and enforce legislation against the perpetrators of practices and acts of violence against women, such as female genital mutilation, prenatal sex selection, infanticide and dowry-related violence and give vigorous support to the efforts of non-governmental and community organizations to eliminate such practices; [...]

I. Human rights of women

Actions to be taken

232. By Governments:

[...]

(l) Review and amend criminal laws and procedures, as necessary, to eliminate any discrimination against women in order to ensure that criminal law and procedures guarantee women effective protection against, and prosecution of, crimes directed at or disproportionately affecting women, regardless of the relationship between the perpetrator and the victim, and ensure that women defendants, victims and/or witnesses are not revictimized or discriminated against in the investigation and prosecution of crimes; [...]

3.1.3. [UN Gen. Ass. Declaration on the Elimination of Violence Against Women \(DEVAW\)](#) ³¹

The General Assembly, [...]

Affirming that violence against women constitutes a violation of the rights and fundamental freedoms of women and impairs or nullifies their enjoyment of those rights and freedoms, and concerned about the long-standing failure to protect and promote those rights and freedoms in the case of violence against women,

Recognizing that violence against women is a manifestation of historically unequal power relations between men and women, [...]

Solemnly proclaims the following Declaration on the Elimination of Violence against Women and urges that every effort be made so that it becomes generally known and respected:

Article 1

For the purposes of this Declaration, the term "violence against women" means any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life.

Article 2

Violence against women shall be understood to encompass, but not be limited to, the following:

- (a) Physical, sexual and psychological violence occurring in the family, including battering, sexual abuse of female children in the household, dowry-related violence, marital rape, female genital mutilation and other traditional practices harmful to women, non-spousal violence and violence related to exploitation;
- (b) Physical, sexual and psychological violence occurring within the general community, including rape, sexual abuse, sexual harassment and intimidation at work, in educational institutions and elsewhere, trafficking in women and forced prostitution;
- (c) Physical, sexual and psychological violence perpetrated or condoned by the State, wherever it occurs.

Article 3

Women are entitled to the equal enjoyment and protection of all human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field. These rights include, inter alia:

- (a) The right to life;
- (b) The right to equality;
- (c) The right to liberty and security of person;
- (d) The right to equal protection under the law;
- (e) The right to be free from all forms of discrimination;
- (f) The right to the highest standard attainable of physical and mental health;
- (g) The right to just and favourable conditions of work;
- (h) The right not to be subjected to torture, or other cruel, inhuman or degrading treatment or punishment.

³¹ UN General Assembly, Declaration on the Elimination of Violence against Women, 20 December 1993, A/RES/48/104, available at <http://www.refworld.org/docid/3b00f25d2c.html> (last visited December 30, 2018).

Article 4

States should condemn violence against women and should not invoke any custom, tradition or religious consideration to avoid their obligations with respect to its elimination. States should pursue by all appropriate means and without delay a policy of eliminating violence against women and, to this end, should: [...]

(c) Exercise due diligence to prevent, investigate and, in accordance with national legislation, punish acts of violence against women, whether those acts are perpetrated by the State or by private persons;

(d) Develop penal, civil, labour and administrative sanctions in domestic legislation to punish and redress the wrongs caused to women who are subjected to violence; women who are subjected to violence should be provided with access to the mechanisms of justice and, as provided for by national legislation, to just and effective remedies for the harm that they have suffered; States should also inform women of their rights in seeking redress through such mechanisms; [...]

(i) Take measures to ensure that law enforcement officers and public officials responsible for implementing policies to prevent, investigate and punish violence against women receive training to sensitize them to the needs of women;

(j) Adopt all appropriate measures, especially in the field of education, to modify the social and cultural patterns of conduct of men and women and to eliminate prejudices, customary practices and all other practices based on the idea of the inferiority or superiority of either of the sexes and on stereotyped roles for men and women; [...]

3.1.4. [U.N. Gen. Ass. Resolution 58/147: Elimination of domestic violence against women](#) ³²

The General Assembly,

[...]

Bearing in mind that domestic violence against women and girls is a human rights issue,

Recognizing that domestic violence against women is, inter alia, a societal problem and a manifestation of unequal power relations between women and men,

Recognizing also that both men and women have and should take responsibility for promoting gender equality,

Recognizing further the serious immediate and long-term implications for health, including sexual and reproductive health, that domestic violence against women can present for individuals and families,

Recognizing the implications of domestic violence for the social and economic development of communities and States,

Underlining the importance of the empowerment of women and their economic independence as critical tools to prevent and eliminate domestic violence against women,

1. *Recognizes:*

(a) That domestic violence is violence that occurs within the private sphere, generally between individuals who are related through blood or intimacy;

(b) That domestic violence is one of the most common and least visible forms of violence against women and that its consequences affect many areas of the lives of victims;

(c) That domestic violence can take many different forms, including physical, psychological and sexual violence;

(d) That domestic violence is of public concern and requires States to take serious action to protect victims and prevent domestic violence;

(e) That domestic violence can include economic deprivation and isolation and that such conduct may cause imminent harm to the safety, health or well-being of women; [...]

3. *Strongly condemns* all forms of domestic violence against women and girls, and in this regard, calls for the elimination of all forms of gender-based violence in the family, including where condoned by the State;

4. *Expresses its concern:*

(a) That women continue to be victims of domestic violence and at the continuing occurrence in all regions of the world of domestic violence, which takes many different forms, and at failure to prosecute and punish the perpetrators;

(b) That domestic violence, including sexual violence in marriage, is still treated as a private matter in some countries;

5. *Stresses* that States have an obligation to exercise due diligence to prevent, investigate and punish the perpetrators of domestic violence against women and to provide protection to the victims, and also stresses that not to do so violates and impairs or nullifies the enjoyment of their human rights and fundamental freedoms;

³² U.N. General Assembly, Resolution Elimination of domestic violence against women, 19 February 2004, A/RES/58/147, available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N03/503/40/PDF/N0350340.pdf?OpenElement> (last visited December 30, 2018).

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6. *Reaffirms* the commitment of States to establish legislation and/or strengthen appropriate mechanisms to handle criminal matters relating to all forms of domestic violence, including marital rape and sexual abuse of women and girls, and to ensure that such cases are brought to justice swiftly;

7. *Calls upon States:*

- (a) To adopt, strengthen and implement legislation that prohibits domestic violence, prescribes punitive measures and establishes adequate legal protection against domestic violence and periodically to review, evaluate and revise these laws and regulations so as to ensure their effectiveness in eliminating domestic violence;
- (b) To make domestic sexual violence a criminal offence and to ensure proper investigation and prosecution of perpetrators;
- (c) To adopt and/or strengthen policies and legislation in order to strengthen preventive measures, protect the human rights of victims, ensure proper investigation and prosecution of perpetrators and provide legal and social assistance to victims of domestic violence, and to adopt policies with regard to the rehabilitation of perpetrators;
- (d) To intensify measures aimed at preventing domestic violence against women;
- (e) To ensure greater protection for women, inter alia, by means of, where appropriate, orders restraining violent spouses from entering the family home, or by banning violent spouses from contacting the victim;
- (f) To provide or facilitate the provision of adequate training, inter alia, gender-awareness training, to all professionals who deal with domestic violence, in particular with victims of domestic violence, police officers, judicial and legal personnel, health personnel, educators, youth workers and social workers;
- (g) To provide or facilitate the provision of assistance to victims of domestic violence in lodging police reports and receiving treatment and support, which may include the setting up of one-stop centres, as well as the establishment of safe shelters and centres for victims of domestic violence;
- (h) To protect women in the process of seeking redress from further victimization because of gender-insensitive laws or practices;
- (i) To establish and/or strengthen police response protocols and procedures to ensure that all appropriate actions are taken to protect victims of domestic violence and to prevent further acts of domestic violence;
- (j) To take measures to ensure the protection of women subjected to violence, access to just and effective remedies, inter alia, through compensation and indemnification and healing of victims, and the rehabilitation of perpetrators;
- (k) To intensify efforts to raise collective and individual awareness about violence against women, including through human rights education, to highlight the role of men and boys in the prevention and elimination of domestic violence against women, and to encourage and support initiatives to promote attitudinal and behavioural change on the part of, and the rehabilitation of, perpetrators of violence against women;
- (l) To encourage the efforts of the media to engage in awareness-raising campaigns;
- (m) To take all measures to empower women and strengthen their economic independence, including through equal remuneration for equal work, and increased job opportunities for women, as well as equal access to and control over economic resources, including land, credit, microcredit and traditional saving schemes such as women's banks and cooperatives, and by ensuring property rights and the right to inheritance, with a view to reducing women's vulnerability to all forms of violence, including domestic violence;
- (n) Not to invoke any custom, tradition or religious consideration to avoid their obligations to eliminate violence against women;
- (o) To consider, as a matter of priority, becoming parties to the Convention on the Elimination of All Forms of Discrimination against Women; [...]
- (r) To collect, update and improve the collection of data on violence against women, including through sex-disaggregated information systems, which should be made public and disseminated widely; [...]

3.1.5. [U.N. Gen. Ass. Resolution 71/170: Intensification of efforts to prevent and eliminate all forms of violence against women and girls: domestic violence](#)³³

³³ UN General Assembly, Intensification of efforts to prevent and eliminate all forms of violence against women and girls: domestic violence, 7 February 2017, A/RES/71/170, available at <http://www.refworld.org/docid/58a309124.html> (last visited December 30, 2018). See also UN General Assembly, Intensification of efforts to eliminate all forms of violence against women, 20 December 2012, A/RES/67/144, available at http://www.un.org/ga/search/view_doc.asp?symbol=A/RES/67/144&Lang=E (last visited December 30, 2018). For other General Assembly's Resolutions on the elimination of violence against women, visit the UN Women website at <http://www.un.org/womenwatch/daw/vaw/v-work-ga.htm#in> (last visited December 30, 2018).

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The General Assembly,
[...]

1. Calls upon all States to implement the commitment to eliminate all forms of violence against all women and girls in the public and private spheres, as set out in the 2030 Agenda for Sustainable Development;

2. Stresses that “violence against women” means any act of gender-based violence that results in, or is likely to result in, physical, sexual, psychological or economic harm or suffering to women and girls, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life, including online, and notes the economic and social harm caused by such violence; [...]

4. Stresses that domestic violence can take many different forms, including physical, psychological and sexual violence, economic deprivation and isolation, and neglect, and occurs within the family or domestic unit and generally between current or former partners or individuals who are related through blood or intimacy;

5. Strongly condemns all forms of violence against women and girls, including domestic violence, while recognizing that it is an impediment to the achievement of gender equality and to the full realization of their human rights, and while expressing concern that domestic violence is the most prevalent and least visible form of violence against women and girls and that its consequences are long lasting and profound and affect many areas in the lives of victims;

6. Recognizes that violence against women and girls persists in every country in the world as a pervasive violation, abuse or impairment of human rights and is a major impediment to achieving gender equality and the empowerment of all women and girls, sustainable development, peace, security and the internationally agreed development goals, in particular the 2030 Agenda for Sustainable Development;

7. Urges States to condemn violence against women and girls, including domestic violence, and reaffirms that they should not invoke any custom, tradition or religious consideration to avoid their obligations with respect to its elimination and should pursue, by all appropriate means and without delay, a policy of eliminating violence against women as set out in the Declaration on the Elimination of Violence against Women; [...]

12. Recognizes that violence against women and girls, including domestic violence, can take the form of an isolated act or pattern of abusive behaviour that may occur over a period of time, which as a pattern constitutes violence against women and girls, and can occur in digital and online spaces and include cyberbullying and cyberstalking; [...]

14. Calls upon States to take effective action to prevent and eliminate domestic violence without delay, including by:

(a) Adopting, strengthening and implementing legislation that prohibits domestic violence and adequately penalizes offences involving physical, sexual, psychological and economic violence occurring in families, and establishing adequate legal protection against such violence, including victim and witness protection from reprisals for bringing complaints or giving evidence;

(b) Preventing violations and taking steps to prevent abuses of all human rights of women and girls, devoting particular attention to abolishing practices and legislation that discriminate against women and girls, including, as applicable, provisions in civil, criminal and personal status law governing marriage and family relations, eliminating prejudices, harmful practices and gender stereotypes and raising awareness of the unacceptability of violence against women and girls, including domestic violence, at all levels throughout their life course;

(c) Accelerating efforts to develop, review and strengthen inclusive and gender-responsive policies, including by allocating adequate resources, to address the structural and underlying causes of domestic violence against women and girls, to overcome gender stereotypes and negative social norms, to encourage the media to examine the impact of gender-role stereotypes, including those perpetuated by commercial advertisements, that foster gender-based violence, sexual exploitation and inequalities, to promote zero tolerance for such violence and to remove the stigma of being a victim and survivor of violence, thus creating an enabling and accessible environment where women and girls can easily report incidents of violence and make use of the services available, including protection and assistance programmes;

(d) Taking measures to ensure that all officials responsible for implementing policies and programmes aimed at preventing violence against women and girls, including domestic violence, protecting and assisting the victims and investigating and punishing acts of violence receive ongoing, adequate and gender- and culturally sensitive training to be aware of gender-specific needs, as well as of the underlying causes and short- and long-term impact of domestic violence;

(e) Evaluating and assessing the impact of current legislation, rules and procedures regarding violence against women and girls, including domestic violence, with a view to ensuring access to justice, improving rates of reporting and addressing the high attrition rate from reporting to conviction, and reinforcing, where necessary, criminal law and procedure relating to all forms of violence against women and girls, including domestic violence, with a focus on prevention and the protection of women and accessible and effective redress for victims; [...]

15. Urges States to address structural and underlying causes and risk factors so as to prevent domestic violence, including by:

- (a) Investing in the full realization of the right to education by, inter alia, eliminating illiteracy, developing equitable, quality, inclusive and gender-sensitive educational programmes, in particular in rural and remote areas, and by closing the gender gap at all levels of education, [...]
- (b) Emphasizing the important role that men and boys can play in preventing and eliminating violence against women and girls, including domestic violence, and further developing and implementing measures that reinforce non-violent actions, attitudes and values and encourage men and boys to take an active part and become strategic partners and allies in the prevention and elimination of all forms of violence and discrimination against women and girls, in order to break intergenerational cycles of violence;
- (c) Promoting awareness among all stakeholders of the need to eliminate all forms of violence against women and girls occurring in public or private life and promoting gender equality and the empowerment of women and girls, inter alia through the regular and repeated use and funding of awareness-raising campaigns nationwide [...]
- (d) Taking measures to empower women by, inter alia, strengthening their economic autonomy and ensuring their full and equal participation in society and in decision-making processes [...]
- (e) Adopting all appropriate measures in the field of education to modify the social and cultural patterns of conduct of men and women of all ages in order to promote the development of respectful relations and to eliminate prejudices, harmful customary practices and all other practices based on the idea of the inferiority or superiority of either of the sexes and on stereotyped roles for men and women, and raising awareness of the unacceptability of violence against women and girls at all levels, in the public and private spheres; [...]

16. Also urges States to take effective action to protect victims of all forms of violence, including domestic violence, including by:

- (a) Providing relevant, comprehensive and victim-centred legal protection to support and assist victims of domestic violence in a gender-sensitive manner, within the framework of their national legal systems, including, as appropriate, legislative or other measures throughout the criminal and civil justice system;
- (b) Establishing comprehensive, coordinated, interdisciplinary, accessible and sustained multisectoral services, programmes and responses for all victims and survivors of all forms of violence, including domestic violence, that are adequately resourced, include effective and coordinated action by, as appropriate, relevant stakeholders, such as the police and the justice sector, as well as providers of legal aid services, health-care services, medical and psychological assistance, counselling services and protection, and, in cases of girl victims, ensure that such services, programmes and responses take into account the best interests of the child;
- (c) Providing for access to appropriate remedies for victims and survivors, and ensuring the protection and empowerment of women and girls, including through adequate enforcement by the police and the judiciary of civil remedies, orders of protection and criminal sanctions;
- (d) Establishing and/or strengthening police and health workers' response protocols and procedures to ensure that all appropriate actions are taken to protect victims of domestic violence, to identify acts of violence and to prevent further acts of violence and psychological harm, taking into account the need to ensure and maintain the privacy and confidentiality of the victim;
- (e) Putting in place measures, and where they exist, expanding such measures, in order to ensure the availability and accessibility, for victims and survivors and their children, of services, programmes and opportunities for their full recovery and reintegration into society, as well as full access to justice, and ensuring the provision of adequate and timely information on available support services and legal measures, when possible in a language that they understand and in which they can communicate;

17. Encourages States to systematically collect, analyse and disseminate data disaggregated by sex, age and other relevant parameters, including, where appropriate, administrative data from the police, the health sector and the judiciary, to monitor all forms of violence against women and girls, including domestic violence [...] in order to effectively review and implement laws, policies, strategies and preventive and protective measures [...]

3.1.6. [Human Rights Council Resolution 29/14 Accelerating efforts to eliminate all forms of violence against women: eliminating domestic violence](#) ³⁴

The Human Rights Council, [...]

³⁴ Human Rights Council, Accelerating efforts to eliminate all forms of violence against women: eliminating domestic violence, 22 July 2015, Resolution A/HRC/RES/29/14, available at <https://www.right-docs.org/doc/a-hrc-res-29-14/> (last visited December 30, 2018).

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Gravely concerned that domestic violence, including intimate partner violence, remains the most prevalent form of violence affecting women of all social strata across the world, and emphasizing that such violence is a violation, abuse or impairment of the enjoyment of their human rights and, as such, is unacceptable, [...]

1. Stresses that “violence against women” means any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women of any age and girls, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life, and also notes the economic and social harm caused by such violence;
2. Also stresses that domestic violence can take many different forms, including physical, psychological and sexual violence, economic deprivation and isolation, and neglect, occurs within the family or domestic unit, and generally between individuals who are related through blood or intimacy;
3. Strongly condemns all forms of violence against women of all ages, including domestic violence, while recognizing that it is an impediment to achieving gender equality and to the full realization of all human rights of women, while expressing concern that domestic violence is the most prevalent and least visible forms of violence against women and girls and that its consequences are long-lasting and profound and affect many areas in the lives of victims;
4. Recognizes that violence against women, including domestic violence, can take the form of an isolated act or pattern of abusive behaviour that may occur over a period of time, which as a pattern constitutes violence against women, and can include acts such as cyberbullying and cyberstalking;
5. Urges States to strongly condemn all forms of violence against women and girls, and to refrain from invoking any custom, tradition or religious consideration to avoid their obligations with respect to its elimination, including harmful practices, such as child, early and forced marriage and female genital mutilation, as set out in the Declaration on the Elimination of Violence against Women;
6. Underscores that domestic violence is of public concern and that States have the primary responsibility for protecting and promoting the human rights of women and girls facing violence, including those facing domestic violence; [...]
8. Calls upon States to take effective action to prevent domestic violence, including by:
 - (a) Publicly condemning, addressing and penalizing the perpetrators of offences involving physical, sexual and psychological violence and economic deprivation occurring in the family, which encompasses but is not limited to battering, sexual abuse of women and girls in the household, incest, dowry-related violence, marital rape, partner violence, femicide, female infanticide, crimes committed against women and girls in the name of so-called “honour”, crimes committed in the name of passion, practices harmful to women and girls such as child, early and forced marriage, and female genital mutilation;
 - (b) Preventing violations and taking steps to prevent abuses of all human rights of women and girls, devoting particular attention to abolishing practices and legislation that discriminate against women and girls, eliminating prejudices, harmful practices and gender stereotypes and raising awareness of the unacceptability of violence against women and girls, including domestic violence, at all levels;
 - (c) Accelerating efforts to develop, review and strengthen inclusive policies, including by allocating adequate resources to address the structural and underlying causes of domestic violence against women and girls, to overcome gender stereotypes, to encourage media to examine the impact of gender-role stereotypes, [...] to promote zero tolerance for such violence and to remove the stigma of being a victim and survivor of violence, thus creating an enabling and accessible environment where women and girls can easily report incidents of violence and make use of the services available, including protection and assistance programmes;
 - (d) Ensuring access to justice and effective remedies for domestic violence, to ensure accountability of perpetrators as a deterrent for domestic violence against women and girls;
 - (e) Promoting effective preventive measures at an early stage with women, families and children exposed to or at risk of domestic violence, such as parenting education and programmes and child counselling services, to reduce the risk of possible perpetration of violence or re-victimization;

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(f) Emphasizing the important role that men and boys can play in preventing and eliminating violence against women and girls, and further developing and implementing measures that reinforce non-violent actions, attitudes and values, and encourage men and boys to take an active part and become strategic partners and allies in the prevention and elimination of all forms of violence and discrimination against women and girls, and the importance of effectively responding to violence against boys as well, in order to break intergenerational cycles of violence;

(g) Promoting primary prevention efforts with a coordinated range of mutually reinforcing strategies to drive a change in the culture, attitudes and behaviour that underpin violence against women and girls;

(h) Taking measures to empower women by, inter alia, strengthening their economic autonomy and ensuring their full and equal participation in society and in decision-making processes [...];

9. Also calls upon States to take effective action to respond to domestic violence, including by:

(a) Adopting, strengthening and implementing legislation that prohibits such violence, including partner violence and marital rape, prescribes punitive measures and establishes adequate legal protection against such violence, including victim and witness protection from reprisals for bringing complaints or giving evidence;

(b) Ensuring women's and girls' unimpeded access to justice, effective legal assistance and information regarding their rights without discrimination so that they have access to just and effective remedies for the harm that they have suffered, including through, where necessary, the adoption of national legislation;

(c) Exercising due diligence to prevent, investigate and penalize all forms of violence against women and girls and to ensure accountability for acts of domestic violence, including by providing safe and appropriate complaint channels;

(d) Creating, developing and implementing a set of policies, and supporting the establishment of rehabilitative services, in order to encourage and bring changes in the attitudes and behaviour of perpetrators of violence against women and girls, and to reduce the likelihood of reoffending, including in cases of domestic violence, rape and harassment, as well as monitoring and assessing their impact and effect;

(e) Establishing comprehensive, coordinated, interdisciplinary, accessible and sustained multisectoral services, programmes and responses at all levels to provide immediate protection and support through which shelter and legal, health and psychological counselling and other services are available to all women facing or subjected to violence, and promoting collaboration and coordination among agencies;

(f) Providing training to relevant public officials in law enforcement, the administration of justice, and education and health sectors to be aware of, and responsive, sensitive and diligent with regard to the nature, incidence, underlying causes and short- and long-term impact of domestic violence;

10. Urges States to take effective action to protect victims of domestic violence, including by:

(a) Providing relevant, comprehensive, victim-centered legal protections to support and assist victims of domestic violence within the framework of their national legal systems, including, as appropriate, legislative or other measures throughout the criminal and civil justice system, such as specialized courts, protection orders, the use of threat assessments and risk analysis tools, and provisions to address their special needs as witnesses, at all stages of investigations and judicial proceedings;

(b) Establishing comprehensive, coordinated, interdisciplinary, accessible and sustained multisectoral services, programmes and responses at all levels for all victims and survivors of all forms of violence against women and girls, including domestic violence, that are adequately resourced and include effective and coordinated action by, as appropriate, police and the justice sector, legal aid services, health-care services, including for sexual and reproductive health, and medical and psychological assistance and counselling services, as well as State and independent women's shelters and counselling centres, 24-hour hotlines, social aid services, one-stop crisis centres, child aid services, skills training and public housing services that would provide easy to reach and safe assistance for women and children, including women and girls with disabilities, as well as assistance, protection and support through access to long-term accommodation;

(c) Fulfilling their obligations at all levels to promote and protect all human rights and fundamental freedoms, including those of women and girls, and exercising due diligence to prevent, investigate, prosecute and hold to account perpetrators, and to eliminate impunity and provide for access to appropriate remedies for victims and survivors, and should ensure the protection

and empowerment of women and girls, including through adequate enforcement by police and the judiciary of civil remedies, orders of protection and criminal sanctions;

(d) Establishing and/or strengthening police and health workers' response protocols and procedures to ensure that all appropriate actions are taken to protect victims of domestic violence and to prevent further acts of domestic violence; [...]

3.1.7. [Human Rights Council Resolution 11/2: Accelerating efforts to eliminate all forms of violence against women](#) ³⁵

The Human Rights Council,

1. Stresses that “violence against women” means any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or private life;

2. Strongly condemns all acts of violence against women and girls, whether they be perpetrated by the State, private persons or non-State actors, and calls for the elimination of all forms of gender-based violence in the family, within the general community and where perpetrated or condoned by the State, in accordance with the Declaration on the Elimination of Violence against Women, and stresses the need to treat all forms of violence against women and girls as a criminal offence, punishable by law, and the duty to provide access to just and effective remedies and specialized assistance to victims, including medical and psychological assistance, as well as effective counselling;

3. Stresses that States have the obligation to promote and protect all human rights and fundamental freedoms of women and girls and must exercise due diligence to prevent, investigate, prosecute and punish the perpetrators of violence against women and girls and provide protection to the victims, and that failure to do so violates and impairs or nullifies the enjoyment of their human rights and fundamental freedoms;

4. Calls upon States to enact and, where necessary, reinforce or amend domestic legislation, including measures to enhance the protection of victims, to investigate, prosecute, punish and redress the wrongs done to women and girls subjected to any form of violence, whether in the home, the workplace, the community or society, in custody or in situations of armed conflict, to ensure that such legislation conforms with relevant international human rights instruments and international humanitarian law, to abolish existing laws, regulations, customs and practices which constitute discrimination against women, to remove gender bias in the administration of justice, and to take action to investigate and punish persons who perpetrate acts of violence against women and girls; [...]

3.1.8. [UN Commission on the Status of Women, Agreed conclusions on the elimination and prevention of all forms of violence against women and girls](#) ³⁶

[...]

12. The Commission strongly condemns all forms of violence against women and girls. It recognizes their different forms and manifestations, in different contexts, settings, circumstances and relationships, and that domestic violence remains the most prevalent form that affects women of all social strata across the world. It also notes that women and girls who face multiple forms of discrimination are exposed to increased risk of violence. [...]

14. The Commission urges States to strongly condemn all forms of violence against women and girls and to refrain from invoking any custom, tradition or religious consideration to avoid their obligations with respect to its elimination as set out in the Declaration on the Elimination of Violence against Women. [...]

16. The Commission stresses that all States have the obligation, at all levels, to use all appropriate means of a legislative, political, economic, social and administrative nature in order to promote and protect all human rights and fundamental freedoms of women and girls, and must exercise due diligence to prevent, investigate, prosecute and punish the perpetrators

³⁵ Human Rights Council, Accelerating efforts to eliminate all forms of violence against women, 17 June 2009, Resolution 11/2, available at http://www.un.org/womenwatch/daw/vaw/humanrights/A_HRC_RES_11_2.pdf (last visited December 30, 2018).

See also Human Rights Council, Accelerating efforts to eliminate all forms of violence against women: ensuring due diligence in prevention, 30 June 2010, A/HRC/RES/14/12, available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G10/147/99/PDF/G1014799.pdf?OpenElement> (last visited December 30, 2018).

³⁶ UN Commission on the Status of Women: Agreed conclusions on the elimination and prevention of all forms of violence against women and girls, E/2013/27, available at <http://www.unwomen.org/-/media/headquarters/attachments/sections/csw/57/csw57-agreedconclusions-a4-en.pdf?la=en&vs=700> (last visited December 30, 2018).

of violence against women and girls and end impunity, and to provide protection as well as access to appropriate remedies for victims and survivors.

24. The Commission expresses concern about violent gender-related killings of women and girls, while recognizing efforts made to address this form of violence in different regions, including in countries where the concept of femicide or feminicide has been incorporated in national legislation.

34. The Commission urges governments, at all levels, and as appropriate, with the relevant entities of the United Nations system, international and regional organizations, within their respective mandates and bearing in mind national priorities, and invites national human rights institutions where they exist, civil society, including non-governmental organizations, the private sector, employer organizations, trade unions, media and other relevant actors, as applicable, to take the following actions:

A. Strengthening implementation of legal and policy frameworks and accountability

[...]

(c) Adopt, as appropriate, review, and ensure the accelerated and effective implementation of laws and comprehensive measures that criminalize violence against women and girls and that provide for multidisciplinary and gender-sensitive preventive and protective measures, such as emergency barring orders and protection orders, the investigation, submission for prosecution and appropriate punishment of perpetrators to end impunity, support services that empower victims and survivors, as well as access to appropriate civil remedies and redress;

(d) Address and eliminate, as a matter of priority, domestic violence through adopting, strengthening and implementing legislation that prohibits such violence, prescribes punitive measures and establishes adequate legal protection against such violence;

(e) Strengthen national legislation, where appropriate, to punish violent gender-related killings of women and girls, and integrate specific mechanisms or policies to prevent, investigate and eradicate such deplorable forms of gender-based violence;

(f) Ensure women's and girls' unimpeded access to justice and to effective legal assistance so that they can make informed decisions regarding, inter alia, legal proceedings and issues relating to family law and criminal law, and also ensure that they have access to just and effective remedies for the harm that they have suffered, including through the adoption of national legislation where necessary;

(g) Take the necessary legislative and/or other measures to prohibit compulsory and forced alternative dispute resolution processes, including forced mediation and conciliation, in relation to all forms of violence against women and girls;

(h) Review and where appropriate, revise, amend or abolish all laws, regulations, policies, practices and customs that discriminate against women or have a discriminatory impact on women, and ensure that the provisions of multiple legal systems, where they exist, comply with international human rights obligations, commitments and principles, including the principle of non-discrimination;

(i) Mainstream a gender perspective into all legislation, policies and programmes, and allocate adequate financial and human resources, [...]

3.1.9. [U.N. Updated Model Strategies and Practical Measures on the Elimination of Violence against Women in the Field of Crime Prevention and Criminal Justice](#)³⁷

Preamble

1. The multifaceted nature of violence against women necessitates different strategies to respond to the diverse manifestations of violence and the various settings in which it occurs, both in private and in public life, whether committed in the home, the workplace, educational and training institutions, the community or society, in custody or in situations of armed conflict or natural disaster. In the updated Model Strategies and Practical Measures on the Elimination of Violence against Women in the Field of Crime Prevention and Criminal Justice, the importance of adopting a systematic, comprehensive, coordinated, multisectoral and sustained approach to fighting violence against women is recognized. The practical measures, strategies and activities described below can be introduced in the field of crime prevention and criminal justice to address violence against women. [...]

³⁷ U.N. General Assembly, Updated Model Strategies and Practical Measures on the Elimination of Violence against Women in the Field of Crime Prevention and Criminal Justice, 31 March 2011, A/RES/65/228, Annex., available at https://www.unodc.org/documents/justice-and-prison-reform/crimeprevention/Model_Strategies_and_Practical_Measures_on_the_Elimination_of_Violence_against_Women_in_the_Field_of_Crime_Prevention_and_Criminal_Justice.pdf (last visited December 30, 2018).

7. The updated Model Strategies and Practical Measures recognize that crime prevention and criminal justice responses to violence against women must be focused on the needs of victims and empower individual women who are victims of violence.[...]

12. The updated Model Strategies and Practical Measures recognize that States have the obligation to promote and protect the human rights and fundamental freedoms of all people, including women, and that they must exercise due diligence and take relevant measures to prevent, investigate and punish the perpetrators of violence against women, to eliminate impunity and to provide protection to the victims, and that failure to do so violates and impairs or nullifies the enjoyment of women's human rights and fundamental freedoms. [...]

II. Criminal law

14. Member States are urged:

(a) To review, evaluate and update their national laws, policies, codes, procedures, programmes and practices, especially their criminal laws, on an ongoing basis to ensure and guarantee their value, comprehensiveness and effectiveness in eliminating all forms of violence against women and to remove provisions that allow for or condone violence against women or that increase the vulnerability or revictimization of women who have been subject to violence;

(b) To review, evaluate and update their criminal and civil laws in order to ensure that all forms of violence against women are criminalized and prohibited and, if not, to adopt measures to do so, including measures aimed at preventing violence against women, protecting, empowering and supporting survivors, adequately punishing perpetrators and ensuring available remedies for victims;

(c) To review, evaluate and update their criminal laws in order to ensure that:

(i) Persons who are brought before the courts on judicial matters in respect of violent crimes or who are convicted of such crimes can be restricted in their possession and use of firearms and other regulated weapons, within the framework of their national legal systems;

(ii) Individuals can be prohibited or restrained, within the framework of their national legal systems, from harassing, intimidating or threatening women;

(iii) The laws on sexual violence adequately protect all persons against sexual acts that are not based on the consent of both parties; [...]

(d) To continually review, evaluate and update their national laws, policies, practices and procedures, taking into account all relevant international legal instruments, in order to effectively respond to violence against women, including to ensure that such measures complement and are consistent with the criminal justice system's response to such violence and that civil law decisions reached in marital dissolutions, child custody decisions and other family law proceedings for cases involving domestic violence or child abuse adequately safeguard victims and the best interests of children;

III. Criminal procedure

15. Member States are urged to review, evaluate and update their criminal procedures, as appropriate and taking into account all relevant international legal instruments, in order to ensure that:

(a) The police and other law enforcement agencies have, with judicial authorization where required by national law, adequate powers to enter premises and conduct arrests in cases of violence against women and to take immediate measures to ensure the safety of victims;

(b) The primary responsibility for initiating investigations and prosecutions lies with the police and prosecution authorities and does not rest with women subjected to violence, regardless of the level or form of violence;

(c) Women subjected to violence are enabled to testify in criminal proceedings through adequate measures that facilitate such testimony by protecting the privacy, identity and dignity of the women; ensure safety during legal proceedings; and avoid "secondary victimization". In jurisdictions where the safety of the victim cannot be guaranteed, refusing to testify should not constitute a criminal or other offence;

(d) Evidentiary rules are non-discriminatory; all relevant evidence can be brought before the court; rules and principles of defence do not discriminate against women; and "honour" or "provocation" cannot be invoked by perpetrators of violence against women to escape criminal responsibility; [...]

(f) People who perpetrate acts of violence against women while voluntarily under the influence of alcohol, drugs or other substances are not exempted from criminal responsibility;

(g) Evidence of prior acts of violence, abuse, stalking and exploitation by the perpetrator is considered during court proceedings, in accordance with the principles of national criminal law;

(h) Police and courts have the authority to issue and enforce protection and restraining or barring orders in cases of violence against women, including removal of the perpetrator from the domicile, prohibiting further contact with the victim and other affected parties, inside and outside the domicile; to issue and enforce child support and custody orders; and to impose penalties for breaches of those orders. If such powers cannot be granted to the police, measures must be taken to ensure

timely access to court decisions in order to ensure swift action by the court. Such protective measures should not be dependent on the initiation of a criminal case;

(i) Comprehensive services are provided and protection measures are taken when necessary to ensure the safety, privacy and dignity of victims and their families at all stages of the criminal justice process, without prejudice to the victim's ability or willingness to participate in an investigation or prosecution, and to protect them from intimidation and retaliation, including by establishing comprehensive witness and victim protection programmes;

(j) Safety risks, including the vulnerability of victims, are taken into account in decisions concerning non-custodial or quasi-custodial sentences, the granting of bail, conditional release, parole or probation, especially when dealing with repeat and dangerous offenders;

(k) Claims of self-defence by women who have been victims of violence, particularly in cases of battered woman syndrome, are taken into account in investigations, prosecutions and sentences against them;

(l) All procedures and complaint mechanisms are accessible to women who are victims of violence without fear of reprisal or discrimination.

IV. Police, prosecutors and other criminal justice officials

16. Member States are urged, within the framework of their national legal systems, as appropriate and taking into account all relevant international legal instruments: [...]

(c) To promote the use of specialized expertise in the police, among prosecution authorities and in other criminal justice agencies, including through the establishment, where possible, of specialized units or personnel and specialized courts or dedicated court time, and to ensure that all police officers, prosecutors and other criminal justice officials receive regular and institutionalized training to sensitize them to gender and child-related issues and to build their capacity with regard to violence against women; [...]

(f) To ensure that criminal justice officials and victims' advocates conduct risk assessments that indicate the level or extent of harm that victims may be subjected to based on their vulnerability, the threats to which they are exposed, the presence of weapons and other determining factors;

(g) To ensure that laws, policies, procedures and practices pertaining to decisions on the arrest, detention and terms of any form of release of the perpetrator take into account the need for the safety of the victim and others related through family, socially or otherwise and that such procedures also prevent further acts of violence;

(h) To establish a registration system for judicial protection, restraining or barring orders, where such orders are permitted by national law, so that police or criminal justice officials can quickly determine whether such an order is in force;

(i) To empower and equip police, prosecutors and other criminal justice officials to respond promptly to incidents of violence against women, including by drawing on a rapid court order, where appropriate, and by taking measures to ensure the fast and efficient management of cases;

(j) To ensure that the exercise of powers by police, prosecutors and other criminal justice officials is undertaken according to the rule of law and codes of conduct and that such officials are held accountable for any infringement thereof through appropriate oversight and accountability mechanisms;

(k) To ensure gender-equitable representation in the police force and other agencies of the justice system, particularly at the decision-making and managerial levels;

(l) To provide victims of violence, where possible, with the right to speak to a female officer, whether it be the police or any other criminal justice official; [...]

V. Sentencing and corrections

17. Recognizing the serious nature of violence against women and the need for crime prevention and criminal justice responses that are commensurate with that severity, Member States are urged, as appropriate:

(a) To review, evaluate and update sentencing policies and procedures in order to ensure that they:

(i) Hold offenders accountable for their acts related to violence against women; [...]

(v) Take into account the impact on victims and their family members of sentences imposed on perpetrators; [...]

(vii) Provide reparations for harm caused as a result of the violence; [...]

(b) To ensure that their national laws take into account specific circumstances as aggravating factors for sentencing purposes, including, for example, repeated violent acts, abuse of a position of trust or authority, *perpetration of violence against a spouse or a person in a close relationship with the perpetrator* and perpetration of violence against a person under 18 years of age;

(c) To ensure the right of a victim of violence to be notified of the offender's release from detention or imprisonment;

(d) To take into account, in the sentencing process, the severity of the physical and psychological harm and the impact of victimization, including through victim impact statements; [...]

(f) To develop and evaluate treatment and reintegration/rehabilitation programmes for perpetrators of different types of violence against women that prioritize the safety of the victims; [...]

(i) To provide adequate protection to victims and witnesses of acts of violence before, during and after criminal proceedings.

VI. Victim support and assistance

18. Member States are urged, as appropriate and taking into account all relevant international legal instruments, in particular the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power:

- (a) To make available to women who have been subjected to violence relevant information on rights, remedies and victim support services and on how to obtain them, in addition to information about their role and opportunities for participating in criminal proceedings and the scheduling, progress and ultimate disposition of the proceedings, as well as any orders against the offender;
- (b) To encourage and assist women subjected to violence in lodging and following through on formal complaints by providing protection to the victims and advising them that the responsibility for pursuing charges and prosecuting offenders rests with the police and the prosecution; [...]
- (d) To ensure that women subjected to violence have access to prompt and fair redress for the harm that they have suffered as a result of violence, including the right to seek restitution from the offender or compensation from the State;
- (e) To provide court mechanisms and procedures that are accessible and sensitive to the needs of women subjected to violence and that ensure the fair and timely processing of cases;
- (f) To provide efficient and easily accessible procedures for issuing restraining or barring orders to protect women and other victims of violence and for ensuring that victims are not held accountable for breaches of such orders; [...]
- (h) To ensure that women subjected to violence have full access to the civil and criminal justice systems, including access to free legal aid, where appropriate, court support and interpretation services;
- (i) To ensure that women subjected to violence have access to qualified personnel who can provide victim advocacy and support services throughout the entire criminal justice process, as well as access to any other independent support persons;
- (j) To ensure that all services and legal remedies available to victims of violence against women are also available to immigrant women, trafficked women, refugee women, stateless women and all other women in need of such assistance, and that specialized services for such women are established, where appropriate; [...]

VIII. Training

20. Member States, in cooperation with relevant non-governmental organizations and professional associations, are urged, as appropriate:

- (a) To provide for or to encourage mandatory cross-cultural gender and child-sensitivity training modules for police, criminal justice officials and professionals involved in the criminal justice system on the unacceptability of all forms of violence against women and on their harmful impact and consequences on all those who experience such violence;
- (b) To ensure that police, criminal justice officials and other professionals involved in the criminal justice system receive adequate training and continued education on all relevant national laws, policies and programmes, as well as international legal instruments;
- (c) To ensure that police, criminal justice officials and other relevant authorities are adequately trained to identify and respond appropriately to the specific needs of women victims of violence, including victims of trafficking; to receive and treat all victims respectfully with a view to avoiding secondary victimization; to handle complaints confidentially; to conduct safety assessments and risk management; and to use and enforce protection orders;
- (d) To encourage relevant professional associations to develop enforceable standards of practice and behaviour and codes of conduct that promote justice and gender equality.

3.1.10. [U.N. Framework for Model Legislation on Domestic Violence](#)³⁸

Introduction

This framework for model legislation outlines important elements which are integral to comprehensive legislation on domestic violence. The objective of this model legislation is to serve as a drafting guide to legislatures and organizations committed to lobbying their legislatures for comprehensive legislation on domestic violence.

I. DECLARATION OF PURPOSE

The purpose of this legislation is to:

- (a) Comply with international standards sanctioning domestic violence;

³⁸ A Framework for Model Legislation on Domestic Violence (Report of the Special Rapporteur on violence against women, its causes and consequences, Ms. Radhika Coomaraswamy, submitted in accordance with Commission on Human Rights resolution 1995/85), adopted by Human Rights Commission, 2 February 1996, E/CN.4/1996/53/Add.2, available at <http://hrlibrary.umn.edu/commission/thematic52/53-add2.htm> (last visited December 30, 2018). More generally, for recommendations on the content of model legislation in the area of violence against women, including domestic violence, see U.N. Handbook for Legislation on Violence against Women, 2010, ST/ESA/329, available at <http://www.un.org/womenwatch/daw/vaw/handbook/Handbook%20for%20legislation%20on%20violence%20against%20women.pdf> (last visited December 30, 2018).

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- (b) Recognize that domestic violence is gender-specific violence directed against women, occurring within the family and within interpersonal relationships;
- (c) Recognize that domestic violence constitutes a serious crime against the individual and society which will not be excused or tolerated;
- (d) Establish specific legislation prohibiting violence against women within interpersonal and family relationships, protecting victims of such violence and preventing further violence;
- (e) Create a wide range of flexible and speedy remedies (including remedies under special domestic violence legislation, penal and civil remedies) to discourage domestic violence and harassment of women within interpersonal relationships and within the family and protect women where such violence has taken place;
- (f) Assure victims of domestic violence the maximum protection in cases ranging from physical and sexual to psychological violence;
- (g) Establish departments, programmes, services, protocols and duties, including but not limited to shelters, counselling programmes and job-training programmes to aid victims of domestic violence;
- (h) Facilitate enforcement of the criminal laws by deterring and punishing violence against women within special interpersonal relationships;
 - (i) Enumerate and provide by law comprehensive support services, including but not limited to:
 - (i) Emergency services for victims of abuse and their families;
 - (ii) Support programmes that meet the specific needs of victims of abuse and their families;
 - (iii) Education, counselling and therapeutic programmes for the abuser and the victim;
 - (iv) Programmes to assist in the prevention and elimination of domestic violence which includes raising public awareness and public education on the subject.
- (j) Expand the ability of law enforcement officers to assist victims and to enforce the law effectively in cases of domestic violence and to prevent further incidents of abuse;
- (k) Train judges to be aware of the issues relating to child custody, economic support and security for the victims in cases of domestic violence by establishing guidelines for protection orders and sentencing guidelines which do not trivialize domestic violence;
- (l) Provide for and train counsellors to support police, judges and the victims of domestic violence and to rehabilitate perpetrators of domestic violence;
- (m) Develop a greater understanding within the community of the incidence and causes of domestic violence and encourage community participation in eradicating domestic violence.

II. DEFINITIONS

It is urged that States adopt the broadest possible definitions of acts of domestic violence and relationships within which domestic violence occurs, bearing in mind that such violations are not as culture-specific as initially observed, since increasing migration flows are blurring distinctive cultural practices, formally or informally. Furthermore, the broadest definitions should be adopted with a view to compatibility with international standards.

States are urged to enact comprehensive domestic violence legislation which integrates criminal and civil remedies rather than making marginal amendments to existing penal and civil laws.

A. Domestic violence

Legislation shall clearly state that violence against women in the family and violence against women within interpersonal relationships constitute domestic violence.

The language of the law must be clear and unambiguous in protecting women victims from gender-specific violence within the family and intimate relationships. Domestic violence must be distinguished from intra-family violence and legislated for accordingly.

B. Relationships to be regulated

The relationships which come within the purview of legislation on domestic violence must include: wives, live-in partners, former wives or partners, girl-friends (including girl-friends not living in the same house), female relatives (including but not restricted to sisters, daughters, mothers) and female household workers.

States should not permit religious or cultural practices to form an impediment to offering all women this protection.

States should offer this protection to non-national women and hold nonnational men accountable to the same standards as men of their nationality.

There shall be no restrictions on women bringing suits against spouses or live-in partners. Evidence laws and criminal and civil procedure codes shall be amended to provide for such contingencies.

C. Acts of domestic violence

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All acts of gender-based physical, psychological and sexual abuse by a family member against women in the family, ranging from simple assaults to aggravated physical battery, kidnapping, threats, intimidation, coercion, stalking, humiliating verbal abuse, forcible or unlawful entry, arson, destruction of property, sexual violence, marital rape, dowry or bride-price related violence, female genital mutilation, violence related to exploitation through prostitution, violence against household workers and attempts to commit such acts shall be termed "domestic violence".

III. COMPLAINT MECHANISMS

The law shall provide for victims, witnesses of domestic violence, family members and close associates of victims, State and private medical service providers and domestic violence assistance centres to complain of incidents of domestic violence to the police or file action in court.

A. Duties of police officers

The law shall provide that police officers shall respond to every request for assistance and protection in cases of alleged domestic violence.

Police officers shall not assign a lower priority to calls concerning alleged abuse by family and household members than to calls alleging similar abuse and violations by strangers.

Police shall respond at the scene of domestic violence when:

- (a) The reporter indicates that violence is imminent or is in progress;
- (b) The reporter indicates that an order relative to domestic violence is in effect and is likely to be breached;
- (c) The reporter indicates that domestic violence has occurred previously.

The police shall respond promptly even where the reporter is not the victim of the violence but is a witness of the violence, a friend or a relative of the victim, or is a health provider or professional working at a domestic violence assistance centre.

On receiving the complaint the police shall:

- (a) Interview the parties and witnesses, including children, in separate rooms to ensure an opportunity to speak freely;
- (b) Record the complaint in detail;
- (c) Advise the victim of her rights as outlined below;
- (d) Fill out and file a domestic violence report as provided for by the law;
- (e) Provide or arrange transport for the victim to the nearest hospital or medical facility for treatment, if it is required;
- (f) Provide or arrange transport for the victim and the victim's children or dependents to a safe place or shelter, if it is required;
- (g) Provide protection to the reporter of violence;
- (h) Arrange for the removal of the offender from the home and, if that is not possible and if the victim is in continuing danger, arrest the offender.

B. Alternative complaint procedure

The victim, witness or reporter may file a complaint alleging an act of domestic violence in the judicial division where:

- (a) The offender resides;
- (b) The victim resides;
- (c) Where the violence took place;
- (d) Where the victim is temporarily residing if she has left her residence to avoid further abuse.

The victim may file a complaint alleging an act of domestic violence with a State or private health facility, which shall direct it to the police in the judicial division where that health facility is located.

A relative, friend or person from whom the victim requests assistance may file a complaint alleging an act of domestic violence with the police, who shall investigate it accordingly.

C. Statement of the victim's rights

The purpose of the statement of the victim's rights is to acquaint the victim with the legal remedies available to her during the initial stage when she complains of an infringement of her legal rights. It also outlines the duties of the police and the judiciary in relation to the victim:

- (a) The police officer shall communicate to the victim in a language understood by the victim, identifying himself or herself by name and badge number. The law requires that the police officer inform the victim of domestic violence that, if a crime is alleged to have been committed against her, the officer must either arrest the suspect immediately, persuade him to leave the household or remove him from the household;
- (b) The officer must drive the victim or help her find transport to a medical facility to have her injuries attended to;
- (c) If the victim wants to leave her residence the officer must help her to find transport to a safe place or shelter;
- (d) The officer shall take all reasonable steps to ensure that the victim and her dependents are safe;
- (e) The officer must provide the victim with a written statement of the legal procedures available to her, in a language that she understands. The statement must indicate that:

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- (i) The law provides that the victim may seek an ex parte restraining court order and/or a court order prohibiting further abuse against the victim, her dependents, anyone in her household or anyone from whom she requests assistance and refuge;
- (ii) The restraining order and/or court order shall protect the victim's property or property held in common from destruction;
- (iii) The restraining order may order the offender to vacate the family home;
- (iv) In the event of the violence taking place during the night, at weekends or on public holidays, the victim must be informed of emergency relief measures to obtain a restraining order by calling the judge on duty;
- (v) The victim need not hire a lawyer to get an ex parte restraining order or court order;
- (vi) The offices of the clerk of the court shall provide forms and non-legal assistance to persons seeking to proceed with ex parte restraining orders or court orders. To obtain a court order, the victim must be advised to apply to the court in the prescribed district/jurisdiction;
- (vii) The police shall serve the ex parte restraining order on the offender.

D. Domestic violence report

It shall be the duty of the police officer responding to a domestic violence call to complete a domestic violence report which shall be a part of the record. The report should be collated by the Department of Justice and (where applicable) the family court.

The domestic violence report shall be on a form prescribed by the police commissioner. It shall include but not be limited to:

- (a) The relationship of the parties;
- (b) The sex of the parties;
- (c) Information regarding the occupational and educational levels of the parties;
- (d) The time and date the complaint was received;
- (e) The time the officer began investigation of the complaint;
- (f) Whether children were involved and whether the domestic violence took place in the presence of children;
- (g) The type and extent of the abuse;
- (h) The number and type of weapons used;
- (i) The amount of time taken in handling the case and the actions taken by the officer;
- (j) The effective date and terms of the order issued concerning the parties;
- (k) Any other data necessary for a complete analysis of all the circumstances leading to the alleged incident of domestic violence.

It shall be the duty of the police commissioner to compile and report annually to the Departments of Justice/Women's Affairs and the Parliament all data collected from the domestic violence reports.

The annual report shall include but not be limited to:

- (a) The total number of reports received;
- (b) The number of reports made by the victims of each sex;
- (c) The number of reports investigated;
- (d) The average time lapse in responding to each report;
- (e) The type of police action taken in disposing cases including the number of arrests.

IV. DUTIES OF JUDICIAL OFFICERS

A. Ex parte temporary restraining order

An ex parte order may be issued on the application of a victim of violence in circumstances where the defendant chooses not to appear in court or cannot be summoned because he is in hiding. An ex parte order may contain a preliminary injunction against further violence and/or preventing the abuser/defendant from disturbing the victim/plaintiff's use of essential property, including the common home.

It is also recommended that a wider category of persons besides the victim of violence apply for a restraining order. It is conceivable that the victim may not be in a position to have access to the legal system. It is also conceivable that witnesses and persons offering assistance to the victim may also be in danger of violence.

Where a situation of grave danger exists to the life, health and wellbeing of the victim and she is unlikely to be safe until a court order is issued, the victim/plaintiff, a relative or welfare worker may apply to a judge or magistrate on duty to provide emergency relief, such as an ex parte temporary restraining order to be issued against the abuser within 24 hours of violence occurring.

The ex parte temporary restraining order may:

- (i) Compel the offender to vacate the family home;
- (ii) Regulate the offender's access to dependent children;
- (iii) Restrain the offender from contacting the victim at work or other places frequented by the victim;
- (iv) Compel the offender to pay the victim's medical bills;

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- (v) Restrict the unilateral disposal of joint assets;
- (vi) Inform the victim and the offender that if the offender violates the restraining order, he may be arrested and criminal charges brought against him;
- (vii) Inform the victim that, notwithstanding the use of a restraining order under domestic violence legislation, she can request the prosecutor to file a criminal complaint against the offender;
- (viii) Inform the victim that, notwithstanding the use of a restraining order under domestic violence legislation and application for criminal prosecution, she can initiate a civil process and sue for divorce, separation, damages or compensation;
- (xi) Require each party to fulfil his/her continuing duty to inform the court at each proceeding for an order of protection at any civil litigation, proceeding in juvenile court and/or criminal proceedings involving either party.

Emergency relief would include an ex parte temporary restraining order, to remain in effect until a court order is issued but for not more than 10 days after the ex parte temporary restraining order has been issued.

The plaintiff must be informed of the following:

- (a) That, notwithstanding use of an ex parte restraining order under domestic violence legislation, she can apply for a court order to protect her from further violence or for a renewal of that court order, and/or request the prosecutor to file a criminal complaint against the defendant;
- (b) That an application for an ex parte restraining order in no way affects her access to other civil remedies such as the right to apply for a judicial separation, divorce or compensation for damages;
- (c) That, on 24 hours' notice to the plaintiff, the defendant may move for a dissolution or modification of the temporary restraining order.

Non-compliance with an ex parte restraining order shall result in prosecution for contempt of court proceedings, a fine and imprisonment.

B. Protection orders

Application for a protection order may be made by the victim, a relative, a welfare worker or person assisting the victim of domestic violence.

Application for protection orders may be made on the expiry of ex parte restraining orders or independently of such restraining orders.

Protection orders may operate to protect the victim, a relative, a welfare worker or person assisting the victim of domestic violence from further violence or threats of violence.

Judges should be required to conduct hearings within 10 days of the complaint and application for a protection order.

Judges should uphold the provisions outlined in the victim's statement of rights.

The court order may provide any or all of the following relief:

- (a) Restrain the offender/defendant from causing further violence to the victim/plaintiff, her dependents, other relatives and persons who give her assistance from domestic abuse;
- (b) Instruct the defendant to vacate the family home, without in any way ruling on the ownership of such property;
- (c) Instruct the defendant to continue to pay the rent or mortgage and to pay maintenance to the plaintiff and their common dependents;
- (d) Instruct the defendant to hand over the use of an automobile and/or other essential personal effects to the plaintiff;
- (e) Regulate the defendant's access to dependent children;
- (f) Restrain the defendant from contacting the plaintiff at work or other places frequented by the plaintiff;
- (g) Upon finding that the defendant's use or possession of a weapon may pose a serious threat of harm to the plaintiff, prohibit the defendant from purchasing, using or possessing a firearm or any such weapon specified by the court;
- (h) Instruct the defendant to pay the plaintiff's medical bills, counselling fees or shelter fees;
- (i) Prohibit the unilateral disposition of joint assets;
- (j) Inform the plaintiff and the defendant that, if the defendant violates the restraining order, he may be arrested with or without a warrant and criminal charges brought against him;
- (k) Inform the plaintiff that, notwithstanding the use of a restraining order under domestic violence legislation, she can request the prosecutor to file a criminal complaint against the defendant;
- (l) Inform the plaintiff that, notwithstanding the use of a restraining order under domestic violence legislation, she can activate the civil process and sue for divorce, separation, damages or compensation;
- (m) Conduct hearings in camera to protect the privacy of the parties.

The burden of proof in these proceedings is on the accused to demonstrate that such domestic violence did not take place.

Judges should order the dispatch of copies of all protection/restraining orders issued to the police zones where the plaintiff and those protected by the order reside, within 24 hours of the issuing order.

Compliance with protection orders shall be monitored by the police and the courts. Violation of a protection order is a crime.

Non-compliance shall result in a fine, contempt of court proceedings and imprisonment.

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Where the plaintiff files an affidavit that she does not have the funds to pay the costs of filing for an ex parte restraining order or a protection order, the orders shall be filed without the payment of fees.

Mala fide and unjustified claims for a protection order may move the court to order the plaintiff to pay costs and damages to the defendant.

V. CRIMINAL PROCEEDINGS

The prosecuting attorney or attorney-general shall develop, adopt and put into effect written procedures for officials prosecuting crimes of domestic violence.

When a court dismisses criminal charges in a crime involving domestic violence, the specific reasons for dismissal must be recorded in the court file.

In criminal actions concerning domestic violence, the prosecuting attorney shall charge in the information sheet that the alleged act is one of domestic violence.

The victim's testimony shall be sufficient for prosecution. No move to dismiss a complaint shall be made solely on the grounds of uncorroborated evidence.

Upon conviction for a domestic violence offence, the judgment shall so indicate the results of the case.

During the trial phase, the defendant accused of domestic violence shall have no unsupervised contact with the plaintiff.

The issue of a restraining order or protection order may be introduced as a material fact in subsequent criminal proceedings. Depending on the nature of the offence, and where a defendant is charged for the first time with a minor domestic violence offence and pleads guilty, a deferred sentence and counselling may be imposed, along with a protection order, provided that the consent of the victim is obtained.

Upon conviction of a defendant for a serious crime of domestic violence, the court may order a term of incarceration and counselling.

Enhanced penalties are recommended in cases of domestic violence involving repeat offences, aggravated assault and the use of weapons.

Counselling shall not be recommended in lieu of a sentence in cases of aggravated assault.

Clear sentencing guidelines shall be established.

VI. CIVIL PROCEEDINGS

A protection order may be issued while civil proceedings for divorce, judicial separation or compensation are pending.

In these circumstances, protection orders may be issued in addition to and not in lieu of civil proceedings.

Protection orders and restraining orders may be issued independently, unaccompanied by an application for divorce or judicial separation.

The issuance of a restraining order or protection order may be introduced as a material fact in subsequent civil proceedings.

VII. PROVISION OF SERVICES

A. Emergency services

The State must provide emergency services which shall include:

- (i) Seventy-two hour crisis intervention services;
- (ii) Constant access and intake to services;
- (iii) Immediate transportation from the victim's home to a medical centre, shelter or safe haven;
- (iv) Immediate medical attention;
- (v) Emergency legal counselling and referrals;
- (vi) Crisis counselling to provide support and assurance of safety;
- (vii) Confidential handling of all contacts with victims of domestic violence and their families.

B. Non-emergency services

States must provide non-emergency services which shall include:

- (a) Delivery of services to assist in the long-term rehabilitation of victims of domestic violence through counselling, job training and referrals;
- (b) Delivery of services to assist in the long-term rehabilitation of abusers through counselling;
- (c) Programmes for domestic violence which are administered independently of welfare assistance programmes;
- (d) Delivery of services in cooperation and coordination with public and private, State and local services and programmes.

C. Training of police officials

The police department shall establish and maintain an education and training programme for police officers to acquaint them with:

- (a) The nature, extent, causes and consequences of domestic violence;
- (b) The legal rights and remedies available to victims of domestic violence;
- (c) The services and facilities available to victims and abusers;

- (d) The legal duties imposed on police officers to make arrests and to offer protection and assistance;
- (e) Techniques for handling incidents of domestic violence that minimize the likelihood of injury to the officer and promote the safety of the victim and her dependents.

Every police cadet should be trained to respond to domestic violence cases.

Special units should also be established where police officers receive intensive and specialized training to handle more complex cases.

Educators, psychologists and victims should participate in seminar programmes to sensitize the police.

D. Training of judicial officers

Provision shall be made to conduct on-going training programmes for judicial officers on the handling of domestic violence cases. Training shall include guidelines on:

- (i) The issuing of *ex parte* restraining orders;
- (ii) The issuing of protection orders;
- (iii) Guidance to be given to victims on available legal remedies;
- (iv) Sentencing guidelines.

Training shall include an initial course for a prescribed number of hours and an annual review for a prescribed number of hours.

Special family courts should also be established and the judiciary should be provided with intensive and specialized training to handle more complex cases.

E. Training of counsellors

States shall provide trained counsellors to support the police, judges, victims of domestic violence and perpetrators of violence.

The law shall mandate counselling programmes for perpetrators as a supplement to and not as an alternative to the criminal justice system.

Counselling programmes must be designed to:

- (i) Help the perpetrator take responsibility for his violence and make a commitment not to inflict further violence;
- (ii) Educate the perpetrator on the illegality of violence.

Funding for counselling and perpetrator programmes should not be taken from resources assigned to victims of violence.

The law should provide but not mandate counselling for victims of violence. Counselling for victims of violence must be:

- (a) Provided as a free service;
- (b) Empowering to the victim and assist her in deciding on short-term and long-term strategies to protect herself from further violence and to restore the normality of her life.

3.1.11. [Report of the UN Special Rapporteur on violence against women, its causes and consequences](#)³⁹

IV. Conclusions and recommendations

100. The persistence of systemic gender-based violence against women, even in States that have proclaimed zero tolerance of violence against women, indicates that gender-based violence is deeply entrenched in our still predominantly patriarchal societies and accepted as “just the way things are”. Prevention and eradication of violence against women require transformation and adoption of comprehensive, integrated and coordinated policies and laws based on international and regional human rights law commitments. The establishment of safe women’s shelters and efficient and immediate protection orders should be seen as human rights obligations that uphold a woman’s right to live free from violence.

A. Specific recommendations to States

Human rights-based approach and integrated and coordinated laws and policies

101. When formulating and implementing national laws on violence against women and domestic violence, States should apply the human rights-based approach provided by the Convention on the Elimination of All Forms of Discrimination against Women and regional instruments to prevent violence against women, 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 such as 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 the police, public prosecutors, the judiciary and social services, health-care professionals, NGOs and other relevant organizations providing frontline services and offering multiagency cooperation for appropriate handling of cases. [...]

³⁹ Report of the UN Special Rapporteur on Violence Against Women, its Causes and Consequences: Conclusions and Recommendations, p. 18-21, 13 June 2017, A/HRC/35/30, available at http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/35/30 (last visited December 30, 2018).

Risk assessment and management

103. States should 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 victims. States should 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 of or access to firearms by perpetrators. Relevant authorities must also be aware of the increased risk of reprisals that women face when they seek official assistance from the authorities, the courts or the police. [...]

Training of professionals

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

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 throughout the State's territory, including in rural areas. States should map and plan an 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; one shelter place for every 10,000 inhabitants could serve as benchmark. [...]

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. In this regard:

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

(b) Protection orders for immediate protection in case of immediate danger of violence (emergency orders) should also be available ex parte and remain in effect until a longer-term protection order comes into effect after a court hearing. They should be available on the statement of the victim, as seeking further evidence may lead to delays which put the victim at greater 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) Protection orders must be available irrespective of, or in addition to, other legal proceedings such as criminal or divorce proceedings against the perpetrator; not be dependent on the initiation of a criminal case; and be allowed to be introduced in subsequent legal proceedings. As many forms of violence, particularly domestic violence, are courses of conduct which take place over time, strict time limits on access to protection orders should not be imposed. The standard of proof that an applicant must discharge in order to be granted an order should not be the standard of proof in criminal cases;

(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 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 the victim is respected, other actors, such as State actors, family members and relevant professionals, should be allowed standing to make applications for a protection order;

(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 is integrated into the provision of protection orders;

(g) States should provide appropriate criminal sanctions for perpetrators' non-compliance with protection orders;

(h) States should ensure regular monitoring of the implementation of protection orders and their automatic enforceability across jurisdictions.

113. States should also guarantee that all cases of gender-based violence are heard in a timely and impartial manner, that ex officio prosecution is duly exercised and that proceedings may continue even when a victim withdraws her complaint.

114. States should also avoid mandatory reconciliation in cases of violence against women. [...]

B. General recommendations to States

115. States should consider developing additional indicators on the implementation of Sustainable Development Goal 5.2, elimination of violence against women, including indicators on shelters and protection orders.

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

3.1.12. [UNHCR Guidelines on International Protection No. 1: Gender-Related Persecution within the context of Article 1A\(2\) of the 1951 Convention and/or its 1967 Protocol Relating to the Status of Refugees](#) ⁴⁰

B. WELL FOUNDED FEAR OF PERSECUTION

9. What amounts to a well-founded fear of persecution will depend on the particular circumstances of each individual case. While female and male applicants may be subjected to the same forms of harm, they may also face forms of persecution specific to their sex. [...]

In this sense, international law can assist decision-makers to determine the persecutory nature of a particular act. There is no doubt that rape and other forms of gender-related violence, such as dowry-related violence, female genital mutilation, domestic violence, and trafficking, are acts which inflict severe pain and suffering – both mental and physical – and which have been used as forms of persecution, whether perpetrated by State or private actors.

Discrimination amounting to persecution

14. While it is generally agreed that ‘mere’ discrimination may not, in the normal course, amount to persecution in and of itself, a pattern of discrimination or less favourable treatment could, on cumulative grounds, amount to persecution and warrant international protection. It would, for instance, amount to persecution if measures of discrimination lead to consequences of a substantially prejudicial nature for the person concerned, e.g. serious restrictions on the right to earn one’s livelihood, the right to practice one’s religion, or access to available educational facilities.

15. Significant to gender-related claims is also an analysis of forms of discrimination by the State in failing to extend protection to individuals against certain types of harm. If the State, as a matter of policy or practice, does not accord certain rights or protection from serious abuse, then the discrimination in extending protection, which results in serious harm inflicted with impunity, could amount to persecution. Particular cases of domestic violence, or of abuse for reasons of one’s differing sexual orientation, could, for example, be analysed in this context.

Agents of Persecution

19. There is scope within the refugee definition to recognise both State and non-State actors of persecution. While persecution is most often perpetrated by the authorities of a country, serious discriminatory or other offensive acts committed by the local populace, or by individuals, can also be considered persecution if such acts are knowingly tolerated by the authorities, or if the authorities refuse, or are unable, to offer effective protection.

C. THE CAUSAL LINK (“for reasons of”)

20. The well-founded fear of being persecuted must be related to one or more of the Convention grounds. That is, it must be “for reasons of” race, religion, nationality, membership of a particular social group, or political opinion. [...]

21. In cases where there is a risk of being persecuted at the hands of a non-State actor (e.g. husband, partner or other non-State actor) for reasons which are related to one of the Convention grounds, the causal link is established, whether or not the absence of State protection is Convention related. Alternatively, where the risk of being persecuted at the hands of a non-State actor is unrelated to a Convention ground, but the inability or unwillingness of the State to offer protection is for reasons of a Convention ground, the causal link is also established.

III. PROCEDURAL ISSUES

35. Persons raising gender-related refugee claims, and survivors of torture or trauma in particular, require a supportive environment where they can be reassured of the confidentiality of their claim. Some claimants, because of the shame they feel over what has happened to them, or due to trauma, may be reluctant to identify the true extent of the persecution suffered or

⁴⁰ UN High Commissioner for Refugees (UNHCR), Guidelines on International Protection No. 1: Gender-Related Persecution within the context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol Relating to the Status of Refugees, 7 May 2002, HCR/GIP/02/01, available at <http://www.refworld.org/docid/3d36f1c64.html> (last visited December 30, 2018).

feared. They may continue to fear persons in authority, or they may fear rejection and/or reprisals from their family and/or community.

36. Against this background, in order to ensure that gender-related claims, of women in particular, are properly considered in the refugee status determination process, the following measures should be borne in mind:

i. Women asylum-seekers should be interviewed separately, without the presence of male family members, in order to ensure that they have an opportunity to present their case. It should be explained to them that they may have a valid claim in their own right. [...]

3.1.13. [Human Rights Council Resolution 32/19 - Accelerating efforts to eliminate violence against women: preventing and responding to violence against women and girls, including indigenous women and girls](#)⁴¹

The Human Rights Council, [...]

Outraged by the persistence and pervasiveness of all forms of violence against women and girls worldwide, including intimate partner violence, and emphasizing that such violence is a violation, abuse or impairment of human rights and, as such, is completely unacceptable, [...]

Recognizing that violence against indigenous women and girls cannot be separated from the wider context of discrimination and exclusion to which indigenous persons are often exposed in social, economic, cultural and political life, and deeply concerned about indications that indigenous women and girls are disproportionately affected by violence, including sexual violence, given the multiple and intersecting forms of discrimination to which they may be exposed,[...]

Strongly condemns all acts of violence against women and girls, including against indigenous women and girls, whether these acts are perpetrated by the State, private persons or non-State actors, and calls for the elimination of all forms of sexual and gender based violence [...]

Expresses concern that violence in the private sphere, including domestic violence, is the most prevalent and least visible form of violence against all women and girls, and that its consequences are long-lasting and profound, and affect many areas in the lives of victims and their communities; [...]

Calls upon States to take effective action to prevent violence against women and girls, including indigenous women and girls, by: [...]

Abolishing practices and legislation that discriminate against women and girls, including indigenous women and girls; [...]

Removing gender bias and other forms of discrimination from the administration of justice, and enhancing the capacity of law enforcement officials to deal appropriately with all forms of violence against women and girls, including against indigenous women and girls, by providing systematic gender sensitivity training, as appropriate, for police and security forces, prosecutors, judges and lawyers, integrating gender considerations into security sector reform initiatives, developing protocols and guidelines, and enhancing or putting in place appropriate accountability measures for adjudicators; [...]

Calls upon States to take effective action to respond to violence against women and girls, including indigenous women and girls, and to protect all victims and survivors by:

Ensuring women's and girls', including indigenous women's and girls', unimpeded access to justice, effective legal assistance and information regarding their human rights without discrimination so that they have access to just and effective remedies for the harm that they have experienced, including through the adoption of national legislation;

Ensuring that remedies for women and girls subjected to violence, whether judicial, administrative, policy or other measures, are available, accessible, acceptable, age- and gender-sensitive and adequately address victims' needs, including by protecting confidentiality, preventing the stigmatization, revictimization or further harm to victims, allowing reasonable time for women subjected to violence to come forward to seek redress, and ensuring reasonable evidentiary standards; [...]

⁴¹ Human Rights Council, Accelerating efforts to eliminate violence against women: preventing and responding to violence against women and girls, including indigenous women and girls, 19 July 2016, A/HRC/RES/32/19, available at <https://www.unhcr.org/2016/09/violence-against-women-un-human-rights-council-july-16-resolution-eliminate-prevent-respond-to-vaw-including-indigenous-women-girls/> (last visited December 30, 2018).

3.1.14. [U.N. Gen. Ass. Resolution 59/165: Working towards the elimination of crimes against women and girls committed in the name of honour](#) ⁴²

The General Assembly, [...]

Bearing in mind that States have an obligation to exercise due diligence to prevent, investigate and punish the perpetrators of crimes against women and girls committed in the name of honour and to provide protection to the victims, and that not doing so violates and impairs or nullifies the enjoyment of their human rights and fundamental freedoms,

Stressing the need to treat all forms of violence against women and girls, including crimes committed in the name of honour, as a criminal offence, punishable by law, [...]

2. Expresses its concern that women continue to be victims of crimes committed in the name of honour, and at the continuing occurrence in all regions of the world of such violence, which takes many different forms, and at failures to prosecute and punish perpetrators;

1. Calls upon all States:

[...]

(b) To continue to intensify efforts to prevent and eliminate crimes against women and girls committed in the name of honour, which take many different forms, by using legislative, administrative and programmatic measures;

(c) To investigate promptly and thoroughly, prosecute effectively and document cases of crimes against women and girls committed in the name of honour and punish the perpetrators;

(d) To intensify efforts to raise awareness of the need to prevent and eliminate crimes against women and girls committed and condoned in the name of honour, with the aim of changing the attitudes and behaviour that allow such crimes to be committed by involving, inter alia, community leaders;

(e) To intensify efforts to raise awareness about the responsibility of men to promote gender equality and bring about change in attitudes to eliminate gender stereotypes, including, specifically, their role in preventing crimes against women and girls committed in the name of honour;

(f) To encourage the efforts of the media to engage in awareness-raising campaigns;

(g) To encourage, support and implement measures and programmes aimed at increasing the knowledge and understanding of the causes and consequences of crimes against women and girls committed in the name of honour, including the provision of training for those responsible for enforcing the law, such as police personnel and judicial and legal personnel, and to strengthen their capacity to respond to complaints of such crimes in an impartial and effective manner and take necessary measures to ensure the protection of actual and potential victims;

(h) To continue to support the work of civil society, including non-governmental organizations, in addressing this issue and to strengthen cooperation with intergovernmental and non-governmental organizations;

(i) To establish, strengthen or facilitate, where possible, support services to respond to the needs of actual and potential victims by, inter alia, providing for them the appropriate protection, safe shelter, counselling, legal aid, health-care services, including in the areas of sexual and reproductive health, psychological health and other relevant areas, rehabilitation and reintegration into society;

(j) To address effectively complaints of crimes against women and girls committed in the name of honour, inter alia, by creating, strengthening or facilitating institutional mechanisms so that victims and others can report such crimes in a safe and confidential environment; [...]

3.1.15. [Programme of Action of the International Conference on Population and Development \(ICPD\)](#) ⁴³

4.9 Countries should take full measures to eliminate all forms of exploitation, abuse, harassment and violence against women, adolescents and children. This implies both preventive actions and rehabilitation of victims. [...]

7.35 Violence against women, particularly domestic violence and rape, is widespread, and rising numbers of women are at risk from AIDS and other sexually transmitted diseases as a result of high risk sexual behaviour on the part of their partners. [...]

⁴² U.N. General Assembly, Working towards the elimination of crimes against women and girls committed in the name of honour (10 Feb 2005), A/RES/59/165.

<https://documents-dds-ny.un.org/doc/UNDOC/GEN/N04/486/16/PDF/N0448616.pdf?OpenElement> (last visited December 30, 2018).

⁴³ Programme of Action of the International Conference on Population and Development (ICPD), 5-13 September 1994, available at https://www.unfpa.org/sites/default/files/pub-pdf/programme_of_action_Web%20ENGLISH.pdf (last visited December 30, 2018).

7.39 Active and open discussion of the need to protect women, youth and children from any abuse, including sexual abuse, exploitation, trafficking and violence, must be encouraged and supported by educational programmes at both national and community levels. Governments should set the necessary conditions and procedures to encourage victims to report violations of their rights. Laws addressing those concerns should be enacted where they do not exist, made explicit, strengthened and enforced, and appropriate rehabilitation services provided. [...]

3.1.16. [Transforming our World: The 2030 Agenda for Sustainable Development](#)⁴⁴

Goal 5. Achieve gender equality and empower all women and girls

5.1 End all forms of discrimination against all women and girls everywhere

5.2 Eliminate all forms of violence against all women and girls in the public and private spheres, including trafficking and sexual and other types of exploitation.

3.2. REGIONAL

3.2.1. [Recommendation \(2002\)5 of the Committee of Ministers to Member States on the Protection of Women against Violence](#)⁴⁵

The Committee of Ministers [...]

Recommends that the governments of member states:

I. Review their legislation and policies with a view to:

1. guaranteeing women the recognition, enjoyment, exercise and protection of their human rights and fundamental freedoms; [...]

II. Recognise that states have an obligation to exercise due diligence to prevent, investigate and punish acts of violence, whether those acts are perpetrated by the state or private persons, and provide protection to victims;

III. Recognise that male violence against women is a major structural and societal problem, based on the unequal power relations between women and men and therefore encourage the active participation of men in actions aiming at combating violence against women;

IV. Encourage all relevant institutions dealing with violence against women (police, medical and social professions) to draw up medium- and long-term coordinated action plans, which provide activities for the prevention of violence and the protection of victims; [...]

Appendix to Recommendation (2002) 5

1. For the purposes of this recommendation, the term “violence against women” is to be understood as any act of gender-based violence, which results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion, or arbitrary deprivation of liberty, whether occurring in public or private life. This includes, but is not limited to, the following:

- a. violence occurring in the family or domestic unit, including, *inter alia*, physical and mental aggression, emotional and psychological abuse, rape and sexual abuse, incest, rape between spouses, regular or occasional

⁴⁴ UN General Assembly, Transforming our world: the 2030 Agenda for Sustainable Development, 21 October 2015, A/RES/70/1, available at <http://www.refworld.org/docid/57b6e3e44.html> (last visited December 30, 2018).

⁴⁵ Council of Europe: Recommendation (2002) 5 of the Committee of Ministers to Member States on the Protection of Women Against Violence, 30 April 2002, available at <http://www.mmuncii.ro/pub/imagemanager/images/file/Domenii/Egalitate%20de%20sanse/Rec%20CMCE%205%202002%20Protejarea%20femeilor%20Oimpotriva%20violentei%20-en.pdf> (last visited December 30, 2018). See also Council of Europe Recommendation of the Committee of Ministers (1985) 4 to Member States on Violence in the Family, 26 March 1985, available at [http://niebieskalinia.info/pliki/dokumenty/Wazne%20dokumenty/Rekomendacja%20Komitetu%20Ministrów%20R%20\(85\)%204%20w%20sprawie%20przemocy%20w%20rodzinie%20z%20dnia%2026%20marca%201985%20roku.pdf](http://niebieskalinia.info/pliki/dokumenty/Wazne%20dokumenty/Rekomendacja%20Komitetu%20Ministrów%20R%20(85)%204%20w%20sprawie%20przemocy%20w%20rodzinie%20z%20dnia%2026%20marca%201985%20roku.pdf) (last visited December 30, 2018)., and Council of Europe Recommendation No. R (90) 2 of the Committee of Ministers to Member States On Social Measures Concerning Violence Within The Family, 15 January 1990, available at [http://niebieskalinia.info/pliki/dokumenty/Wa%C5%BCne%20dokumenty/Rekomendacja%20Komitetu%20Ministrów%20R%20\(85\)%204%20w%20sprawie%20przemocy%20w%20rodzinie%20z%20dnia%2015%20stycznia%201990%20roku.pdf](http://niebieskalinia.info/pliki/dokumenty/Wa%C5%BCne%20dokumenty/Rekomendacja%20Komitetu%20Ministrów%20R%20(85)%204%20w%20sprawie%20przemocy%20w%20rodzinie%20z%20dnia%2015%20stycznia%201990%20roku.pdf) (last visited December 30, 2018).

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partners and cohabitants, crimes committed in the name of honour, female genital and sexual mutilation and other traditional practices harmful to women, such as forced marriages [...]

General measures concerning violence against women

3. Member states should introduce, develop and/or improve where necessary, national policies against violence based on:

- a. maximum safety and protection of victims;
- b. empowerment of victimised women by optimal support and assistance structures which avoid secondary victimisation;
- c. adjustment of the criminal and civil law including the judicial procedure;
- d. raising of public awareness and education of children and young persons;
- e. ensuring special training for professionals confronted with violence against women;
- f. prevention in all respective fields. [...]

Information, public awareness, education and training

Member states should:

[...]

8. include in the basic training programmes of members of the police force, judicial personnel and the medical and social fields, elements concerning the treatment of domestic violence, as well as all other forms of violence affecting women;
9. include in the vocational training programmes of these personnel, information and training so as to give them the means to detect and manage crisis situations and improve the manner in which victims are received, listened to and counselled; [...]
11. encourage the inclusion of questions concerning violence against women in the training of judges [...]

Assistance for and protection of victims (reception, treatment and counselling)

Member states should:

23. ensure that victims, without any discrimination, receive immediate and comprehensive assistance provided by a coordinated, multidisciplinary and professional effort, whether or not they lodge a complaint, including medical and forensic medical examination and treatment, together with post-traumatic psychological and social support as well as legal assistance; this should be provided on a confidential basis, free of charge and be available around the clock;
24. in particular, ensure that all services and legal remedies available for victims of domestic violence are provided to immigrant women upon their request;
25. take all the necessary measures in order to ensure that collection of forensic evidence and information is carried out according to standardised protocol and forms;
26. provide documentation particularly geared to victims, informing them in a clear and comprehensible manner of their rights, the service they have received and the actions they could envisage or take, regardless of whether they are lodging a complaint or not, as well as of their possibilities to continue to receive psychological, medical and social support and legal assistance;
27. promote co-operation between the police, health and social services and the judiciary system in order to ensure such coordinated actions, and encourage and support the establishment of a collaborative network of non-governmental organisations;
28. encourage the establishment of emergency services such as anonymous, free of charge telephone help-lines for victims of violence and/or persons confronted or threatened by situations of violence; regularly monitor calls and evaluate the data obtained from the assistance provided with due respect for data protection standards;
29. ensure that the police and other law-enforcement bodies receive, treat and counsel victims in an appropriate manner, based on respect for human beings and dignity, and handle complaints confidentially; victims should be heard without delay by specially-trained staff in premises that are designed to establish a relationship of confidence between the victim and the police officer and ensure, as far as possible, that the victims of violence have the possibility to be heard by a female officer should they so wish;
30. to this end, take steps to increase the number of female police officers at all levels of responsibility; [...]
33. take all necessary measures to ensure that none of the victims suffer secondary (re)victimisation or any gender-insensitive treatment by the police, health and social personnel responsible for assistance, as well as by judiciary personnel.

Criminal law, civil law and judicial proceedings

Criminal law

Member states should:

34. ensure that criminal law provides that any act of violence against a person, in particular physical or sexual violence, constitutes a violation of that person's physical, psychological and/or sexual freedom and integrity, and not solely a violation of morality, honour or decency;

35. provide for appropriate measures and sanctions in national legislation, making it possible to take swift and effective action against perpetrators of violence and redress the wrong done to women who are victims of violence. In particular, national law should:

"penalise sexual violence and rape between spouses, regular or occasional partners and cohabitants; [...]

"penalise any abuse of the position of a perpetrator, and in particular of an adult vis-à-vis a child.

Civil law

Member states should:

36. ensure that, in cases where the facts of violence have been established, victims receive appropriate compensation for any pecuniary, physical, psychological, moral and social damage suffered, corresponding to the degree of gravity, including legal costs incurred;

37. envisage the establishment of financing systems in order to compensate victims.

Judicial proceedings

Member states should:

38. ensure that all victims of violence are able to institute proceedings as well as, where appropriate, public or private organisations with legal personality acting in their defence, either together with the victims or on their behalf;

39. make provisions to ensure that criminal proceedings can be initiated by the public prosecutor;

40. encourage prosecutors to regard violence against women and children as an aggravating or decisive factor in deciding whether or not to prosecute in the public interest;

41. take all necessary steps to ensure that at all stages in the proceedings, the victims' physical and psychological state is taken into account and that they may receive medical and psychological care;

42. envisage the institution of special conditions for hearing victims or witnesses of violence in order to avoid the repetition of testimony and to lessen the traumatising effects of proceedings;

43. ensure that rules of procedure prevent unwarranted and/or humiliating questioning for the victims or witnesses of violence, taking into due consideration the trauma that they have suffered in order to avoid further trauma;

44. where necessary, ensure that measures are taken to protect victims effectively against threats and possible acts of revenge;[...]

Additional measures with regard to violence within the family

Member states should:

55. classify all forms of violence within the family as criminal offence;

56. revise and/or increase the penalties, where necessary, for deliberate assault and battery committed within the family, whichever member of the family is concerned;

57. preclude adultery as an excuse for violence within the family;

58. envisage the possibility of taking measures in order to:

a. enable police forces to enter the residence of an endangered person, arrest the perpetrator and ensure that he or she appears before the judge;

b. enable the judiciary to adopt, as interim measures aimed at protecting the victims, the banning of a perpetrator from contacting, communicating with or approaching the victim, residing in or entering certain defined areas;

c. establish a compulsory protocol for operation so that the police and medical and social services follow the same procedure;

d. promote pro-active victim protection services which take the initiative to contact the victim as soon as a report is made to the police;

e. ensure smooth co-operation of all relevant institutions, such as police authorities, courts and victim protection services, in order to enable the victim to take all relevant legal and practical measures for receiving assistance and taking actions against the perpetrator within due time limits and without unwanted contact with the perpetrator;

f. penalise all breaches of the measures imposed on the perpetrators by the authorities.

59. consider, where needed, granting immigrant women who have been/are victims of domestic violence an independent right to residence in order to enable them to leave their violent husbands without having to leave the host country.[...]

Comments on the recommendation

Additional measures with regard to violence within the family

Paragraphs 55 to 59

89. The studies carried out in member states all identify the family environment as the scene of the most violence of all types against women and children. Realising the importance of the issue, the drafters wished to envisage specific measures.

Paragraph 55

90. According to a certain number of practices and/or legal systems, violence committed within the family, and especially domestic violence, is considered to be a private affair that does not require legal treatment. This is why the drafters wanted to point to the necessity for member states to classify violent acts committed within the family as penal violations of varying degrees of seriousness according to their nature.

Paragraphs 56 to 58

91. The drafters regarded as a potential perpetrator any adult regularly or occasionally living with the victim. The circumstance of living together, even occasionally and even without any specific relationship of authority, nonetheless creates an intimate situation that warrants reinforcement of protection.

92. In this type of situation, police action remains an essential factor. Police forces should be enabled, if a person is in danger, to expel a perpetrator immediately from the dwelling, irrespective of the property relations concerning the residence or of any objections of fellow occupants. The provisions of the recommendation specify injunctions to the abuser to keep away from the victim's dwelling and/or other places, or restraining orders (whereas under conventional legislation the victim was expected to leave home). This type of arrangement, founded on concern to protect victims and spare them the trauma of leaving home, is established in Austria and Finland. As an example, under Austrian law, expulsion carried out by the police force constitutes an administrative order that must consequently be confirmed by a court decision.

Paragraph 59

93. The situation of migrant women is distinctive: they may have suffered violence either before emigrating or afterwards. Risks of violence are also linked with their limited knowledge of the host country's language, culture and applicable legal provisions, which lessens their ability to avail themselves of aid services. The recommendation concerns those women whose right to reside in a given place depends on staying married to a violent man. The intention is to remedy the difficulty that, for women in such circumstances, any attempt to put a stop to the violence carries a risk of expulsion.

3.2.2. [Recommendation \(1991\) 9 of the Committee of Ministers to Member States on Emergency Measures in Family Matters](#)⁴⁶

Principle 1

Courts and other competent authorities dealing with family matters should have sufficient emergency powers and resources to protect children and other persons in need of special protection and assistance and whose interests are in serious danger.[...]

Principle 2

These courts or competent authorities should be ready to act at any time in extremely urgent cases.

Principle 3

1. Simple and expeditious procedures should be available to ensure that decisions are reached very quickly. To this end the following measures could be used:

- lodging a request by simple application;
- allowing a court or competent authority to act on its own motion;
- provisional measures taken without a hearing;
- using all modern communication technology to facilitate the introduction and conduct of any proceedings, the transmission of requests and exchanges of information between courts and other competent authorities and the different parties to the proceedings;
- allowing the court or competent authority to play an active role in conducting the case and in calling for and taking evidence;
- preventing any party from improperly delaying emergency measures.

2. National authorities should ensure that information on emergency measures is given to the public and to those to whom a person in need of such measures may turn for help.

3. Legal aid and advice should be provided rapidly when required.

4. Courts and other competent authorities should have the power to grant decisions which are immediately enforceable.

⁴⁶ Council of Europe: Recommendation (1991) 9 of the Committee of Ministers to Member States on Emergency Measures in Family Matters, 9 September 1991, available at https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=09000016804bfa85 (last visited December 30, 2018).

5. Courts and other competent authorities should be given sufficient powers to ensure that their decisions are rapidly enforced. [...]

3.2.3. [PACE Resolution 1691 \(2009\) on Rape of women, including marital rape](#) ⁴⁷

1. Every year, millions of women are raped: by their husbands, partners or ex-partners, male relatives or acquaintances, or complete strangers. However, most of these rapes are not reported and the perpetrators go unpunished.
2. Rape is a serious violation both of women's physical and psychological integrity and also of the right to freedom, safety and dignity enjoyed by all human beings.
3. Unfortunately, the extremely low level of reporting of rape is matched by a very high rate of attrition and an extremely low level of conviction – especially, but not only, for marital rape. This is due to several factors, including:
 - 3.1 widespread attitudes to rape and sexual assault which tend to shift the blame from the attacker to the victim and undermine victims' credibility (attitudes widespread also amongst the members of the police, the legal profession, public prosecutors and the judiciary);
 - 3.2 unreformed rape legislation which requires a victim to physically resist the attacker, to initiate proceedings, and/or makes it possible for the most intimate details of victims' private lives to be exposed in court;
 - 3.3 a lack of support, assistance and protection for victims. [...]

5.The Parliamentary Assembly thus recommends that Council of Europe member states:

- 5.1 fully implement the recommendations on sexual violence and rape contained in Recommendation (2002)5 of the Committee of Ministers on the protection of women against violence, as well as the recommendations contained in Assembly Recommendation 1777 (2007) on sexual assaults linked to “date-rape drugs”, and in Assembly Resolution 1670 (2009) and Recommendation 1873 (2009) on sexual violence against women in armed conflict;
- 5.2 ensure that their legislation on rape and sexual violence reaches the highest possible standard, ensuring that rape is defined in essence by the absence of consent or the absence of the choice to consent by the victim, and avoiding a re-victimisation of the victim by the criminal justice system; legislation should thus, as a minimum:
 - 5.2.1. make rape (including marital rape) an ex officio crime;
 - 5.2.2. define consent as agreement by choice when having the freedom and capacity to make that choice;
 - 5.2.3. not require that a victim physically resist the attacker;
 - 5.2.4. have prosecutors make all discontinuance decisions and give the victim the right to challenge such decisions;
 - 5.2.5. protect victims' private lives, especially in court;
 - 5.2.6. allow evidence gathered in pre-trial proceedings to be used when the victim avails herself of her right to refuse to testify once in court;
 - 5.2.7. establish procedures to ensure victim and witness safety, where the victim or witness is facing threats or intimidation;
 - 5.2.8. give victims a legal right to advice and support throughout the process;
- 5.3. establish marital rape as a separate offence under their domestic law so as to avoid any hindrance of legal proceedings, if they have not already done so;
- 5.4. penalise sexual violence and rape between spouses, cohabitant partners and ex-partners, if they have not already done so, and consider whether the attacker's current or former close relationship with the victim should be an aggravating circumstance;
- 5.5. consider instituting compensation for the victim, if they have not already done so;
- 5.6. develop a comprehensive strategy which should comprise measures to prevent rape in the first place, by empowering girls and women not to be victims and teaching boys and men to respect women, as well as to ensure (securely-funded) protection of and assistance to rape victims at every step of the proceedings;
- 5.7. develop compulsory training programmes for police officers, judicial, medical and forensic personnel, social workers and teachers so as to enable them to identify cases of rape and sexual violence, and, in particular, of marital rape, and to enable them to advise and assist the victims more effectively and consistently.

⁴⁷ Parliamentary Assembly of the Council of Europe (PACE), Resolution 1691 (2009) on Rape of women, including marital rape, 2 October 2009, available at <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=17784> (last visited December 30, 2018).

3.2.4. [PACE Recommendation 1582 \(2002\): Domestic Violence Against Women](#) ⁴⁸

1.Domestic violence is the most common form of violence against women and its consequences affect many areas of the lives of victims — housing, health, education and the freedom to live their lives without fear and in the way they wish. This widespread phenomenon is common to all European countries and is not limited to any particular social group or class. Domestic violence can take a number of forms such as physical assault, sexual abuse and rape, threats and intimidation and should be recognised as a crime.

2.However, violence committed within the family is still considered to be a private matter. Statistics shows that for women between 16 and 44 years of age, domestic violence is thought to be the major cause of death and invalidity, ahead of cancer, road accidents and even war. Therefore, domestic violence should be treated as a political and public problem, and a violation of human rights. [...]

4.The Assembly considers acts of domestic violence to be criminal acts and calls on the member states to recognise that they have an obligation to prevent, investigate and punish all acts of domestic violence and to provide protection to its victims. [...] Therefore the Assembly calls on the member states of the Council of Europe:

Measures to be taken regarding victims of domestic violence

to provide victims of domestic violence with free legal advice and assistance before taking legal action;

to help victims of domestic violence by opening residential centres where women can receive psychological support and by giving financial support to welfare associations and emergency services;

to ensure effective protection for victims of violence after the incident and during the whole legal procedure;

to give special financial support to non-governmental organisations as well as to women's associations working with victims of domestic violence;

to adopt or reinforce social protection measures so that injuries caused to women and children by violent acts are provided for under social protection schemes;

to promote the training of professionals working with young people, as well as health personnel, to identify children and adolescents growing up in violent homes and to take the necessary measures to assist them;

to ensure the training of medical personnel to enable them to identify victims of violence;

to grant immigrant women who have been or who are victims of domestic violence an independent right of residence.

Measures to be taken regarding the prevention of domestic violence

to improve statistics on domestic violence, and with this in mind to develop a clear picture of its nature and prevalence, to permit the identification of resources earmarked for this problem and the evaluation of initiatives to tackle it;

to develop a partnership between the authorities responsible for the protection of women's rights and regional and local authorities in order to increase the number of rehabilitation centres and shelters for women victims of domestic violence;

to promote continuing co-operation and understanding between the police, government departments and non-governmental organisations in the fight against the problems and dangers associated with domestic violence;

to develop action plans in co-operation with women's non-governmental organisations in order to create a general climate where domestic violence is rejected;

to launch, through the media, national awareness campaigns against domestic violence;

to organise adequate training for people who deal with victims of domestic violence: health care staff, police and social workers;

to start education on gender equality and non-violent behaviour at a very early stage and to ensure adequate training for teachers on the issue of domestic violence and gender equality; [...]

to increase state funding to support the social services dealing with the problem of domestic violence; [...]

Legal measures to be taken

national legislation should prohibit all forms of domestic violence and introduce effective legal provisions, including the immediate removal of the violent partner from the common household and the environment of the woman and her children, without prior evidence of violence, and on the first complaint without waiting for the court order;

⁴⁸ Parliamentary Assembly of the Council of Europe (PACE), Recommendation 1582 (2002) on Domestic violence against women, 27 September 2002, available at <http://assembly.coe.int/nw/xml/xref/Xref-XML2HTML-en.asp?Fileid=17055> (last visited December 30, 2018). See also PACE Résolution 1654 (2009) Féminicides, 30 Janvier 2009, available at <http://www.assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-FR.asp?fileid=17716> (last visited December 30, 2018).

the concept of domestic violence should be defined in national legislation in such a way that it is treated as a serious criminal offence, whatever its form;
in view of the legal and institutional reform aimed at establishing more effective systems for protecting women against domestic violence, a review of existing national laws and comprehensive research are necessary;
conjugal rape should be made a criminal offence;
access to justice and the different procedures should be more flexible: hearings should preferably be held in private, there should be a reduced burden of proof, and so on;
the police and law enforcement agencies should be granted the authority to carry out investigations and obtain evidence, and to lodge complaints on behalf of victims of domestic violence. [...]

3.2.5. [OSCE Decision No. 7/14 Preventing and Combating Violence Against Women](#) ⁴⁹

[...]

The Ministerial Council,

Reaffirming the commitment to respect human rights and fundamental freedoms for all without distinction as to race, sex, language or religion, as enshrined in the provision of the Helsinki Final Act of 1975,

Recalling that the full and equal exercise by women of their human rights is essential to achieving a more peaceful, prosperous and democratic OSCE area and that the OSCE participating States are committed to making equality between men and women an integral part of their policies, both at the level of their States and within the OSCE executive structures, as was declared at the OSCE Istanbul Summit in 1999,

Reaffirming that the inherent dignity of the individual is at the core of comprehensive security, as asserted in the Astana Commemorative Declaration in 2010,

Reaffirming all relevant OSCE commitments, including those contained in Ministerial Council Decision No. 14/04 on the Action Plan for the Promotion of Gender Equality and the Ministerial Council Decision No. 15/05 on preventing and combating violence against women,

Recalling that OSCE commitments on human rights and gender equality are inspired by the international human rights framework, including the Convention on the Elimination of all Forms of Discrimination against Women, the Beijing Declaration and Platform for Action, and UN Security Council resolution 1325 on women and peace and security,

Acknowledging commitments that participating States have undertaken in international and regional fora on combating violence against women,

Taking note of international and regional initiatives to combat sexual violence, in particular in armed conflict,

Taking note of the High-Level Gender Equality Review Conference, held in Vienna in July 2014, related to the progress of and gaps in implementation of relevant OSCE commitments,

Deeply concerned by the persistence of violence against women as one of the most pervasive human rights violations in the OSCE area, manifested as physical, sexual, and psychological violence and reiterating the particular need to take more vigorous measures in preventing and combating violence against women, to which gender inequality can be among the major contributing factors,

Reaffirming the importance of effective accountability with regard to violence against women and against children, including sexual violence, abuse and exploitation, and of undertaking adequate measures to combat such violence,

Calls on the participating States to take on the following measures related to combating and preventing violence against women in the areas of developing legal frameworks and partnerships, preventing and prosecuting violence against women, and protecting victims;

⁴⁹ OSCE Decision No. 7/14 Preventing and Combating Violence Against Women, MC.DEC/7/14/Corr.1 (5 December 2014), available at <https://www.osce.org/cio/130721?download=true> (last visited December 30, 2018).

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Calls on the participating States to ensure for all women the protection and full respect of human rights and fundamental freedoms; Strongly condemns all forms of violence against women and refrain from justifying it, as described in the Declaration on the Elimination of Violence against Women;

(A) Legal framework

1. Calls on the participating States to:

- Request, as appropriate, opinions produced by the ODIHR on legal and policy frameworks for preventing and combating violence against women, including domestic violence;
- Collect, maintain and make public reliable, comparable, disaggregated, and comprehensive evidence based data and statistics regarding all forms of violence against women, including sexual and domestic violence, whilst ensuring compliance with their data protection laws, and include information on the number of cases reported to law enforcement bodies, the numbers investigated and prosecuted and the sentences imposed;
- Align national legislation with relevant international standards they have undertaken, if they have not done so already, and OSCE commitments on all forms of violence against women, and consider best practices when adopting relevant legislation;
- Give consideration to the signature and ratification of relevant regional and international instruments, such as the Council of Europe Convention on preventing and combating violence against women and domestic violence, where applicable.

[...]

(B) Prevention

2. Encourages the participating States to:

- Strengthen efforts to reach out to the public through public awareness and sensitization activities, in order to address negative stereotypes, attitudes, and prejudices which contribute to all forms of violence against women;
- Take appropriate measures to increase the engagement and participation of men and boys in the prevention and elimination of all forms of violence against women, including sexual and domestic violence;
- Take measures to raise awareness of the vicious cycle of violence that might emanate from physical, sexual, and psychological violence experienced in childhood and adolescence;
- Develop programmes to work with the perpetrators of violence against women, both during and after their sentence in order to avoid repeat offenses;
- Provide treatment, counselling and training courses and other measures to prevent re-victimization and trauma, including during judicial processes.

[...]

(C) Protection

5. Encourages the participating States to:

- Ensure that victims of all forms of violence against women receive timely and adequate information on available legal measures and support services, such as sexual violence crisis centres, shelters or other relevant structures, as well as healthcare, and to ensure that they are easily accessible;
- Promote programmes and activities that empower and support women who have been victims of violence.

[...]

(D) Prosecution

7. Encourages the participating States to:

- Strengthen the efforts to investigate, prosecute and punish the perpetrators of all forms of violence against women and provide victims with protection and appropriate remedies;
- Ensure the development and effective implementation of legislation that criminalize violence against women and that provides for preventative and protective measures, such as emergency barring orders and protection orders, where they exist, as well as the investigation, and submission for prosecution and appropriate punishment of perpetrators, including with a view to end impunity.

(E) Partnership

8. Encourages the participating States to:

- Develop comprehensive and coordinated national policies aimed at combating all forms of violence against women, encompassing all relevant actors, such as law enforcement and the justice sector, parliaments, national human rights institutions, healthcare and social services as well as civil society organizations.

[...]

3.2.6. [African Commission on Human and Peoples' Rights Guidelines on Combating Sexual Violence and its Consequences in Africa](#)⁵⁰

3. Definitions

3. 1. Sexual violence

a. Sexual violence means any non-consensual sexual act, a threat or attempt to perform such an act, or compelling someone else to perform such an act on a third person. These acts are considered as non- consensual when they involve violence, the threat of violence, or coercion. Coercion can be the result of psychological pressure, undue influence, detention, abuse of power or someone taking advantage of a coercive environment, or the inability of an individual to freely consent. This definition must be applied irrespective of the sex or gender of the victim and the perpetrator, and of the relationship between the victim and the perpetrator.

b. Sexual violence is not limited to physical violence and does not necessarily involve physical contact. It takes many forms, and includes but is not limited to:

[...]

- rape (including gang rape, marital rape or “corrective” rape), which includes penetration of the vagina, anus or mouth by any object or part of the body; [...]

e. It has been acknowledged that under certain circumstances, sexual violence can be a form of torture (rape, female genital mutilation, forced abortions and sterilizations), or can constitute cruel, inhuman or degrading treatment. [...]

6. The due diligence principle

States must ensure that agents acting on their behalf or under their effective control refrain from committing any acts of sexual violence. States must adopt the necessary legislative and regulatory measures to act with due diligence to prevent and investigate acts of sexual violence committed by State and non-State actors, prosecute and punish perpetrators, and provide a remedies to victims. [...]

9. Obligation to guarantee access to justice and investigate and prosecute the perpetrators of sexual violence

9. 1. States must take measures to guarantee access to justice for all victims of sexual violence, including in rural areas. States must ensure that investigations into acts of sexual violence and the prosecution of the perpetrators are carried out:

- without unjustified delays
- independently, impartially and effectively
- in a manner that will lead to the identification and sentencing of the perpetrators.

9. 2. Investigations and prosecutions must consider the rights of victims throughout the proceedings and guarantee the well-being and safety of victims and witnesses (in accordance with the Part 4 of these *Guidelines*).

⁵⁰ Guidelines on Combating Sexual Violence and its Consequences in Africa, adopted by the African Commission on Human and Peoples' Rights at the 60th Ordinary Session held in Niger (May 8-22, 2017), available at http://www.achpr.org/files/instruments/combating-sexual-violence/achpr_eng_guidelines_on_combating_sexual_violence_and_its_consequences.pdf (last visited December 30, 2018).

9. 3. States must also adopt measures to promote compliance with regional and international standards of protection for the rights of women and girls within traditional justice systems, to guarantee the rights of the victims of sexual violence and to eliminate the discrimination that persists in these systems. States must raise awareness and provide training for traditional authorities and other stakeholders, the majority of whom are men, who are involved with traditional justice mechanisms with a view to encouraging respect for equality between women and men as well as broader representation for women in these systems.

9. 4. States must take measures to prohibit the use of alternative methods of conflict resolution, such as mediation or conciliation, in dealing with cases involving sexual violence before and during civil and criminal proceedings, when those methods do not respect the rights of victims, especially women and girls. [...]

3.2.7. [Declaration on the Elimination of Violence Against Women and Elimination of Violence Against Children in ASEAN](#) ⁵¹

[...]

WE, the Heads of State/Government of the Member States of the Association of Southeast Asian Nations (hereinafter referred to as “ASEAN”), namely Brunei Darussalam, the Kingdom of Cambodia, the Republic of Indonesia, the Lao People’s Democratic Republic, Malaysia, the Republic of the Union of Myanmar, the Republic of the Philippines, the Republic of Singapore, the Kingdom of Thailand and the Socialist Republic of Viet Nam, on the occasion of the 23rd ASEAN Summit;

UPHOLDING the goals, purposes and principles of ASEAN as enshrined in the ASEAN Charter and Cha-am Hua Hin Declaration on the Roadmap for the ASEAN Community (2009-2015);

REAFFIRMING the goals and commitments of ASEAN to eliminating violence against women and monitor their progress as reflected in the Declaration on the Elimination of Violence Against Women in the ASEAN Region adopted at the 37th ASEAN Ministerial Meeting (AMM) on 30 June 2004;

FURTHER REAFFIRMING the importance and general principles of the ASEAN Human Rights Declaration (AHRD) and the Phnom Penh Statement on the Adoption of the AHRD adopted at the 21th ASEAN Summit on 18 November 2012; and the commitments of ASEAN as reflected in the ASEAN Leaders’ Joint Statement in Enhancing Cooperation Against Trafficking in Persons in Southeast Asia adopted at the 18th ASEAN Summit on 8 May 2011; the Ha Noi Declaration on the Enhancement of Welfare and Development of ASEAN Women and Children adopted at the 17th ASEAN Summit on 28 October 2010; the ASEAN Declaration Against Trafficking in Persons Particularly Women and Children adopted at the 10th ASEAN Summit on 29 November 2004; the Declaration on the Commitments for Children in ASEAN adopted at the 4th Meeting of the ASEAN Ministers Responsible for Social Welfare (AMRSW) on 2 August 2001; the Resolution on the ASEAN Plan of Action for Children adopted at the 3rd AMRSW Meeting on 2 December 1993; and the Declaration on the Advancement of Women in the ASEAN Region adopted at the 21st AMM on 5 July 1988;

ACKNOWLEDGING the commitments of individual ASEAN Member States to the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and the Convention on the Rights of the Child (CRC) that have been ratified by all ASEAN Member States; the Declaration on the Elimination of Violence Against Women (Vienna Declaration); the Beijing Declaration and Platform for Action (BPFA), BPFA+5 Outcome Document; the World Declaration on the Survival, Protection and Development of Children and Plan of Action for Child Survival, Protection and Development; A World Fit For Children Declaration; and the Millennium Development Goals (MDGs);

RECALLING resolutions relating to the elimination of violence against women and children of the United Nations General Assembly, the Human Rights Council and the United Nations Security Council Resolutions 1325 (2000), 1820 (2008), 1888 (2009), and 1889 (2009) on Women, Peace and Security;

WELCOMING the adoption of the Terms of Reference and Work Plan (2012-2016) of the ASEAN Commission on the Promotion and Protection of the Rights of Women and Children (ACWC) to promote and protect the human rights and fundamental freedoms of women and children in ASEAN taking into consideration the regional and national contexts bearing in mind the different historical, political, socio-cultural, religious, legal and economic backgrounds in the region;

⁵¹ The Declaration on the Elimination of Violence Against Women and Elimination of Violence Against Children in ASEAN, 9 October 2013, available at https://asean.org/?static_post=asean-regional-plan-action-elimination-violance-women-asean-rpa-evaw (last visited December 30, 2018).

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RECOGNISING that ASEAN Member States shall take all appropriate measures to promote and protect human rights and fundamental freedom and to modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of inferiority or the superiority of either of the sexes or on stereotyped roles for men and women;

ACKNOWLEDGING the importance of intensifying efforts of ASEAN Member States to promote the rights of women and children, as well as to prevent and protect them from and respond to all forms of violence, abuse and exploitation of women and children particularly for those who are in vulnerable situations, including domestic violence, women and children who are sexually exploited, women and children with disabilities, women and children living with and affected by HIV and AIDS, women and children in conflict with laws, cyber pornography and cyber prostitution, trafficking in women and children, women and children in disasters, women and children in armed conflict, women and children in refugee camps, women and children on the move, stateless women and children, migrant women and children, women and children belonging to ethnic and/or indigenous groups, children in early marriage, physical abuse of children, bullying, discrimination against women and children in mass and social media, and others;

RECOGNISING that violence against women and violence against children occur irrespective of the stages of the life cycle, whether at home, in school, in the workplace, in public or private spaces (including cyber space) as a result of gender bias, discriminatory and harmful traditional practices and must be eliminated as they impair human rights and fundamental freedoms of women and children;

EMPHASISING that the rights of children to special protection and care are different than those of women, given that parents have the responsibilities in the upbringing and development of their children and to protect them from violence, abuse, maltreatment and exploitation, and the obligations of state parties to assist parents in these efforts;

DO HEREBY DECLARE THAT:

ASEAN Member States, individually and/or collectively, express common resolve to eliminate violence against women and violence against children in the region through the following measures:

1. Strengthen and, where necessary, enact or amend national legislations for the elimination of violence against women and violence against children, and to enhance the protection, services, rehabilitation, education and training, recovery and reintegration of victims/survivors;
2. Integrate legislations, policies and measures to prevent and eliminate violence against women and violence against children and to protect and assist the victims/survivors in the national development plans and programmes with time- bound targets, adequate resources, and gender responsive planning and budgeting;
3. Strengthen a holistic, multi-disciplinary approach to promote the rights of women and children and adopt a gender responsive, child sensitive, and age-responsive approach to eliminate violence against women and violence against children in the region which includes effective laws, legislations, policies and measures to:
 - Investigate, prosecute, punish and, where appropriate, rehabilitate perpetrators;
 - Protect women and children victims/survivors and witnesses;
 - Provide victims/survivors with access to justice, legal assistance, protection, social welfare services, education, and health services, including counseling and peer-to peer support mechanisms, rehabilitation, recovery, and reintegration into the community, and consider provision of programme for families to properly give support to victims/ survivors;
 - Instill awareness to prevent re-victimization of women and children from any form of violence and ensure it does not occur anywhere through various programmes, such as provision and promotion of vocational training and employment opportunities of women who are victims/survivors, access to reproductive health services, education and other basic social services;
 - Promote family support services, parenting education, education and public awareness on the rights of women and children and the nature and causes of violence against women and violence against children to encourage active public participation in the prevention and elimination of violence;
 - Create an enabling environment for the participation of women and children, including victims/survivors, in the prevention and elimination of violence against women and violence against children;
 - Develop effective strategies to eliminate harmful practices which perpetuate gender stereotyping, violence against women and violence against children;
4. Strengthen the existing national mechanisms, with the assistance, where necessary, of the ACWC and other related stakeholders, in implementing, monitoring and reporting the implementation of the Concluding Observations and

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Recommendations of CEDAW, CRC and other Treaty Bodies as well as the accepted recommendations under the Universal Periodic Review Process of the United Nations Human Rights Council related to the elimination of all forms of violence against women and violence against children;

5. Strengthen the capacity of law enforcement officers, policy makers, social workers, health personnel, and other stakeholders to develop, implement, monitor and evaluate gender responsive and child friendly legislations, policies and measures for women and children victims of violence;

6. Encourage research and data collection and analysis in confidential concerning all forms of violence against women and violence against children to support the formulation and effective implementation of laws, policies and programmes to eliminate violence against women and violence against children for better protection of the victims/survivors in the region;

7. Strengthen the provision of support social welfare services to women and children victims/survivors of violence and their families in ASEAN through the establishment of an ACWC network of social services to facilitate the promotion of good practices, sharing of information, exchange of experts, social workers and service providers, including NGOs;

8. Strengthen partnerships with external parties at international, regional, national and local levels, including ASEAN Dialogue Partners, UN Agencies, civil society, community-based organisations, academia, philanthrops and private entities, in the work for the elimination of violence against women and violence against children in ASEAN and to mobilise resources to assist the victims/survivors;

WE TASK the relevant ASEAN bodies, in particular the ACWC, to promote the implementation of this Declaration and review its progress through appropriate instruments and actions with the support of ASEAN Member States.

[...]

3.2.8. [Declaration of Pachuca on Strengthening Efforts to Prevent Violence against Women](#) ⁵²

⁵² Declaration of Pachuca on Strengthening efforts to prevent violence against women, OAS Committee of Experts of the Follow-up Mechanism to the Belém do Pará Convention (MESECVI), OEA/Ser.L/II.5.32 CIM/CD/doc.16/14 rev.3 (16 May 2014), available at <http://www.oas.org/es/mesecvi/docs/DeclaracionPachuca-EN.pdf> (last visited December 30, 2018).



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