

# FEMICIDE

Special Issue, May 2022



**Femicide Observatories and  
Physiological Violence against Women,  
especially Mothers**





## Acknowledgments

This special edition was made possible by the generous financial contributions by the Karen Burke Foundation, the World Victimology Society of Serbia, and private donations.

Further, we are particularly grateful to the cooperation and support by Alma Zadic, Federal Minister of Justice of Austria, the Permanent Missions of Mexico and El Salvador to the United Nations (Vienna) and the International Association for Advancement of Innovative Solutions to Global Challenges (IAAI Glocha).

This publication was also made possible through the contributions, voluntary engagement and dedication by a number of activists, individuals and non-governmental organizations (NGOs) working in the field of violence against women and femicide. We also extend our gratitude to all those volunteers who worked tirelessly to put together this special edition in such a short period of time.

The Femicide team would like to further express its gratitude to the Sigmund Freud Private University in Vienna for their continuous support and cooperation, the United Nations Office on Drugs and Crime (UNODC), the Vienna NGO Committee on the Status of Women, the Alliance of NGOs on Crime Prevention and Criminal Justice in Vienna, and FEM.A (*Die Feministischen Alleinerzieherinnen – The Feminist Single Mothers Association*).

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# **Femicide Observatories and Psychological Violence against Women, especially Mothers**

## **Foreword**

**Michael Platzer and Ourania Roditi**

A two-day Online Expert Meeting was convened in Vienna in November 2021. The objectives of the meeting, held in English, were to discuss:

- a. Data collection of cases of femicide and gender-based violence, including psychological violence;
- b. The adoption and implementation of tailor-made policies in this regard;
- c. The establishment of Femicide Observatories at the national level; and
- d. Lessons learned from existing efforts to combat femicide and psychological violence.

This special issue of FEMICIDE contains the speeches of the participants of this conference, the recommendations for Austria in a Declaration and Action Plan dated 10 December 2021 and the latest report to the General Assembly of the United Nations by the Special Rapporteur Dubravka Šimonović evaluating the progress made during her term in office.

The first Symposium on Femicide was held on the International Day to eliminate violence against women in 2012 at the United Nations Office on Drugs and Crime (UNODC). It was sponsored by the Permanent Missions of Argentina, Austria, the Philippines, Spain, Thailand and the United Kingdom to the United Nations (Vienna) and attended by senior officials of UNODC, the Special Rapporteur on violence against women, and Diana Russell, the American feminist who had popularized the term at the First International Tribunal on Crimes against Women in 1976. Messages of support were received from the Executive Director of UN Women, the Austrian Federal Minister for Women, and a Declaration on Femicide was agreed by the participants.

The Declaration recognized the different forms of femicide, that its eradication required efforts on all levels of society, and the due diligence obligations of United Nations Member States to investigate, prosecute and redress these crimes. It proposed education programmes to change the mindsets of men, a goal to halve the number of feminicides by 2025; that the relevant United Nations agencies and entities collaborate on research, on what works and data collection. It encouraged the Human Rights Council, the Commission on Crime Prevention and Criminal Justice, the Committee on the Elimination of Discrimination against Women (CEDAW) and the Commission on the Status of Women to actively cooperate with each other and civil society organizations. It called for the creation of a platform where enforcement officials, prosecutors, judges, academics, law and feminists could exchange good practices and transfer knowledge across regions.

Princess Bajrakittiyabha Mahidol, of Thailand inaugurated a photo exhibition on the occasion of the Symposium and spoke of the alarming numbers of gender-related killings (a leading cause of death to women), that those crimes continued to be accepted, tolerated, even justified, with

impunity as the norm and that we needed to end violence against women and bring perpetrators to justice. She, along with the Ambassador of Argentina, led the effort to adopt the resolution in the Commission on Crime Prevention and Criminal Justice. Rita Banerji, founder of the 50 million missing campaign, outlined a strategy to establish separate and specialized police and court units to deal with femicide cases, honour killings, murder of daughters, foeticide of girl babies, and the forced marriage of children.

Angela Me, of UNODC presented the Global Study on Homicide 2011 and reported that violence against women could occur at home, on the street, or in the workplace but was most likely to occur at hands of current or former male partners. Anna Alvazzi del Frate, another advocate for analyzing the rising rate of the murder of women, based on the data gathered by the Small Arms Survey in 111 countries, said there were very high rates in some countries.

The campaign on eliminating violence of women has been ongoing in Austria, with regular meetings and publications over the last decade. Nine years after the first a two-day symposium was convened in Vienna to examine the progress against femicide in Austria, with particular reference to the the vulnerability of women in custody battles with their former partners to physical and psychological violence. This special issue of FEMICIDE contains the speeches of the conference participants, the recommendations for Austria in a Declaration and Action Plan of 10 December 2021, and the latest report to the General Assembly of the United Nations by the Special Rapporteur Dubravka Šimonović evaluating the progress made since her term in office.

The Austrian Federal Minister of Justice opened the 2021 conference, saying, "Femicide is a tragic global phenomenon .... The current situation is unacceptable and forces us to step up action against gender-based violence". Elena Kountoura, Member of the European Parliament, said the statistics are alarming. One in three women had been the victim of abuse, but two out of three did not file a complaint. Mirella Dummar Frahi, Chief of the UNODC Civil Society Unit, listed the Handbooks for gender responsive police services and the projects in Bolivia, Kyrgyzstan, Liberia, Mexico, Senegal, and Sierra Leone that had been undertaken in last ten years. Reem Alsaleem, the new Special Rapporteur on violence against women, reported that on every continent there were countries that still did not have femicide observatories that the gap often had to be filled by NGOs or academic institutions.

The other topics dealt with during the two days were the impact of COVID on violence against women, online stalking, psychological and emotional violence, persistent ridicule, children witnessing domestic violence, and a critique of the new Austrian draft law proposing automatic joint custody for both parents—married or not—at the birth of a child, even in cases where there is a propensity to violence against the mother and/or the child. What became clear in this conference, is that the killing of women is only the final act of violence embedded in structural discrimination, denigration of women, impunity, and lack of adequate support for victims.

The Femicide Campaign has drawn attention to the vulnerability and weak position of women in societies. It is hoped that by focusing on the worst forms of male behaviour we all become more aware of the more subtle ways in which women are disrespected.

With this publication we intend to bring these issues forward to the Commission on Crime Prevention and Criminal Justice 2022 at a side event on "Ten Years of Anti-Femicide Campaigning at UNODC".



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## **For the Commission on Crime Prevention and Criminal Justice 2022 Side Event on "Ten Years of Anti-Femicide Campaigning at UNODC"**

### **Concept Note**

The concept of femicide, the intentional killing of women and girls because they are female, was devised by Diana Russell in the 1970s, but the term was already in use across Latin America. Largely motivated by misogyny, sexism, and a male superiority complex, it has been gradually brought forward in the public discourse and is now recognized as a form of discrimination and a human rights violation, which remains to a great extent unpunished.

It was only on 18 December 1979 that the Convention on the Elimination of All Forms of Discrimination against Women was adopted by the United Nations General Assembly and entered into force as an international treaty on 3 September 1981. The Convention provided a comprehensive framework for challenging the various forces that have created and sustained discrimination based upon sex.

In 1993, at the *Vienna World Conference on Human Rights*, violence against women was formally recognized as a human rights violation. In 1994 the United Nations Commission on Human Rights adopted a mandate to integrate the rights of women into the United Nations human rights framework, with the goal of tackling violence against women (resolution 1994/45).

The first Special Rapporteur on violence against women, including its causes and consequences, was appointed in 1994 following United Nations General Assembly resolution 1994/45. The first legally binding international treaty, the Belém do Pará Convención, also adopted in 1994 by the Inter-American Commission of Women (CIM) of the Organization of American States criminalized all forms of violence against women, especially sexual violence.

The Beijing Declaration and Platform for Action followed in 1995, which represented—at the time—the world's most comprehensive agreement on women's empowerment and gender equality. In 2011, the Council of Europe Convention on preventing and combating violence against women and domestic violence ("Istanbul Convention") was adopted, which explicitly categorized gender-based violence as a human rights violation and form of discrimination.

In 2012, the first International Symposium on combatting femicide was held in Vienna, organized by young activists outraged at the widespread killing of women globally. The meeting was supported by Argentina, Austria, Philippines, Thailand and the United Kingdom. It was attended by senior officials of UNODC, Barbara Spinelli, lawyer, Femicide expert and member of the Italian Association of Democratic Lawyers, and Professor Diana Russell.

A Vienna Action Plan was elaborated and circulated among the Members of the Commission on Crime Prevention and Criminal Justice. The presentations by the speakers were compiled and published in the first issue of FEMICIDE. During the same year, Rashida Manjoo became the first

Special Rapporteur on violence against women, its causes and consequences, to present a thematic report on Femicide to the General Assembly of the United Nations. Her successor Dubravka Šimonovic (2015-2021) concentrated on the collection of disaggregated data of femicides at the national level and the establishment of Femicide Observatories.

In 2013, a resolution was prepared at the United Nations Commission on Crime Prevention and Criminal Justice and adopted by the United Nations General Assembly (resolution 68/191). It was followed by United Nations General Assembly resolution 70/176 of 17 December 2015 which gave UNODC a clear mandate to study the matter, gather comparable statistics, and make recommendations to curb these crimes.

In 2015, the Special Rapporteur called on United Nations Member States to establish Femicide Watches to collect data and establish good practices to prevent and prosecute femicides. UNODC, in the meantime, provided advisory services, workshops and training to police, judges, social workers, and non-governmental organizations and published handbooks and comparative statistics.

A further ground-breaking development occurred on 14 July 2017, when the Committee on the Elimination of Discrimination against Women (CEDAW) adopted the General Recommendation No. 35 on gender-based violence against women, which defined gender-based violence as occurring in all spaces and spheres of public interaction, as well as introduced the concept of intersectionality by recognizing that discrimination is linked to other factors that affect women, such as race and ethnicity, and that violence against women may affect differently women and as a result, tailor-made responses are necessary. It also highlighted the obligation of United Nations Member States to combat gender based violence and provided comprehensive guidance for accelerating the elimination of violence against women.

And yet, the killing, attempted murder of women and girls, and extreme violence continues to rise. Only 22 countries have established femicide watches and in most countries inadequate resources are committed to prevention, investigation, prosecution, and protection of vulnerable women.

### **What Can Be Done?**

The International Association for the Advancement of Innovative Approaches to Global Challenges (IAAI), in cooperation with Soroptimist International, proposes to organize a side event at the next Commission on Crime Prevention and Criminal Justice composed of diplomats, experts, and activists to examine possible solutions, new strategies, and promote greater awareness of these crimes against women. Emphasis will be placed on the necessity of maintaining the ongoing fight against gender-related killings, overcoming bias and stereotypes, and adopting prevention measures and instruments of control. The event will also be used to commemorate the "heroines"—advocates and institutions that have drawn attention to the various forms of femicide. It is hoped that many of the early advocates will be able to attend or contribute with a video message

## **Panelists at Side Event**

Moderator: Ambassador. Esther Monterrubio Villar, Permanent Representative of Spain to the United Nations (Vienna)

- Elisa Nieto Maestro, Special Adviser of the Support Department in the Government Delegation against Gender Violence, Ministry of Equality, Spain
- Jean-Luc Lemahieu, Director of Policy Analysis and Public Affairs, UNODC
- Linda Witong, Advocacy Consultant and Soroptimist International United Nations representative in Vienna
- Anna Alvazzi del Frate, Chair, Alliance NGOs for Crime Prevention
- Rashida Manjoo, Professor Emeritus, University of Cape Town, former Special Rapporteur on violence against women, 2009-2015
- Dubravka Šimonović, former Special Rapporteur on violence against women, 2015-2021
- Rita Banerji, Author, Photographer and Gender Activist, Founder of the *50 Million Missing* online campaign to raise awareness about female Femicide in India (*recorded video message*)
- Claire Laurent, Programme Officer, East Africa, CARE Austria

## **"Femicide"—The Power of a Word**

**Michael Platzer**

In 1976, the feminist Professor Diana Russell chose the term femicide to refer to the "killing of females by males because they are female." She used it at the first International Tribunal on Crimes against Women that took place in Belgium in that year. Professor Russell thought that the crime of homicide did not adequately cover the misogynist factor in the murder of women. The motivations for these killings were totally different from those of ordinary crimes and needed to be analyzed and prevented in a completely different ways.

Of course, the killing of a woman has always been a crime. UNODC has conducted a study of the criminalization of gender-related killing of women and girls (UNODC/CCPCJ/EG/.8/2014/CRP.3) and examined in the annex of that document the language and severity of punishment in 24 jurisdictions in the annex. The paper concludes there are possible advantages and disadvantages to criminalizing such killing (primarily on the basis of fairness and the difficulty of proving motivation).

The problem lies in the willingness to DO SOMETHING about the killing of women: the widespread impunity, unwillingness of witnesses, neighbours, relatives to testify, and cultural acceptance of child marriage, and strict obedience to the husband and wife beating. Even before the Beijing Declaration and Platform for Action (1995), religious traditions enshrined the sacredness of women and specially motherhood, feminists and human rights activists fought for the equality before the law. The Universal Declaration of Human Rights and the International Covenants on Civil, Social and Cultural Rights were deemed to cover men and women equally.

The Convention on the Elimination of All Forms of Discrimination Against Women was adopted by the General Assembly in 1979. It was the first United Nations instrument to recognize "women's rights as human rights." A Committee (CEDAW) was established and they adopted general recommendations No. 12 (1989) and No. 19 (1992) on violence against women, in which the Committee recognized violence as form of discrimination in accordance with Article 1 of the Convention. As more and more countries joined the Convention and accepted the monitoring mechanism, the Committee developed significant jurisprudence under the individual complaints procedure on violence against women. In 2017 the Committee updated recommendation No. 19 and issued a special recommendation on gender-based violence against women.

At the same time, the position of the Special Rapporteur on violence against women, its causes and consequences was established in March 1994 by the Commission on Human Rights. The successive Rapporteurs have visited almost one hundred countries and prepared detailed observations and recommendations. However, Special Rapporteur Dubravka Šimonović

described the cooperation with the Committee as "somewhat challenging" due to financial constraints and lack of substantive cooperation. Moreover, the Rapporteurs argued for a separate convention on violence against women whereas the Committee said the prohibition of

gender- based violence against women had evolved into a principle of customary international law and as such, was binding on all States. The Rapporteurs argued the time allocated to the issue during the country review sessions was inadequate. As a minimum a standing committee on violence against women should be established. The general recommendation No. 35, which does provide the most advanced standards on violence against women, has unfortunately had limited dissemination within the United Nations system and beyond.

Fortunately, however, Femicide or Feminicide legislation was being adopted in Latin American countries due to female activists. And regional treaties with monitoring mechanisms were being agreed upon: the Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women (Convention of Belem do Para); the Maputo Protocol; the Council of Europe Convention of Preventing and Combating Violence against Women and Domestic Violence (the Istanbul Convention).

The Rapporteurs have complained about the poor collaboration with UN-Women, has called for a global implementation plan on violence against women; has had zero cooperation with the United Nations Development Fund for Women in connection with the trust fund in support of actions to eliminate violence against women; about the dismal response of 31 Member States; the femicide watch initiative; and the shaky Platform of Independent Expert Mechanisms of Discrimination and Violence against Women (EDVAW Platform).

In 2018, UNODC published "The Global Study on Homicide: Gender-related killing of women and girls" which concluded that crimes against women are among the most under-reported and least likely to end in conviction. Moreover, survivors face significant obstacles due to gaps in criminal law and procedure, gender stereotypes, victim blaming and inadequate responses of criminal justice institutions and professionals. Therefore UNODC has launched a Global Programme to Strengthen Crime Prevention and Criminal Justice Responses to Violence, with a victim- centred approach and published a handbook for the judiciary on effective responses to gender- based violence against women and girls.

As the Special Rapporteur says in her 2019 report: "At the international normative level, the right of women to be free from violence is recognized as an international human rights standard but, in practice, gender- based violence against women and girls continues to be tolerated and has become normalized in many societies". Although the rise of popular movements, such as #MeToo and #NiUnaMenos, have broken the silence on sexual harassment and other forms of gender based violence, "at the same time there is a mounting opposition and backsliding of women's rights everywhere, including an upsurge in retrogressive movements and a backlash against feminism, gender equality and women's empowerment.....and has led to an increase in gender based violence." She concludes, "The rise in authoritarianism, populism and fundamentalism....a growing wave of conservatism ....challenging international standards. Some States are passing laws restricting women's rights, agency, and mobility, including State authorities permitting so- called 'morality police' to use violence against women".

At the sixty-third session of the Commission on the Status of Women, the United Nations Secretary-General reflected on the aforementioned "pushback" movements against women's rights and called upon all States to "push back against the pushbacks and to continue pushing back". In the 27 years since the Beijing conference new forms of violence have developed: on-line stalking; torture pornography, international trafficking and transnational sex slavery. Again, all these forms of violence are driven by male misogyny. Can we say things have improved?

Yes, there is a better understanding of the different forms of violence and an improved collection of data, but there is still great immunity from this crime as well as an acceptance of cultural violence against women and girls.

## **Message from the Federal Minister of Justice of Austria**

### **Alma Zadic**

I am delighted to have the opportunity to address you on the occasion of today's discussion on tackling the major issue of femicide on a global level.

Violence against Women in its most extreme form, femicide, is a tragic global phenomenon which has also been a matter of great concern in Austria. The current situation is unacceptable and forces us to step up action against gender-based violence.

The collection of comparable data in the fight against gender-based violence, which is also the topic of this panel discussion, is crucial in this regard. We – decision makers, practitioners, academics, and of course civil society – need solid, reliable and comparable data to properly understand the challenges and adopt effective protective and preventive measures.

Such an evidence-based approach is also firmly established in international human rights law: since Austria ratified the Istanbul Convention we are obliged to collect relevant data on a regular basis and support research.

For Austria, it is thus crucial, as a first step, to improve the data situation regarding domestic violence. As you are all aware, domestic violence is very often the harbinger of femicide.

Hence, we need to develop a coherent definition of domestic violence to close the existing data gaps. Based on such a coherent definition comparative research can be started which will then form the basis for improved prevention and protection mechanisms.

We have started by surveying all murder cases of women and children since 2016. The public prosecutors and the department of the Federal Ministry of Justice have identified 140 relevant cases and the following questions for analyzing those cases:

- Have any irregularities occurred in the life of the perpetrator;
- What was the relationship between the perpetrator and the victim; and
- Has the perpetrator already been convicted for related offences?

With this survey, we wish to provide the public prosecutors with a tool that provides better recognition of risk factors. Austria will soon have data to share on gender-related killings of women.

Another topic that will be discussed at today's panel are lessons learned from existing efforts to combat femicides and psychological violence. In my view, effective protection and prevention can be achieved only through proper, institutionalized cooperation among the relevant actors (such as police, judicial authorities, and social workers) allowing for regular exchange of relevant information. This is true for every so-called Hochrisiko-Fallkonferenz (high risk case conference), enabling the police and civil society organizations to jointly protect victims of domestic violence from further harm. This is also true for penal sentencing discussions.

Therefore, thank you for organizing such an outstanding forum for discussing possible legal and substantive reforms. I wish you every success and a productive exchange.



# **Impact of Intimate Partner Violence and Custody Rights on Women and Children**

**Elena Kountoura**

Thank you for the invitation to join you at this event held on the eve of the International Day for Eliminating Violence Against Women and also to commend you for your commitment in addressing all the adversities that women victims of violence endure, and your work towards bringing much needed change in this respect. To this end, I will briefly touch upon critical issues that I have addressed through my initiative, the report I made as a rapporteur of the European Parliament on the impact of intimate partner violence and custody rights on women and children.

As you may know, the report was adopted with a huge majority by the European Parliament in its October plenary, and has been submitted as a resolution to the European Commission to be taken into consideration in its upcoming directive for combating gender-based violence in the EU. With this progressive ground-breaking report, the European Parliament, for the first time, is focusing not only on women but also on children that have been impacted, either as victims themselves or as witnesses of such violence.

We call on the European Commission and all Member States to adopt a holistic European framework in support of the fundamental right of every woman and child to a life without violence. Intimate partner violence is a serious, often long-term and hidden social problem that causes systematic physical and psychological trauma. The consequences are grave for the victims and have a severe impact on the emotional, economic and social wellbeing of the children and the whole family. And as we all know, the statistics are extremely alarming. One in three women has been the victim of physical or sexual abuse. One in five has been abused by her partner or ex-partner. But two out of three do not file a complaint because of the fear, the shame, the blackmail, even the threats for their lives or their children's lives that they received from their abuser.

Other obstacles they face are due to the lack of trust in the authorities that they turn to for help, and also their economic dependency. Women victims will be forced to stay with their abuser because they have nowhere else to live and zero income for themselves and their children. Still, when they find the strength to get away, the violence might not stop, even after the separation. During the pandemic and the lockdowns, domestic violence increased sharply as women and children found themselves in confinement at home 24 hours a day with their abuser. In some Member States reported incidents increased by as much as 60%. While other reports show that when lockdown measures were lifted, the abusers reacted even more violently because they then lost the control they had gained, and this is reflected in the growing list of femicides and infanticides across Europe.

The pandemic has highlighted pre-existing distortions and legislative gaps in addressing the full spectrum of domestic violence and especially in matters of custody. With my report we ask first and foremost that the Istanbul Convention be swiftly ratified and implemented by all Member States that have not yet done so, and by the European Union as the first binding international legal text for combating gender-based violence for prevention and for the punishment of perpetrators.

We urge the Commission also to include gender-based violence in the Euro-crimes list and to use this as a legal base to propose binding measures as well as a holistic EU directive to prevent and combat all forms of gender-based violence. We also call upon the Commission and Member States to ensure adequate and universal access for victims to structures and support services and to tackle financial violence against women, including improved access to housing income and faster payment of benefits, such as child support.

We stated the need for specific programmes for the perpetrators with the aim of changing the patterns of violent behaviour and also for a permanent mechanism that must be established against gender-based violence in times of crisis, such as the pandemic. Child abuse is a key criterion in determining custody; yet in cases of intimate partner violence it is often ignored in several Member States. The trauma experienced by the child is often underestimated during the judicial proceedings; so, too, is the risk of the child and the mother being repeatedly abused. This is why in my report the European Parliament stated clearly that the failure to recognize and address incidents of intimate partner violence in determining child custody and visitation rights is a violation of the right of women and children to a life without violence and is incompatible with the best interests of the child.

The protection of women and children from violence and the best interests of the child must be paramount and should always take precedence over other criteria when establishing the arrangement for custody and visitation rights. And when the mother is a victim of violence we consider that she should be granted full custody and that the custody and visitation rights of the abusive partner should be revoked, as this is the only way to protect her from further violence and secondary victimization.

Both parents must indeed participate actively in the life and upbringing of their child but not if it is against the best interests of the child. In any case, the European Parliament is opposed to mandatory shared custody because each case must be ruled on individually, based on what is the best interest of the child, as defined in the United Nations Convention on the Rights of the Child. Even more so in cases with a history or even an indication of violence, shared custody decisions should be postponed until adequate investigations and adequate risk assessments have been carried out. The shared custody situation of intimate partner violence exposes women to a continuum of preventable violence by forcing them to stay in geographical proximity to their abusers and subjecting them to further exposure to physical and psychological violence as well as emotional abuse, all of which can have a direct or indirect impact on their children.

Moreover, ill-treatment of children by perpetrators is often used to exercise power over, and commit acts of violence against, a mother who is a victim of violence. A further concern is the so-called parental alienation syndrome and similar concepts and terms. The scientific community does not recognize such terms and criticizes them strongly. Still, they are often being used by abusive fathers in the context of intimate partner violence as a strategy against the mother victim of violence, putting into question her parental skills dismissing her opinions, and disregarding the violence to which children are exposed. This is why in my report the European Parliament firmly rejects the use of this pseudo syndrome and calls on the Member States not to recognize it in their law and practice and to discourage or even to prohibit its use in court proceedings during the investigations to determine the existence of violence. For these reasons, we consider that custody in separation cases should be adjudicated exclusively by special courts and judges with the support of specialists, such as forensic doctors, psychologists, child psychologists, and

paediatricians. Training must become mandatory for all personnel in the judicial system, in law enforcement and forensic medical services, and among healthcare professionals in relation to all forms of violence and its mechanisms in handling such cases. It is unacceptable that women and children should lose their lives because the competent authorities fail to recognize the risks to them or to react in a timely way.

Finally, as we state in our report, I would like to point out the need to support activities in schools and other settings for raising awareness of crime and trauma issues on where to seek help or report such crimes and how to build resilience among children and those working with children. In every strategy regarding prevention against intimate partner violence, action must be included that reduces exposure to violence during childhood and eliminate all forms of sexism and gender stereotypes. The culture of inspiring respect towards human rights and for every human being regardless of their gender is the only way of creating healthy relationships and prospects for true progress in our societies.

# Femicide 2021: What Has Changed?<sup>1</sup>

Reem Alsalem

## Introduction

Femicide, or gender-related killings of women, is the most extreme form of violence against women and the most violent manifestation of discrimination against women. It has been a priority for the mandate of the Special Rapporteur on violence against women since this post was established, and was the focus of thematic reports in 2012 (A/HRC/20/16) and 2016 (A/71/398). In the latter, the former Special Rapporteur, Ms. Dubravka Šimonović, called on States to establish a "femicide watch" and/or observatories, and elaborated on the modalities for establishing such a mechanism.

In 2016, the Special Rapporteur established a Femicide Watch Prevention Initiative that aimed to foster the creation of such observatories or watch bodies. The mandate has also made yearly calls to States to submit information on the measures it has taken against femicide and provide data on femicide in general and on the number of gender-related killings of women per year, disaggregated by the age and sex of the perpetrators, and by the relationship between the perpetrator and the victim. In October 2021, and pursuant to General Assembly resolution 75/161 the Special Rapporteur presented a report on the Femicide Watch Prevention Initiative, to the General Assembly (A/76/132).

## Developments Regarding the Prevention of, and Response to, Femicide in 2021

In response to the 2021 call by the mandate for information on femicide, 32 Member States, 7 National Human Rights Institutions, and 4 non-state actors responded. The following article is based in large part on these submissions. Compared to previous years, there has been only a very modest increase in the number of femicide observatories. Between 2016 and 2021, there was significant progress towards the creation of different types of bodies to monitor violence against women and femicide. Yet, in every continent, there are countries that still do not have femicide observatories such as Azerbaijan,<sup>2</sup> Cambodia,<sup>3</sup> Switzerland,<sup>4</sup> Turkey,<sup>5</sup> and Ukraine.<sup>6</sup> The list includes developed countries and countries that are not in a state of conflict, busting the myth that the presence of a femicide observatory or the lack of it is a matter primarily of resources and capacity.

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<sup>1</sup> The author would like to thank Ann Foster Monk and Eszter Horvath of the School of Oriental and African Studies of London University, who were interning with the mandate in 2022, for their support with reviewing the data this article and systematizing it.

<sup>2</sup> Submission by the Permanent Mission of the Republic of Azerbaijan, 2021, p.1, [ohchr.org/Documents/Issues/Women/SR/femicide-watch-initiative/States/azerbaijan.pdf](https://www.ohchr.org/Documents/Issues/Women/SR/femicide-watch-initiative/States/azerbaijan.pdf)

<sup>3</sup> Submission by the Permanent Mission of the Kingdom of Cambodia, 3 December 2021, p.1, <https://www.ohchr.org/Documents/Issues/Women/SR/femicide-watch-initiative/States/cambodia.pdf>

<sup>4</sup> Submission by the Permanent Mission of the Swiss Confederation, 3 December 2021, p.1, <https://www.ohchr.org/Documents/Issues/Women/SR/femicide-watch-initiative/States/switzerland.pdf>

<sup>5</sup> Submission by the Permanent Mission of the Republic of Turkey, 25 November 2021, p.8, <https://www.ohchr.org/Documents/Issues/Women/SR/femicide-watch-initiative/States/turkey.pdf>

<sup>6</sup> Submission by the Permanent Mission of Ukraine, 2021, p.5, <https://www.ohchr.org/Documents/Issues/Women/SR/femicide-watch-initiative/States/ukraine.pdf>

In some countries, femicide observatories have been created or improved upon by local governments, civil society, and academia, thereby filling important gaps that exist at the national level. This has been the case in Albania, for example, where a femicide observatory has been set up by civil society.<sup>7</sup> For example, in Colombia, the Government's Colombian Observatory of Women has a strong relationship with the NGO Femicidios Colombia which provides the Observatory with information that can help identify possible cases of femicide that are not being investigated.<sup>8</sup> Another example is the way data are collected by the Human Rights Commission of the Colombian State of Nuevo Leon which has developed a femicide cartography based on monitoring the news from the local and national press. The data is systematized in a database that contains the date of the event, name of the woman, age, gender identity, location, type of aggression, identity of the alleged aggressor, and age and type of relationship he had with the woman.<sup>9</sup> The creation of this cartography and database has made it possible to geographically visualize the violent deaths of women and to look into whether the authorities have failed in their duties to prevent, investigate, and punish gender-based violence; it has also improved the analysis of the context in which these cases occur.<sup>10</sup>

Conscious of the fact that institutional design of the observatories may differ from one country to another, the mandate recommended that they all have standard roles and functions which are as follows: 1) data are collected according to the modalities recommended by the mandate, and are therefore comparable at the regional and global levels; 2) data are analyzed and made public; 3) cases are reviewed to identify gaps in protection, services, and legislation; 4) recommendations for improvement based on local trends can reach legislators, policy makers, and the general public; and 5) evidence-based legislation and policy reforms can be implemented.

The Special Rapporteur notes that femicide continues not to be criminalized as a separate offence in several countries such as Albania,<sup>11</sup> Cambodia,<sup>12</sup> Malaysia,<sup>13</sup> Slovakia,<sup>14</sup> Switzerland.<sup>15</sup> The list of countries includes affluent countries and ones with developed legal frameworks and justice systems. The mandates position has been that it is not necessary to have a separate criminal offence for femicide as long as the legal system can adequately identify and prosecute

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<sup>7</sup> Submission by the Permanent Mission of the Republic of Albania, 2021, p.1, <https://www.ohchr.org/Documents/Issues/Women/SR/femicide-watch-initiative/States/albania.pdf>

<sup>8</sup> Submission by the Permanent Mission of Colombia, 2021, p.2, <https://www.ohchr.org/Documents/Issues/Women/SR/femicide-watch-initiative/States/colombia.pdf>

<sup>9</sup> Submission by the State Human Rights Commission of Nuevo León (La Comisión Estatal de Derechos Humanos de Nuevo León), 2021, p.2, <https://www.ohchr.org/Documents/Issues/Women/SR/femicide-watch-initiative/CSOs/comision-nuevo-leon-mexico.pdf>

<sup>10</sup> Ibid, p.6

<sup>11</sup> Submission by the Permanent Mission of the Republic of Albania, 2021, p.4, <https://www.ohchr.org/Documents/Issues/Women/SR/femicide-watch-initiative/States/albania.pdf>

<sup>12</sup> Submission by the Permanent Mission of the Kingdom of Cambodia, 3 December 2021, p.4, <https://www.ohchr.org/Documents/Issues/Women/SR/femicide-watch-initiative/States/cambodia.pdf>

<sup>13</sup> Submission by the Permanent Mission of Malaysia, 6 December 2021, p.1, <https://www.ohchr.org/Documents/Issues/Women/SR/femicide-watch-initiative/States/malaysia.pdf>

<sup>14</sup> Submission by the Permanent Mission of the Slovak Republic, 2 December 2021, p.3, <https://www.ohchr.org/Documents/Issues/Women/SR/femicide-watch-initiative/States/slovakia.pdf>

<sup>15</sup> Submission by the Permanent Mission of the Swiss Confederation, 3 December 2021, p.3, <https://www.ohchr.org/Documents/Issues/Women/SR/femicide-watch-initiative/States/switzerland.pdf>

these cases, while also taking into account their gendered nature. However, creating a separate criminal offence can be a useful strategy in this regard.

The collection of disaggregated data continues to be a challenge. For example, courts in Hungary still do not collect data disaggregated by sex, race, nationality, ethnicity, or religion of victim or perpetrator; only by type of crime.<sup>16</sup>

The mandate has systematically recommended that States collect data under three broad categories: 1. intimate-partner femicide or 2. family-related femicide, based on the relationship between the victim and the perpetrator, and 3. other femicides, according to the local context. The centrality of data collection and monitoring in State efforts to combat violence against women was reaffirmed by the Committee on the Elimination of Discrimination against Women, particularly its General Recommendation No. 35 (2017) on gender-based violence against women. In it, the Committee recommended that States parties establish a system to regularly collect, analyze, and publish statistical data on the number of complaints of violence. This system should include information on the sentences imposed on perpetrators and reparations, including compensation, provided to victims. The Committee also recommended that data should be disaggregated by type of violence, relationships between victim and perpetrator, and other relevant socio-demographic characteristics.

Furthermore, the mandate has reiterated on numerous occasions that the existence of criminal law provisions establishing the crime of femicide (as a standalone offence or as an aggravating circumstance to homicide) is not a prerequisite for the collection of data. Furthermore, when such legal definitions of femicide as a specific crime are in place, often only prosecuted cases are counted; in those States, data collection should be broader and encompass all gender-related killings of women.

The mandate considers it problematic that, in some countries, data on femicide or gender-related killings of women and girls continue to be limited to intimate-partner violence. A comprehensive approach should include all types of femicides relevant to a particular context, including intimate-partner and family-related killings, and others in which, while there is no relationship between victim and perpetrator, there is a gender motive.

The Special Rapporteur notes with satisfaction, however, that since 2020, there have been further moves to gather better data in several countries, even if this has relied on different methodologies and scope. In Argentina, for example, through resolution 48/2021, the Integrated System for Cases of Violence for Gender Reasons (SICVG) was created. This system is a tool for recording, processing, and analyzing information on queries and complaints of gender-based violence in order to contribute to the design and monitoring of public policies on gender-based violence. The integrated mechanism would prevent the duplication of data and improve the gathering and analysis of data arising from diverse sources such as complaints, consultations, and legal cases.<sup>17</sup> The mandate has recommended that data collected should include three broad categories: 1. intimate-partner femicide or 2. family-related femicide, based on the relationship between the victim and the perpetrator, and 3. other femicides or gender-related killings, according to the local context. In Bolivia, the Ministry of Justice and Institutional Transparency

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<sup>16</sup> Submission of the Permanent Mission of Hungary, 2021, p.3, <https://www.ohchr.org/Documents/Issues/Women/SR/femicide-watch-initiative/States/hungary.pdf>

<sup>17</sup> Submission by the Permanent Mission of Argentina, 2021, p.2, <https://www.ohchr.org/Documents/Issues/Women/SR/femicide-watch-initiative/States/argentina.pdf>

has established a national monitoring commission for femicide cases to monitor the judicial processes on femicide. An electronic form has been created that allows the effective monitoring of criminal proceedings and shows the areas of greatest prevalence of these crimes.

Submissions sent by different governments to the mandate in 2021 show that femicide continues to be monitored predominantly in the framework of domestic violence or family violence in several countries. Similarly, where States have adopted national plans to address femicide, many have done so through a heavy focus on ending domestic violence and intimate-partner violence (for example Albania,<sup>18</sup> Azerbaijan,<sup>19</sup> Iraq,<sup>20</sup> Malaysia,<sup>21</sup> Norway,<sup>22</sup> Serbia,<sup>23</sup> and Ukraine<sup>24</sup> are cases in point). In Malaysia for example, while femicide is not defined in any laws including the Penal Code, the Domestic Violence Act of 1994 has been amended to introduce new elements, such as immediate protection for victims of violence at home to supplement the offences under the Penal Code; it also expands the definition of domestic violence to also include emotional, mental, and psychological abuse, the recognition of victims' rights and the right to exclusive occupation of the dwelling and access to a rehabilitation programme.<sup>25</sup> However, and as the mandate has emphasized on numerous occasions, while the categories of domestic violence, family violence, and intimate-partner violence are all relevant categories for understanding the phenomenon of femicide, none of them is sufficient as a standalone proxy for femicide.

Studies and improved data continue to show that women are the primary victims of intimate-partner killings and also the prevalence of a prior history of violence leading up to the femicide. For example, data collected by the German Institute for Human Rights Project in Germany from 2018 to 2020 show that more than 79% or more of women that were killed in homicide cases had been killed by intimate partners.<sup>26</sup> Similarly, data collected in Argentina show that, in 90% of the cases of femicide in Argentina, victims had a previous link with their aggressor; 66% of these were committed by partners or former partners.<sup>27</sup> Finally, in Colombia, the data gathered shows that there is a strong correlation between domestic/gender-based violence and femicide. This

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<sup>18</sup> Submission by the Permanent Mission of the Republic of Albania, 2021, p.4,

<https://www.ohchr.org/Documents/Issues/Women/SR/femicide-watch-initiative/States/albania.pdf>

<sup>19</sup> Submission by the Permanent Mission of the Republic of Azerbaijan, 2021, p.1,

<https://www.ohchr.org/Documents/Issues/Women/SR/femicide-watch-initiative/States/azerbaijan.pdf>

<sup>20</sup> Submission by the Permanent Mission of the Republic of Iraq, 23 December 2021, p.2,

<https://www.ohchr.org/Documents/Issues/Women/SR/femicide-watch-initiative/States/iraq.pdf>.

<sup>21</sup> Submission by the Permanent Mission of Malaysia, 6 December 2021, p.2,

<https://www.ohchr.org/Documents/Issues/Women/SR/femicide-watch-initiative/States/malaysia.pdf>

<sup>22</sup> Submission by the Permanent Mission of the Kingdom of Norway, 2021, p.1,

<https://www.ohchr.org/Documents/Issues/Women/SR/femicide-watch-initiative/States/norway.pdf>

<sup>23</sup> Submission by the Protector of Citizens of the Republic of Serbia, 2021, p.1,

<https://www.ohchr.org/Documents/Issues/Women/SR/femicide-watch-initiative/NHRIs/protector-citizens-serbia.pdf>

<sup>24</sup> Submission by the Permanent Mission of Ukraine, 2021, p.3,

<https://www.ohchr.org/Documents/Issues/Women/SR/femicide-watch-initiative/States/ukraine.pdf>

<sup>25</sup> Submission of Permanent Mission of Malaysia, 6 December 2021, p.2,

<https://www.ohchr.org/Documents/Issues/Women/SR/femicide-watch-initiative/States/malaysia.pdf>

<sup>26</sup> Submission by the Permanent Mission of the Federal Republic of Germany, 2021, p.2,

<https://www.ohchr.org/Documents/Issues/Women/SR/femicide-watch-initiative/States/germany.pdf>

<sup>27</sup> Submission by the Permanent Mission of Argentina, 2021, p. 5,

<https://www.ohchr.org/Documents/Issues/Women/SR/femicide-watch-initiative/States/argentina.pdf>

shows that improving responses to cases of domestic/gender-based violence can reduce the incidence of femicide.<sup>28</sup>

In the 2021 report to the General Assembly, the mandate highlighted the difficulty of gaining a clearer picture of the impact of COVID-19 on femicide, in part due to the pandemic-related lockdown measures. Anecdotal information received from different parties by the mandate since then confirm that, while measuring the impact of COVID-19 continues to be challenging, femicide and domestic violence cases appear to have increased during COVID-19 in some countries, such as Poland<sup>29</sup> and Costa Rica.<sup>30</sup> Interestingly, the number of femicides reported during COVID-19 restrictions in Argentina (from 20 March to 31 October 2020) were higher than in 2019. Yet, this increase in femicide was a result of an increase in femicides by perpetrators unrelated to the victims, while the number of partner femicides decreased.<sup>31</sup> Similarly, in Colombia in 2020, the rate of cases associated with femicide seems to have decreased in 2020, which could be attributed to the fact that courts were closed during the mandatory isolation period in Colombia because of the COVID-19 pandemic.<sup>32</sup> The number of femicide victims had also decreased by 23% between March and December 2020 compared to the same period the previous year, though the number of domestic violence reports had increased. This period corresponds to the different periods of mandatory isolation throughout 2020.<sup>33</sup>

Several countries adopted measures to improve information to women at risk of violence during COVID-19 as well as improve referral mechanisms. This was the case in Argentina, where the Ministry of Women, Gender and Diversity improved measures to facilitate access for women at risk or actual victims.<sup>34</sup>

## Conclusion

While much progress has been made in establishing violence-against-women observatories or femicide watch bodies, dedicated to the issue of femicide or gender-related killings of women, the femicide-related information that the mandate received in 2021 continues to be uneven. While some countries and regions have put significant resources into setting up their Femicide watches, in others there is very little progress, if any. The challenge is exacerbated by the fact that data are not yet comparable, as in many cases the modalities proposed by the mandate are not observed.

The Special Rapporteur will continue to call on States to establish femicide watches or observatories on violence against women, where none exists, and collect and publish each year comparable data on femicide or gender-related killings of women as part of data on violence

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<sup>28</sup> Submission by the Permanent Mission of the Republic of Colombia, 2021, p.4, <https://www.ohchr.org/Documents/Issues/Women/SR/femicide-watch-initiative/States/colombia.pdf>

<sup>29</sup> Submission by the Womens Rights Center Poland, 2021, p.1, <https://www.ohchr.org/Documents/Issues/Women/SR/femicide-watch-initiative/CSOs/femicide-watch-poland.pdf>

<sup>30</sup> Submission by the Permanent Mission of Costa Rica, 2021, p.8-9, <https://www.ohchr.org/Documents/Issues/Women/SR/femicide-watch-initiative/States/costa-rica.pdf>

<sup>31</sup> Submission by the Ombudsman of Argentina (La Defensoría del Pueblo de la Nación Argentina), 2021, p.3, <https://www.ohchr.org/Documents/Issues/Women/SR/femicide-watch-initiative/NHRIs/defensoria-argentina.pdf>

<sup>32</sup> Submission by the Permanent Mission of Colombia, 2021, p.11, <https://www.ohchr.org/Documents/Issues/Women/SR/femicide-watch-initiative/States/colombia.pdf>

<sup>33</sup> Ibid, p.11-12

<sup>34</sup> Submission by the Latin American Justice and Gender Team / El Equipo Latinoamericano de Justicia y Género (ELA), 2021, p.1, <https://www.ohchr.org/Documents/Issues/Women/SR/femicide-watch-initiative/CSOs/equipo-latinoamericano-argentina.pdf>



against women. She will also continue to encourage States to strengthen collaboration with civil society organizations, National Human Rights Institutions, academia, and all other entities in collecting data and producing information on femicide. Finally, States are reminded to strengthen the gathering of data on gender-based violence and femicide or gender-related killings of women during the COVID-19 pandemic and to conduct a comparison between femicide data collected before and during the COVID-19 pandemic.

## **Why Preventing Violence against Women Matters for UNODC**

### **Mirella Dummar Frahi**

According to the World Health Organization (WHO), one in three women worldwide has experienced sexual and other forms of violence. Women are also much more likely than men to be killed by their intimate partners or family members, according to a UNODC homicide report on Gender-related killings of women and girls in the private sphere - Global estimates 2020 [1].

In March 2021 in Vienna, for example, Nadine W. who had a newsagent's shop in Nussdorfer Strasse in Vienna was locked and burned inside her shop by her partner who "wanted to teach her a lesson". Reports from the Austrian news indicate that as of Monday, 22 November 2021, in Austria alone, the toll of femicides had reached 27 victims [2]. Last year, Italian President Mattarella named all the 120 victims of femicide in Italy as a mark of the importance of remembering femicide victims and recounting their personal stories. In particular, the ongoing COVID-19 pandemic has exacerbated the vulnerability of women and girls confined within their home with reduced access to essential police and justice services for women.

The specific interventions made by UNODC have developed to address gender-based violence (GBV): UNODC's mandate is limited to soft laws, for example the updated Model Strategies and Practical Measures on the Elimination of Violence against Women in the Field of Crime Prevention and Criminal Justice and other related international standards [3] and norms, as well as several resolutions adopted during the meetings of the UNODC's Committee on Crime Prevention and Criminal Justice [4]. Since 2010, UNODC has been supporting countries to ensure that gender-based violence is addressed in a victim-centred manner.

For example, UNODC builds Member States' capacity with regards to the collection and analysis of relevant data on crimes involving gender-based violence, including victimization surveys and data collected by police, prosecution services, or the judiciary. UNODC is also conducting assessments of national laws, policies, and strategies, and their implementation by the different parts of the criminal justice system. As part of its response to COVID-19, UNODC adapted its programmes and initiatives to respond to increased demand for essential police and justice services by women survivors of violence during COVID-19.

In 2020, UNODC conducted a global assessment of the impact of COVID-19 on criminal justice system responses to gender-based violence against women, as well as a research brief about the impact of the pandemic on reported GBV examining crime and hotline data [5]. Two practical examples from the field were: i) UNODC and UN Women's project in Liberia, Senegal and Sierra Leone enabled civil society and local stakeholders to provide legal aid services to survivors of sexual and gender-based violence (SGBV) in response to an increased demand during COVID-19; and ii) in Kyrgyzstan, UNODC supported emergency mobile groups of police officers, health, social workers, and psychologists providing essential services during COVID-19-related lockdowns. Through its technical assistance capacity UNODC has a number of relevant tools, such as the following:

- The Impact of COVID-19 on Criminal Justice System Responses to Gender-based Violence Against Women: A Global Review of Emerging Evidence (in English);

- [https://www.unodc.org/documents/justice-and-prison-reform/Assessment\\_COVID-19\\_and\\_CJS\\_responses\\_to\\_GBVAW\\_23Mar2021.pdf](https://www.unodc.org/documents/justice-and-prison-reform/Assessment_COVID-19_and_CJS_responses_to_GBVAW_23Mar2021.pdf);
- Handbook on gender-responsive police services for women and girls subject to violence English
- <https://www.unwomen.org/-/media/headquarters/attachments/sections/library/publications/2021/handbook-on-gender-responsive-police-services-en.pdf?la=en&vs=5712>;
- Strengthening Crime Prevention and Criminal Justice Responses to Violence against Women (in English);
- RESPECT - Preventing violence against women: A framework for policymakers (in English);
- Handbook on Effective Police Responses to Violence against Women (in English, Spanish and French);
- Training Curriculum on Effective Police Responses to Violence against Women (in English, Spanish and French);
- Handbook on Effective Prosecution Responses to Violence against Women and Girls (in English);
- Resource Book for Trainers on Effective Prosecution Responses to Violence against Women and Girls (in English and Ukrainian);
- Handbook for the Judiciary on Effective Criminal Justice Responses to Gender-based Violence against Women and Girls (in English and Spanish);
- Toolkit on Strengthening the Medico-Legal Response to Sexual Violence (in English);
- Gender-Related killing of Women and Girls Brochure (in English, French, Spanish, Arabic, Chinese and Russian);
  - Essential services package for women and girls subject to violence:
  - Modules 1-5 (in Arabic, English, French, Spanish, Russian and Chinese);
  - Module 6 : Implementation Guide (in Arabic, English, French and Spanish);
  - Module 7 : Costing Tool (in English);
- <https://www.unodc.org/documents/justice-and-prison-reform/EN-Modules-AllInOne.pdf> and <https://www.unodc.org/documents/justice-and-prison-reform/Gender/Essential-Services-Package-Module-6-en.pdf>
- The Trial of Rape: Understanding the criminal justice system response to sexual violence in Thailand and Vietnam (in Thai and Vietnamese); and
- A Practitioners Toolkit on Women's Access to Justice Programming.

UNODC offers targeted technical assistance and advisory services to enhance criminal justice responses to violence against women, to end impunity of perpetrators, and to enhance victim safety and empowerment. To this end it actively collaborates with civil society. Two examples from Latin America were:

In **Mexico**, UNODC administered 38.8% of its allocated budget under the Spotlight Initiative through 5 civil society organizations, including:

- EducarUno, which is a self-managed course on remote care for survivors and course for the management of geostatistical data on violence against women and girls;

- Circo Azul: communicational spots on non-violent masculinities;
- Decasol, which involves podcasts for the prevention of violence against women and girls
- Universidad Iberoamericana Ciudad de México that provides diploma courses for civil servants who deliver services for the prevention, care and punishment of gender-based violence
- Empatitit, which is an evaluation specialized diploma course.
- To those initiatives, the Femicide observatories must be added. These are very important to provide reliable data and evidence on the actual crime as it develops.

In **Bolivia**, UNODC, in cooperation with the Community of Human Rights and Solidarity Switzerland, developed a self-training course for police officers on "Police action in cases of violence against women and the family", organized an exhibition on Equality and Gender Perspective jointly with the Universidad Privada de Bolivia, and partnered with local civil society organizations in the development of a course on journalism with a gender perspective.

The importance of engaging with Civil Society and encouraging collaboration with the already established or planned observatories on femicide, is key, as it could become the eyes and ears on the ground on the status of crime, crime prevention and criminal justice with focus on women. NGOs, academia and the private sector can also provide a richness of expertise that can contribute to addressing this crime.

#### **Note**

Ms. Dummar heads the work of the Civil Society Unit (CSU) of UNODC, which involves partnerships and collaboration with the same stakeholders on issues more related to transnational organized crime. Since 2008, the Unit has served as the main entry point for civil society engagement in the work of UNODC on drugs and crime. Through the Stakeholder Engagement for the Implementation of the United Nations Convention against Transnational Organized Crime (SE4U) project the CSU facilitates meaningful engagement of civil society in the prevention of organized crime at the national levels, through capacity building activities and a multi-stakeholder database called WhatsOn (<https://whatson.unodc.org/>) which is focused on crime and corruption.

Ms. Dummar invited those who were not yet included in the WhatsOn database to register online. It was in the interest of the UNODC to have as many non-governmental stakeholders, including civil society organizations (CSOs), academia, and the private sector as possible worldwide and in the field. The aim is to continue building bridges and bringing the voice of victims through grassroots CSOs to the international fora and to hope that the observatories envisaged by this meeting will be a useful tool for this purpose.

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# Psychological Gender-Based Violence: The Invisible Threat

## Anna Alvazzi Del Frate

### 1. Introduction

"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" (Beijing Platform for Action, 1995, paragraph 113). Since this definition, it has become a familiar concept that gender-based violence includes all three forms of physical, sexual and psychological violence. Sustainable Development Goals Target 5.2 calls for the elimination of "all forms of violence against women and girls"<sup>35</sup> and progress towards this target is measured by SDG indicator 5.2.1, which clearly spells out the need to identify measures for "physical, sexual or psychological violence".<sup>36</sup>

Psychological violence is probably the most widespread form of intimate partner violence. For example, in eight south-east European countries 60% of the women respondents who had been in a relationship experienced some form of psychological violence from a partner (OSCE, 2019). The fact that such a high proportion of women may have experienced this type of violence indicates the crucial importance of gaining better insights of the underlying dynamics. Prevention requires putting in place policies to address cultural and root causes.

But psychological violence also exists beyond intimate relationships. In-depth knowledge of psychological violence, its forms and frequency, as well as effective policies to address it, are still lacking. This article intends to focus on the key forms of psychological gender-based violence as identified by international surveys. In particular, emphasis is placed on the risk of underestimating the related, even long-term, consequences, especially in the contexts where cultural bias may generate a high level of tolerance of controlling and abusive male behaviours towards women and girls.

### 2. What Do We Know about Psychological Gender-Based Violence?

Addressing psychological violence is key to preventing further physical and sexual violence and the long-term effects of these. Psychological gender-based violence exists in the domestic spheres, at the workplace, in communities. It often includes harm, abuse and controlling behaviours caused by an intimate partner or ex-partner. These behaviours are generally hidden, hardly acknowledged even by the victims themselves. Research has advanced over time, also via specialized methodologies for data collection, encouraging and empowering women to talk.

Surveys are the most appropriate method of collecting information. Still, considering that much of this violence is of domestic nature, women may not be safe talking about their intimate experiences in household surveys. The confidentiality of the survey should meet the highest standards of protection, creating a safe environment for the interviews, in which the respondent

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<sup>35</sup> SDG Target 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.

<sup>36</sup> SDG Indicator 5.2.1: Proportion of ever-partnered women and girls aged 15 years and older subjected to physical, sexual or psychological violence by a current or former intimate partner in the previous 12 months, by form of violence and by age.

feels confident and accepts that she can disclose her experiences. Meeting these high standards requires large investments for this type of survey (for research, logistics, organization, training of interviewers). Nevertheless, they represent a unique source of information, enabling the collection of crucial data and contextual information that may open the way to effective policies to prevent further victimization.

Dedicated methodology for measuring violence against women includes specific questionnaires covering physical, sexual and psychological violence. The first internationally comparable surveys on violence against women were carried out in the 1990s.<sup>37</sup> The experience generated by these international projects informed a "do no harm" principle for data collection on violence against women. Protecting the privacy and safety of respondents was included as top priority in methodological guidelines and principles inspiring all subsequent surveys.<sup>38</sup>

Surveys explore psychological violence by dedicated sections covering experiences and attitudes of respondents. Among the most important international surveys on violence against women, the one carried out by the EU Fundamental Rights Agency in all EU countries in 2014 (EU FRA, 2014) deals with "Psychological partner violence" and "Forms of psychological violence in childhood". Findings indicate that more than two in five women (43%) had experienced some form of psychological violence by either a current or a previous partner. The highest percentage (25%) referred to women who had been belittled or humiliated in private by a partner, a form of emotional abuse in which the abuser undermines the other persons feelings of self-worth and independence (EU-FRA, 2014, pp. 71-80). In particular, the EU-FRA survey focused on four main forms of psychological violence:

- **Controlling Behaviours**

The partner prevents the woman from seeing her friends, using social media, freely contacting her birth family or relatives, going out without providing detailed information on all her movements, speaking with another man, using contraception, completing school, wearing certain types of clothes, freely seeing a doctor.

- **Economic Violence**

Economic violence refers to a partner preventing the woman from making decisions about family finances, shopping independently, working outside the home.

- **Abusive Behaviours**

Belittling and humiliating are the most frequent abusive behaviours by partners. A partner prevents the woman from leaving the house at all or without being accompanied by a relative, or without free access to car keys.

- **Threatening Behaviours**

Threatening behaviours by partners include:

- Stalking, including repeatedly sending offensive material (e.g., by mail or by internet), making threatening or silent phone calls, following insistently, tampering with her property;

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<sup>37</sup> The WHO Multi-country Study on Women's Health and Domestic Violence against Women (see <https://www.who.int/reproductivehealth/publications/violence/9241593512/en/>) and the International Violence Against Women Survey – IVAWS, coordinated by HEUNI with UNODC, UNICRI and Statistics Canada (see <https://heuni.fi/-/international-violence-against-women-survey-ivaws>)

<sup>38</sup> See WHO, 2001; Ellsberg and Heise, 2005; UNDESA, 2014; UNFPA, 2016; EUROSTAT, 2021.

- Using a woman's children to blackmail her, or abusing her children, including threatening to take her children away, threatening to hurt or actually hurting her children, or making threats concerning the custody of her children;
- Making her watch or look at pornographic material against her wishes, threatening to hurt or kill someone she cares about (other than her children), threatening to hurt her physically or sexually (rape, forced pregnancy, etc.).

Stalkers may be partners, former partners, but also other persons known or not known by the victim. The FRA survey found that while stalkers were most frequently former partners (1 out of 10 of women who had a former partner were stalked by him), respectively, 7% and 8% of the respondents had been victims of stalking by people known or unknown to them, and they included some female stalkers (EU-FRA, 2014 p. 85). These behaviours are exacerbated by the presence of firearms. There is no need for the gun to be actually discharged to inflict serious psychological trauma. The mere presence of a gun is sufficient to threaten and coerce (Sorenson and Schut, 2018). Stalkers frequently display guns to scare their victims, and there is often a thin line between the display and the actual use of a firearm. A study in the US found that threats with guns or other weapons were a strong predictor of femicide, with women who experienced such threats being 20 times more likely than other women to be murdered (Campbell, 2003).

A particular form of psychological violence reported to surveys is that experienced by respondents as children. In the EU-FRA survey, 1 in 10 women respondents mentioned some form of psychological victimization in childhood within their family, including many of them having been told they were not loved (EU-FRA, 2014. p. 121).

Finally, "whenever a mother is subjected to violence, there is a great probability that a child witnesses this violence. Every single child exposed to violence at home reacts differently, but witnessing violence against their mother is, in all cases, a form of psychological abuse which has potentially severe consequences." (CoE, 2010, 1). The EU-FRA survey found that almost three-quarters (73%) of women who had been victims of violent incidents by their previous or current partner said that this happened with children living with them being aware of the violence (EU-FRA, 2014. p. 121).

It has been established by several studies that witnessing violence as a child increases risks of suffering and perpetrating violence as an adult. This specific form of victimization generates a range of behavioural and emotional disturbances. For example, a survey carried out in Italy showed that among a sample of female respondents, those who had witnessed domestic violence as children were four times more likely to have been victims of gender-based violence as adults (ISTAT, 2014).

Survey sections on psychological violence are often accompanied by questions to assess levels of acceptance of controlling, abusive and even violent behaviours in the surveyed sample and communities. In some cases, these are separate surveys including male and female respondents. The method used involves presenting scenarios with examples of controlling or abusive behaviours. Respondents shall indicate whether they consider the behaviour in the example as acceptable (always, sometimes, occasionally or never). Questions refer to bias, prejudices, and tolerance with respect to specific behaviours which in some cultures may be considered acceptable but de facto represent acts of psychological violence. For example, the survey on



*Stereotypes about Gender Roles and the Social Image of Sexual Violence*, carried out by the Italian Statistical Office in 2019 (ISTAT, 2019) found that approximately 60% of the population interviewed (aged 18–74 years) had gender stereotypes, with higher percentages observed among those aged 60–74 and those with lower levels of education. The survey showed that 17.7% of the respondents considered *always or under certain circumstances* "acceptable that a man habitually controls his wife's/girlfriend's cell phone and/or activities on social media".

This controlling behaviour is included in international protocols of psychological violence. The Italian survey found that it was considered acceptable by more than 1 person out of 6. The survey also found that 7.4% of people considered always or under certain circumstances acceptable that "a young man slaps her girlfriend because she flirted with another man"; 6.2% believed that in a relationship a slap might occasionally occur.

The connection between the results of these surveys and of those capturing actual experience of victimization is among the core themes of research on gender-based violence.

### **3. Responses and Prevention Initiatives**

Victims of psychological violence feel scared and confused, have doubts about their own ability to handle their relationship and often feel that there is no way out and no one to turn to. Not only, some may have the feeling that seeking help may be dangerous for their own safety, for their children, and for the sake of their (abusive) relationship.

The consequences of psychological violence include serious short- and long-term physical, mental, sexual, and reproductive health problems for victims, who are most frequently women. Women may suffer isolation, inability to work, loss of wages, lack of participation in regular activities and limited ability to care for themselves and their children.

Psychological violence may be the most difficult form of violence against women to eradicate and requires addressing cultural and root causes. The Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention, 2011) is the first legally binding regional instrument that comprehensively addresses different forms of violence against women, criminalizing, inter alia:

- psychological violence (Art. 33);
- stalking (Art. 34);
- physical violence (Art. 35);
- forced marriages (Art. 37);
- sexual violence, including rape (Art. 36);
- female genital mutilation (Art. 38);
- forced abortion and forced sterilization (Art. 39);
- sexual harassment (Art. 40);
- aiding or abetting and attempt (Art. 41);
- unacceptable justifications for crimes, including crimes committed in the name of so-called honour (Art. 42).

Addressing psychological violence requires better gender education of both male and female children, to promote mutual respect. Inputs from experts and civil society organizations are needed to provide knowledge to support efforts and strategies in this area.

Civil society actors should be involved in the development and monitoring of national action plans to help ensure that these deliver practical results for victims and are feasible and sustainable. Several European countries have developed national action plans, such as the Danish "Action plan for the prevention of psychological and physical violence in intimate relationships" (MFA of Denmark, 2019) and the "Action Plan for the Prevention of Domestic and Gender based Violence for 2019-2022" of Czechia (OG of the Czech Republic, 2019). These plans assess the costs and consequences of psychological violence and allot resources for specific training and programmes.

Several international organizations have joined forces in the RESPECT framework, promoted by six United Nations agencies, the World Bank and four development agencies<sup>39</sup> to prevent violence against women. The framework, based on seven VAW prevention strategies identified by their initial letter to compose the R.E.S.P.E.C.T. acronym, is addressed to policymakers and health implementers to support interventions and programmes using seven strategies to prevent VAW. The following strategies are included:

- R** – Relationship skills strengthened
- E** – Empowerment of women
- S** – Services ensured
- P** – Poverty reduced
- E** – Environments made safe
- C** – Child and adolescent abuse prevented
- T** – Transformed attitudes, beliefs and norms

Civil society actors have provided important contributions in recent decades in highlighting the extent and nature of violence against women, including psychological violence, highlighting data gaps and calling for robust and comprehensive evidence to be collected. Many NGOs are involved in providing support services and shelters to victims. A survey carried out by the Alliance of NGOs on Crime Prevention and Criminal Justice in 2021 showed that the majority of member NGOs were actively involved in gender issues, with more than one-third directly dealing with community-based efforts to prevent and respond to domestic violence and femicide. Their advocacy role is crucial in ensuring that action plans, strategies and frameworks are successfully rooted in the communities they are addressing.

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<sup>39</sup> WHO with UN Women, together with the Office of the High Commissioner for Human Rights (OHCHR), United Nations Development Programme (UNDP), United Nations Population Fund (UNFPA), United Nations Office on Drugs and Crime (UNODC), the Government of the Netherlands, Swedish International Development Cooperation Agency (SIDA), UK Aid, United States Agency for International Development (USAID) and the World Bank Group. See <https://www.who.int/reproductivehealth/topics/violence/respect-women-framework/en/>

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## **Foreword on the First Day of the Webinar on Femicide and Psychological Violence on 24 November 2021**

**Ambassador of Mexico to Austria, Luis Javier Campuzano Piña**

Normally, when contributing to a publication, one should start by expressing one's) deepest appreciation and gratitude for receiving such an honour. However, it is regrettable that a publication on such topics is still required. And I am sure that the editors and other contributors will agree with with the the powerful message formulated by Helen Hemblade and Helena Gabriel in the November 2020 issue: "And we can assure you, in the name of the FEMICIDE movement, we will not stop speaking up, joining forces and providing solutions until we see change!"

I am deeply grateful, then, for having received the opportunity to participate in an event that opens the eyes and creates further awareness of the magnitude and gravity of the crimes that are committed against women and children every day )and everywhere. This also allows us to raise our voice and join forces in the efforts aimed at achieving a positive change, particularly at a time when the risks that women and girls face are increasing, whether due to the impact of the COVID-19 pandemic, economic crises or armed conflicts, among other causes.

Let me pay particular homage again, as I did during the forum entitled "*Femicide Observatories and Psychological Violence against Women*" held on 24 November 2021, to every person and entity engaged in the "16 Days of Activism against Gender-Based Violence against Women and Girls".

As we concluded at the forum, we have to put an end to these heinous acts. Criminals have to be brought to justice and societies have to oppose all crimes against women and girls, including psychological violence. The knowledge and expertise gained through the statements of experts at that forum, which will be reflected in this edition of FEMICIDE, will certainly be another step in the right direction.

## **Concluding Remarks to the First Day of the Webinar on Femicide and Psychological Violence on 24 November 2021**

**Ambassador of El Salvador to Austria, Julia Emma Villatoro Tario**

I would note that the panelists at this event—according to their professional and academic background—presented relevant information and data regarding the femicide and psychological violence against women, especially mothers, for example:

- Many times, the perpetrator, who should be prosecuted and criminalized, is usually the partner or a member of the family of the victims.
- Regrettably, the current statistics show that violence against women and girls are high and continue increasing.
- Respect for human rights and attention to the needs of the victims are important for combating this crime. The psychological, physical, and neurobiological damages caused to the victims (women and girls) and also to children witnessing any form of violence need to be addressed.
- The consequences for children in different areas of their lives (emotional, educational, and socially) are of high impact.
- Women are also victims of psychological or physical non-State-torture violence (NST). Torture is different from abuse and happening more frequently than we realize. Torture causes other damage, such as shame, fear, terror, and trauma.
- Unfortunately, during the COVID-19 pandemic the number of cases of violence against women, girls, and children has increased.
- The collection of data is an important tool to tackle this issue. Solid, reliable, and comparable data, correctly analyzed, are needed to identify risk factors of this threat.
- The adoption/implementation of tailor-made policies on this issue is of utmost importance: national plans, legislation, programmes and the establishment of institutions focusing on this matter.
- UNODC has already supported the issuance and the update of standards, norms, and resolutions in this field. These documents can be consulted online. UNODC has technical assistance tools for use by Member States. Other institutions have made surveys, studies, and compiled data to show the impact of these crimes on violence committed during COVID-19 pandemic (lockdowns).
- The experience of some countries like Mexico have demonstrated the important role a Femicide Observatory may play in tackling violence against women and girls.
- Civil society's important contribution in this area.
- A call to Member States to sign and ratify international instruments on the subject was highlighted, and to assist countries in accomplishing effective implementation.
- Despite action by the governments, institutions, organizations, and civil society, there is still much to be done, which is why continuing efforts must be made to stop this threat.

There are many girls and women who urgently need our support. Each one of us can do something at our own level. Let's do it!

# **Killed for Being a Woman: Femicide in the Latin America Region**

## **Miriam Estrada Castillo**

### **Abstract**

This article briefly analyses the construction of deeply rooted societal patterns of violence and discrimination against women where femicide, identified as the most brutal act of violence against them, expresses the vertical patriarchal power of most of Latin American societies, intertwined with all the continents multifarious national characteristics. The article also addresses the socio-economic and political origin of violent discrimination, exposing the reasons for its existence as an intrinsic part of the "social conscience" prevalent in the region. Stereotypes, prejudices, religion, and exclusion comprise the core structure of violence and discrimination that has historically accompanied the socio-political and economic development of the post-colonial Latin-American countries. These customs, traditions and culture feed and trigger the aggressive manifestations against women who dare not be "in the place where they belong" or "who are not fulfilling their right role" or—even worse—who are "invading" the public sphere that has traditionally belonged only to men. Femicide, then, is the ruthless reaction of men who have not been able to overcome the sense of loss of entitlement and ownership of "private property" over women. Femicide in Latin America is, undoubtedly, the vicious response against female empowerment and against their self-recognition as human beings fully endowed with their rights and deserving to live a life free of violence that they wish for themselves. Finally, and most importantly, femicide, in the "post-truth" era (Llorente 2017: 53), is the revival of the medieval witch-hunting and killing brought into the 20th Century by radicalized neoliberal mentalities. Therefore, the massive impunity surrounding the crime of femicide in Latin America makes it clear that in the region, women are unequal before the Law because they are unequal in life, and what has no value in life is deemed inferior also in law.

**Keywords:** Femicide, Patriarchy, Violence, Legislation, Impunity, Post-truth, Latin America

### **Introduction**

Femicide, the act of killing a woman because she is a woman, is a crime that crosses all social, economic, and cultural spheres worldwide, transcending races, borders, ages, and religions, thus becoming a universal criminal offence. There is no region of the world, no country, and no culture in which women can feel safe from this scourge, despite the efforts of the international community and the programmes and laws that have been adopted at the international level to put an end to it.

In November 2019, the Gender Equality Observatory of the United Nations Economic Commission for Latin America and the Caribbean (ECLAC) issued information on femicides based on official figures from 16 Latin American and nine Caribbean countries. According to this data, at least 3,500 women were killed in 2018 because of their gender. The actual figure was likely much higher, as only ten countries provided data on women killed by their current or former intimate partners. In 2021, the Observatory reported that the three highest rates of femicide occurred in Honduras (4.7 per 100,000 women), the Dominican Republic (2.4 per 100,000 women) and El Salvador (2.1 per 100,000 women).

### **Latin America Social Conscience, Culture and the Sources of Femicide**

These data urge us to explore deeper into the contextual mindset that shapes the social conscience of the Latin American population and understand why these crimes are so persistent. Why society in general pressurizes women to accept misogynistic mistreatment from their intimate partners knowing the possible consequences, why do offenders enjoy so much impunity, why women are afraid to seek help, why the police refuse to protect or prevent the crime, why States are openly disinclined to provide real solutions, and finally, why the population continues to silently blame the victim.

Social consciousness represents the thousand year knowledge of a society, accumulated and expressed throughout its history, political and legal ideas, the achievements of its culture, its social and moral values, religion and social psychology (Rosenthal M., Ludin P. 2003: 411-412). Investigating Latin American social conscience is thus imperative for understanding femicide in the region.

Social consciousness represents the general thinking of society about all these various subjects being, in the end, the product of its economic and social patterns—various forms and expressions of social consciousness that are, and always have been, concatenated, forming the whole spiritual life of Latin American society. Furthermore, such states of social consciousness also have determined the specific historical role played in the life and development of the regions thoughts, concepts, beliefs, and inspirations.

On the other hand, culture is: "The set of material and spiritual values, developed by humans in the process of social-historical practices as well as the procedures to create, apply, and transmit them" (Rosenthal M., Ludin P. 2003: 106-107). Thus, when discussing Latin American culture, we refer to the personality and character of its people, its national idiosyncrasies, its soul and beliefs, the degree of its historical and intellectual development, its ideological struggles, all interacting to form an inseparable whole.

Latin Americas soul is shaped by contradictions, where the possible and impossible coexist between dreams, sorrows, love, chimeras, tortures, and truths. Generally speaking, we live in what we could call "a social, political, magical realism" blurred by necessity, ignorance, passivity, and prejudices. The obscurantism of the Inquisition combines with stereotypes and superstitions prevalent since Spanish colonial times. "Women's rights" is still a dirty expression in this context. Poverty, hunger, corruption, discrimination, frustration, ignorance, gangs, chaos, lack of opportunities, drugs, exclusion, structural and institutional violence ruthlessly shred the souls of 213 million poor people who barely survive on the continent, making it the most unequal region in the world, according to OXFAM (2020)

Amid the COVID pandemic, the current socio-economic conditions have allowed 69 billionaires to increase their fortunes by 104.1 billion dollars since March 2020. Even given the international economic catastrophe, their profit would be enough for each one of the 25 million people forced into poverty by COVID-19 on the Continent to receive a check for 4,000 dollars. (UNDP, 2021).

Such a distorted distribution of economic power has fed a long-standing, silent, and multi-faceted predator that has grown, strengthened, and expanded, shaping the killer "shadow" pandemic against women. Its name? Femicide.

## The Roots of the Problem

History teaches us that women have endured violence and murder since the dawn of society. From the historical moment when human beings became sedentary, the State and the Law were organized, regulating the new social division of labour and the appropriation of private property. It was at this historical moment that women lost their leading role in the construction of society, and their actions were reduced to the "private space" (what society now knows as "the home" or "the intimate family").

It took thousands of years to recognize that it is in the private space, among human relationships under the same roof or in the intimate and close interactions established between a man and a woman, that one of the most imminent dangers for women is hidden. The exercise of male vertical power ("I command, and you obey") is the first step to a tragic end, as the one who exercises control in the relationship has the right to everything. In contrast, the one who does not have access to it must remain silent, submissive and obedient, almost asking for permission to live.

Society's problems and responses to them, as well as the need for orderly coexistence are achieved through the legal system. On the other hand, legal rules are nothing other than the will of the ruling class as embodied in its specific system of jurisprudence. From this perspective, legal regulations, as the expression of the will and consensus of those who hold power and the ability to make decisions, express the prevailing characteristics in society imposed by the socio-economic classes holding these privileges. By studying the origins of the prevailing Law we can learn about the historic impositions from the highest levels of the State in building our mentality and become aware of the origins of discrimination and violence against women.

The Latin American legal system is based on the Continental or Roman legal tradition. Emperor Justinian (483–565) compiled the laws of Rome as the most significant legal product of antiquity: The Corpus Iuris Civilis comprising all institutions, provisions, concepts, and legal categories which established the scientific basis of the Civil Legal System or Continental Law for all Latin peoples and territories. These were drawn up by the Roman Patrician Lictors<sup>40</sup> representing the Curiae. The latter also exercised religious and family functions, meeting under the presidency of the Pontifex maximus (high priest). It is interesting that many of these provisions are still in force in Ibero-American countries.

In his work, "Synopsis of Roman Law," Mario Oderigo stresses: "Most of the legal provisions of Roman Law served as a source for the legislation of most countries of the world, perpetuating the social structure of that time." Thus, in the Laws of the Seven Partitas of Spain, written by Alfonso X The Wise in 1269, Roman Law is recognized as the primary source of its inspiration. Later, in 1804, Napoleon Bonaparte marked a milestone in the universal history of law, establishing a set of organized legal provisions structuring a legal body that the world knows as the Napoleonic Code, recognising the legal provisions of Roman Law as its most essential source.

In Latin America, liberated from Spain, Andrés Bello, the main promoter and editor of the Chilean Civil Code, one of the most innovative and influential American legal works of his time, finds his inspiration in the Napoleonic Code, rooting the principles of Roman Law in the legal structure of all countries of Latin America, which adopt the Code of Andrés Bello as the source of their legal organization. Many of their dispositions are still in force throughout Latin America.

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<sup>40</sup> From Latin *ligāre*: to bind



### **The Legal Institutions in Latin America: The Family and the Pater Familias**

The Roman family<sup>41</sup> was organized as a small State. The power of the husband or Pater Familias was absolute, indisputable, and all-encompassing. His decisions regarding the management of the family group were expressed in internal and domestic regulations of both a criminal and administrative nature.

The Pater Familias—who could only be either the father or the paternal grandfather—had among his rights the ability to manage all the assets and acquisitions made by his family members, as his own and unique patrimony, exercising over them the Right of Property. Similarly, the Pater Familias acted as priest regarding family worship. Having all the prerogatives in its own right, he could dictate sentences, which could not be appealed; consisting, according to his will and criteria, penalties such as flogging, expulsion from the house, even prison and death. It is essential to highlight that in this "Small State" that constituted the Roman Family, the Public Power could not intervene.

The description of this Institution and its permanence in the legal system of Latin-American countries gives us a good account of the mentality that persists even nowadays regarding male power vis-à-vis the members of his family. Currently, the Law has moderated the prerogatives of the Pater Familias. Still, customs, social conscience, and culture retain their power held invisibly in the teachings transmitted to children from generation to generation.

### **Why the Digressions?**

All these historical-legal digressions in an article about Femicide are of the utmost necessity for acquiring the understanding that we are not fighting against a "new" act of violence against women. We are fighting against a patriarchal structure still very much in force in our society. We must adopt an active commitment to defend what has been achieved so far and stop the pervasive crimes against women. We need to understand that we have been trying to change profoundly internalized stereotypes intertwined in the social consciousness of humanity for millennia. Therefore, it is mandatory to focus on changing society structurally.

History teaches us the actual dimension of our task when analyzing the genesis of violence against women and our long unsuccessful fight to eradicate it. The lesson is clear: We cannot raise the demands for equality and elimination of discrimination if we forget that women's rights are human rights. And that human rights are universal, indivisible, and interdependent. They are the core of democracy. Therefore, although we are fighting for the eradication of Femicide, we are also fighting for true democracy to prevail in real terms. Real democracy cannot exist if women cannot live without violence.

### **The Danger of the Post-Truth Era**

Throughout the 21<sup>st</sup> century, various governments and religious leaders have initiated massive campaigns against women's human rights. Worldwide movements fight now against women's reproductive rights—particularly safe abortion. Furthermore, suffering and self-sacrifice are romanticized utilizing the Post-Truth Era elements (characterized by the conscious distortion of the truth) taking advantage of social media. In Latin America, theories such as "The Gender

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<sup>41</sup> From Latin *Domus*: Home, House.

Ideology" and "Marianism" have come alive again, mobilizing thousands of people to the streets with mottos such as "Not with my children", fearing that educating children on gender issues will make them become homosexuals. Clinics of rehabilitation for LGBTQI people have proliferated in the region.

"Marianismo" is a theory highlighting the figure of the Virgin Mary and her behaviour as a role model for women. The theory has been resurrected and is currently revered in the Region. Suffering and virtue taken to new extremes are the new women's duties. "Marianism" implies sweetness, holiness, humility, feminine obedience, plus the undisputed predisposition to sacrifice for her children and her man (Stevens, 1973: 17-24). In the wedding ceremony—one of the most important social events in the life of a Latin American woman—the words of Saint Paul are authoritatively stated by the Priest: "Woman, from now on you must obey your husband who is the head of the home".

In this light, we cannot fail to mention that the Inquisition was abolished in Latin America only in 1834, having been present in the Region for centuries during which obscurantism, cruelty, discrimination and hatred towards everything that represented the use of the senses were the rule. Sins of the flesh, demonic possession, vile pleasures, dirty thoughts, and negative sinful behaviours were epitomized and embodied by the feminine. The sinner. The witch. The devil's messenger. The One responsible for all of us being born with original sin. The culprit for us living in a "valley of tears". The one who should be tortured, punished, murdered, burned alive, in order to become "clean" again and forgiven by God.

Then, it is just natural to be told by your family, the police, or the authorities that you should forgive any "mistake" of your partner: be it an insult, a slap in the face, or your attempted murder. Basically, women are always the ones to blame. After all:

*"To become a woman of honour, look after your husband, look after your sons,  
never discuss, eyes looking the floor,  
Go to the church, talking not much,  
and suffer, suffer, suffer a lot"<sup>42</sup>.*

### **A Cruel Reality: Facts and Figures.**

This article recognizes the scientific fact that violence and aggression are not "innate" features of people's nature. With very few exceptions, human beings are not born violent or full of hate and prejudices. These characteristics are acquired as a response to the heavy weight imposed on individuals by surviving in a profoundly unfair socio-economic system full of frustrations, grievances, misery, and lack of appropriate social responses. Discrimination and inequality hit our lives, preventing us from ensuring a positive and peaceful environment for us and our families. Thus, International Human Rights Law acts as a positive counterweight to these harmful elements, providing humanity with a set of hard-won rights achieved by human beings during their historical struggle to eradicate violence and build a better world. As sad as the current situation is, there is hope. There is a path to improve the general case as long as we all can work together towards justice, equality and peace.

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<sup>42</sup> Children's song taught only to girls to be sung while jumping rope

The first step would be to accept that we have a problem of violence that threatens all society's life and security. Because in an environment of violence, nobody is safe. Nor anyone could be happy. The following facts and figures will demonstrate to us the magnitude of the problem:

- "In Latin America and the Caribbean, despite greater visibility and social condemnation, at least 4,091 women were victims of Femicide during the year 2020" (ECLAC: 2020).
- The Mexican Association Against Corruption and Impunity (MCCI) reveals impunities for femicides at the 97% rate in Mexico (CONNECTA, 2020).
- In Latin America, one woman is killed every two hours just for being a female (Spotlight Initiative, 2018).
- **"Latin America is home to 14 of the 25 countries with the highest rates of femicide in the world, and 12 women and girls in the region are killed every day because of their gender" (UN Woman, 2018).**
- In 2018, 1,206 women were victims of Femicide in Brazil, a figure 4% higher than in 2017, 60% of those murdered women were black (the black population of Brazil is 7.6%), and almost 60% of the victims were between 20 and 40 years old. (Romo, K.: 2018)
- In Latin America, the two countries that reported the highest rate of femicides were Paraguay (0.9 per 100,000 women) and Honduras (0.8 per 100,000 women) (ECLAC: 2020).
- "In the Caribbean, the highest rates of women's deaths at the hands of their intimate partner or former partner in 2020 were registered in Grenada (5.5 per 100,000 women), Saint Vincent and the Grenadines (5.5 per 100,000 women) and Suriname (2.8 per 100,000 women). In this subregion, four out of nine countries and territories with available data recorded an increase in the rate per 100,000 women from 2019 to 2020 (Grenada, Saint Vincent and the Grenadines, Suriname, and Trinidad and Tobago)" (ECLAC: 2020).
- According to the Alliance for the Registration and Mapping of Femicides in Ecuador, there is a femicide every 41 hours (ARMF/Civil Society: 2021).

### **Impunity and Property: The Latin American Formula**

The COVID-19 era has hit Latin American women harshly and continues to pose a latent, frightening, and alarming threat. Many factors make this problem more pronounced and more difficult to face and fight in the Region. The COVID pandemic has exposed the awful truth: we know that violence against women is unacceptable in all its expressions--whether physical, verbal, emotional or psychological—regardless of whether it has been committed by the State or its agents, by relatives or strangers, in the public or private sphere, in times of peace or in times of conflict. However, a sad reality affecting all Latin American women is hidden behind these crimes. Impunity! Impunity allows and consolidates the commission of these crimes, and receives societal encouragement, including from public personages and high-level authorities. Women who have dared to step into the public space to become political actors or agents of change, leaving behind the "submissive and obedient slave" role are subjects to pejorative expressions, insults, sick or diminishing jokes, and even condescending comments about the activism, professional or political actions that the feminists have chosen to undertake.

In this context, spaces for public expressions, such as television, newspapers, and social media, contribute to supporting these negative attitudes with degrading programmes reinforcing the stereotype of the "woman as object" that inevitably leads society to identify her with the stereotype of the "woman as property." And this is how women unknowingly take a step towards being killed: they are entirely unaware that impunity and property are the Latin American macho formula. When "something" that is "mine" and exists "to please me" or "to serve me" or "to obey me" and one day suddenly decides to think and to act independently or refuses to continue being "something" to become "someone," the punishment can be dreadful.

Faced with impotence and frustration, the fist and the kick appear. Then, the fist will hold a knife. Reasons cannot be discussed or negotiated. How to deal or argue with an "object"? How to discuss with a "thing" that also belongs to me? These questions are answered from the darkest place of uncontrollable rage produced by losing control over "the property." Therefore, the logic behind the action is the brutal desire to attack, destroy, torture, deny, or minimize the woman who has challenged the quintessence of the "lord and master." She will pay with her life.

### **Conclusion**

We have demonstrated that violence against women and its ultimate terrible expression: femicide occurs in Latin American society, not because we lack laws or international commitments. Few countries in Latin American and the Caribbean have adopted special laws for identifying and preventing femicide. Even fewer have organized an Observatory. However, these apparent "successes" are only promises written in the air as the governments do not consider it a priority to work on these subjects. The institutions that have been organized cannot rely on solid support. Moreover, they are denied proper and sufficient human and economic resources. With few exceptions, they only exist on paper. This is our cruel reality.

### **The Road Ahead**

The big challenge now is to continue fighting for a better world. I want to offer a proposal which is the product of my experience working on this subject for more than thirty years. We, women, are aware of our rights, needs, sorrows, hopes, and defeats. We have been talking about them since 1968. But what about men? Do they know how we feel? Do they foresee the world we want to contribute to creating as equal partners? Do they understand that the world needs its other half to be complete and to advance towards the path of democracy and peace? Have we sat down and explained these issues to our male counterparts? I do not think so. I propose to implement two parallel campaigns. We still need to strengthen our presence in this post-truth era. They need to understand that the macho position has brought only pain and sorrow for all.

Promoting and implementing campaigns aimed at educating men—which are practically non-existent in the Latin American Region—to free them from the macho culture is perhaps the most challenging, if not a titanic, task that can arise in the fight to prevent femicides.

But we need to do it. As John F. Kennedy said, "We need to do it not because it is easy, but because it is right".

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## Psychological Violence: The Non-State Torture of Women and Girls

Jeanne Sarson and Linda MacDonald

The term *non-State torture (NST)* refers to acts of torture committed against women and girls by parents, other family members, a spouse, guardians, human traffickers, pimps, buyers, pornographers, and like-minded others (Sarson, Gordon and MacDonald, 2019; Sarson and MacDonald, 2014; 2016; 2018a; 2018b; 2019a; 2019b; 2021). Such perpetrators are known as *non-State actors* to distinguish them from *State actors* who are officials of a government (Amnesty International, 2000). Committing acts of violence is intentional (UNODC, 2019), including the infliction of acts of torture. Non-State torturers express misogynistic pleasures when torturing and when exerting totalitarian power and control over the life and death of the women and girls they torture (Sarson, Gordon and MacDonald, 2019; Sarson and MacDonald, 2011; 2014; 2018a; 2018b; 2019a; 2021). They also gain financial income if involved in other crimes such as human and drug trafficking or achieve other like-minded peer benefits. Non-State torture victimizations are perpetrated in homes, and in other places safe for the torturers in local, national, and international communities.

If non-State torture is a new word and awareness, this is not surprising. Although article 5 of the Universal Declaration of Human Rights (UDHR) declared that "no one shall be subjected to torture" (1948), the global patriarchal mind-set meant that when the United Nations Convention against Torture and Other Cruel, Inhuman, and Degrading Treatment or Punishment (UN CAT) was adopted (1984), it was conceived as applicable to the welfare of men (Méndez, 2018). Creating a global discriminatory conditioning whereby acts of torture were socio-legally perceived to be only committed by *State actors*, who were government "officials" such as police, public officers, or military personal. Resulting in a social and legal position whereby article 5 was not applied as a human right of women and girls, therefore, the NST perpetrated against them has been, and continues to be, globally invisibilized.

This occurred in Canada when the House of Commons Standing Committee on Justice and Human Rights decided that it was "redundant" to amend the *Criminal Code* to include torture perpetrated by non-State torturers, reasoning that the brutality could be legally, thus socially, dealt with as aggravate assault crimes (Housefather, 2016). Eliminating such legal and social denial that NST victimization occurs requires equitable access to non-discriminatory justice. It demands women's and girls' legal right to appear in a court of law to denounce the NST human rights crime they survived (Sarson and MacDonald, 2016; 2019b). Access to equitable human right justice is also declared as belonging to women and girls in article 7 of the UDHR. However, this remains truly and factually redundant by the patriarchal dismissal that occurred in the decision of the Canadian House of Commons Standing Committee on Justice and Human Rights not to amend the *Criminal Code*. Considering the term torture "is reserved for one of the worst possible human rights violations...human beings can inflict upon each other" (Nowak, 2010, pp. 13).

This socio-legal culture of human rights discrimination has invisibilized acts of torture committed by non-State torturers such as parents, a spouse, or criminal groups. It has also promoted decades of disbelieving, denying, and dismissing women's and girls' attempts to tell they had been tortured within family and non-family relationships.

### **A Herstorical Glimpse: The Socio-Legal Dismissal of NST of Women and Girls**

In the 1985 booklet, "Outlawing an Ancient Evil: Torture," published with the adoption of UN CAT, it described that "no circumstances - not war, not public emergency, not orders from a higher authority, **nothing** [emphasis added] - can be invoked to justify torture" (Department of Public Information, p. 1). However, as previously mentioned, a global dismissiveness meant that the UN CAT developed a focus of defining the meaning of torture as State torturing, dismissing that women had a human right to be protected from torture including when perpetrated by non-State actors. Such dismissiveness also occurred previously in 1979, during the work of creating the United Nations Convention on the Elimination of all Forms of Discrimination against Women (CEDAW). Delegates working on this Convention rejected the need to fully address violence against women in the Convention (Manjoo, 2018). Missed was the socio-legal reality that there existed a patriarchal NST "war" against women and girls (WG-USA, 2021). This brief herstorical insight into the development of human rights instruments reveals the impact of how the global patriarchal culture influenced the dismissal of violence against women, including their human right not to be subjected to torture in their personal or public life.

There have been efforts to remedy this socio-legal, human rights discrimination by United Nations Committees connected to both the UN CAT and CEDAW. The UN CAT Committee wrote in its 2008 General Comment that there are acts of violence committed against women that manifest as torture by non-State actors. In its General Recommendation 35, the CEDAW Committee also identifies that torture is perpetrated against women by non-State actors (2017). If these Committees recommend to States parties that their national laws criminalized all acts of torture, which would include torture committed by non-State actors, States parties can ignore these Committee recommendations. This is because recommendations based on the text of the UN CAT General Comment or the CEDAW General Recommendation are considered "soft law" and not legally binding (Jones, Gordon and MacDonald, 2019; UNODC, 2019). Consequently, although freedom from torture is a non-derogable human right, meaning torturing another human being cannot be justified, women and girls are non-State tortured daily on this planet.

### **Comparing Non-State and State Torture Acts Committed against Women**

Global, patriarchal human rights discrimination persists in unjustly invisibilizing that the NST of women is as dehumanizing and as brutal as the acts committed by State torturers. This is evidenced by discussing the personal ordeals of three groups of women (Jones, Sarson and MacDonald, 2018). The three groups are:

- Mexican women who were arrested, jailed, and tortured by security forces, police, army, and navy members (Amnesty International, 2016);
- Asian and African women who immigrated to the United Kingdom and who had been tortured mainly by State actors but also by non-State actors (Smith, & Boyles, 2009), and
- Women born into non-State torturing families (Sarson, Gordon and MacDonald, 2019; Sarson and MacDonald, 2014; 2016; 2018a; 2018b; 2021).

In documents that discuss State torture methods, these are frequently divided into physical, sexualized, and psychological methods (Amnesty International, no date; Shrestha and Sharma, no date; Kooijmans, 1986; de Zoysa and Fernando, 2007). Using these three categories, the

physical tortures committed against the three different groups of women revealed that all survived severe physical beatings and all reported being electric shocked. Mexican women and women born into non-State torturing families reported water and suffocation tortures. African and Asian women and women born into NST families said torturers used many different kinds of weapons to burn, cut, and stab them. Overall, the women born into non-State torturing families reported extensive forms of physical tortures that other women did not. This is a consequence of being subjected to acts of NST often since infancy, and for years and even decades, before gaining the ability to escape and find support.

Sexualized torture was reported by all the women; it included vaginal, oral, and anal torture-rapes, and being ejaculated on by individuals and or groups. Objects and firearms were used to penetrate and injure their body. Women from all three groups disclosed rape-impregnations followed by abortions as a result of severe beatings or violent rapes. Women born into NST families reported being forced to consume aborted fetal tissue. They all endured watching others being tortured including other family members. African, Asian, and women born into non-State torturing families reported that their torture-rapes were sometimes photographed. Women born into non-State torturing families also suffered sexualized human trafficking torture ordeals, including that some parents held "torture parties" in their home and endured bestiality.

Forced nakedness was as psychological torture endured by all women. Both Mexican and women born into non-State torturing families identified being harassed or stalked, enduring misogynistic putdowns, called derogatory names, and being threatened. Deep, long-lasting emotional humiliation was a psychological torture endured by all women.

### **Psychological Tortures of Women: Responses to Physical and Sexualized NST**

Psychological tortures are consequences of being intentionally subjected to acts of physical and sexualized NST as illustrated in figure 1 (Sarson and MacDonald, 2011; 2016; 2021). The first column shares three examples of physical tortures: burning, cutting, choking and strangulation; the second column describes how the physical acts of torture "translated" into sexualized tortures, and the third column lists the consequential psychological tortures. Women were emotionally terrorized by the severity of the physical, sexualized, and psychological pain and suffering inflicted by non-State torturers. Emotional terror, horrification, and powerlessness are listed as psychological torture responses (Sarson and MacDonald, 2014; 2016; 2018a; 2018b; 2019a; 2019b; 2021). Nowak (2008) suggested that the creation of "a situation of powerlessness" be added to the defining elements of torture (p. 7).



Torture acts translate →→→→→→→→	Into sexualized torture →→→→→→→→	Psychological torture as harmful consequences
1. Physical torture: burning	<ul style="list-style-type: none"> <li>Hot light bulb, hot poker, or smoldering stick inserted into her vagina</li> </ul>	<ul style="list-style-type: none"> <li>Physiological terror</li> <li>Torture pain and suffering: burning and blistering of her vaginal tissue</li> <li>Reproductive organ damage, infertile</li> </ul>
2. Physical torture: cutting	<ul style="list-style-type: none"> <li>Knife inserted into her vagina cutting with vaginal blood smeared on her body</li> <li>Knife used to cut off part of her vaginal and nipple tissue</li> </ul>	<ul style="list-style-type: none"> <li>Emotional terror</li> <li>Emotional horrification at seeing her blood and fear of bleeding to death</li> <li>Mutilation</li> <li>Torture pain and suffering</li> </ul>
3. Physical torture: choking/strangulation	<ul style="list-style-type: none"> <li>Rope around neck, unconscious</li> <li>Torture-raped, pleasure of pseudo-necrophilia</li> <li>Hung in cage</li> <li>Can't escape</li> </ul>	<ul style="list-style-type: none"> <li>Powerlessness</li> <li>Terrorized she will die</li> <li>Psychological pain and suffering</li> <li>Risk of femicide—present or delayed</li> </ul>

**Figure 1. Cause and effects physical and sexualized tortures cause psychological torture**

The life-threatening severity of physical and sexualized tortures and the consequential severe psychological pain and suffering can leave a woman thinking and believing her only escape is to die by suicide. This is a life-threatening response that needs to be considered as a form of suicidal-femicide conditioning (Sarson and MacDonald, 2018c; 2020a; 2021). It is the result of the non-



**Figure 2. Alex's "Raw Fight"**

State torturers intentional infliction of acts of torture. Or, for some women born into NST families, they recall how they were "taught" to inflict self-harm, such as cutting their wrists, if they tried to tell on their family. This would make their deaths appear to be Self-inflicted versus a psychologically torture-conditioned response that provided protection from discovery for the family-based non-State torturers (Sarson and MacDonald, 2021).

As listed in column three, femicide can also occur when the torturer strangles a woman. Research on repeated strangulation against women living in violent intimate partner relationships, finds that the risks for femicide increases 750% when strangulation is repetitive (Training Institute of Strangulation Prevention, no date). This research also revealed that a delayed femicide can occur as a result of damage to the neck arteries.

Inflicting psychological torture is intentionally aimed to humiliate, so profoundly as to attempt to destroy the tortured person's ability to experience their own Self-identity, to destroy their dignity, integrity, self-esteem, and pride, which leads to dehumanization (Baer, 2007). Alex, who

was born into a torturing-trafficking family, shared the meaning of dehumanization in her art entitled "Raw Fight" shared as figure 2. She voiced her struggle by explaining the meaning of "Raw Fight," saying it: Expresses the total and complete torture of body and soul. Being dehumanized, degraded and humiliated to the point of believing I did not have the right to breathe the same air as everyone else. Having an inner conflict of wishing for death to avoid going through the excruciating pain and humiliation again, yet having a small part yearn to feel what it would feel like if someone believed I was worthy of love and protection. Determined to thrive and have a positive influence in a world that started so cruelly for me (email communication, 4 September 2021).

### NST Victimization-Traumatization Informed Care

The psychological harms listed above must be understood and named as *normal responses* to the atrocities of physical and sexualized tortures suffered versus labelled as disordered responses. Women must not have their psychological responses considered disorders or be labelled as disordered. Instead, women's responses need to be reframed by replacing the term post-traumatic stress disorder (PTSD) with the term post-traumatic stress responses (PTSR) (Sarson and MacDonald, 2019b; 2021).

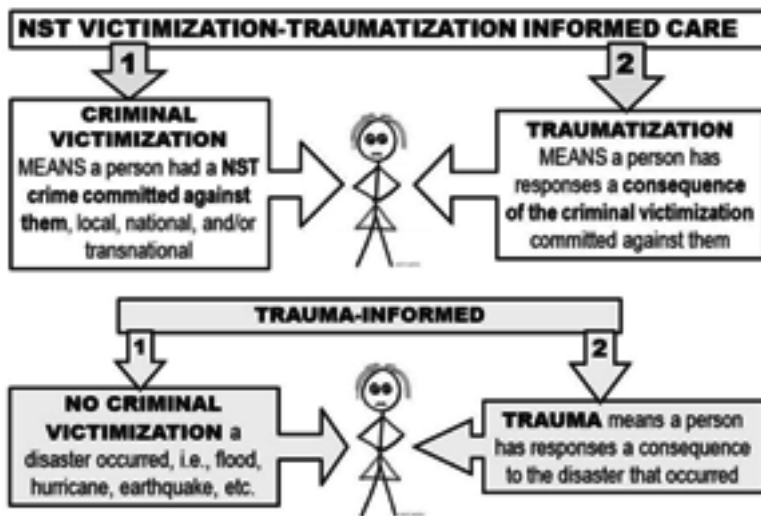


Figure 3. NST victimization-traumatization informed care

Such woman-centred sensitivity is captured when the care and recovery is framed as *NST Victimization-Traumatization Informed Care*, presented in figure 3 (Sarson and MacDonald, 2021).

Two different caring realities are presented. NST victimization-traumatization informed care is distinguished from trauma informed care; NST victimization-traumatization informed care acknowledges that a perpetrator(s) existed who inflicted the victimizing crime of torture. It places definite attention on the perpetrators as being responsible for the acts of NST they committed. This sends the truth-telling message that it was not the woman's or girl's fault they were tortured.

Being informed that she was victimized—that a crime was committed against her can provide emotional relief. This can help reduce their Self-blame and shame.

When thinking only of trauma informed care, it's as if the woman or girl carries all the responsibility for the misery they are suffering. As one woman explained, she had been seeing a therapist for dozens of years and had never been told that the sexualized violence committed against her was a crime, and that was why she had been suffering. It was a totally new thought and perception for her to make the link that she had been victimized (verbal communication, 2021).

It is comforting when women can truthfully name the NST crime intentionally committed against them to listeners who have learned of NST. Truth-telling offers them an opportunity to build Self-resiliency. This nurtures their dignity. Accepting truth-telling exposes the requirement for carers to develop the specific skills needed to help women recover from NST victimizations. It also works at dismantling patriarchal deceit, denial, and dismissiveness. Truth-telling pressures the exposure of NST crimes and as a human right crime NST must be criminalized so prevention becomes a reality (Sarson and MacDonald, 2021).

### **Psychological Non-State Torture of Women Occurs by Language Exclusion**

As previously herstorically explained that when the Universal Declaration of Human Rights was released, the message in article 5 that no one shall be subjected to torture was detached



from being women's human right. This patriarchal oppression made NST invisible. It made women's telling unheard. This patriarchal socio-legal discrimination made it painfully easy for Elizabeth to explain this impact on her. She said,

'It is so true that women silence other women about their human right not to be subjected to NST. I guess for some it may be fear of even the word torture. Often women ignore me and worse...because they know I do speak about torture. Sometimes I feel so isolated...like being in a place and no one talks my language...and I have to keep relating in their language even though it is not my language. It's a social isolation...difficult to describe" (email communication, 27 February 2019).

**Figure 4. Elizabeth's NST "boxes" of memories**

Elizabeth also shared her drawing, included as Figure 4 (Sarson and MacDonald, 2020b). She explained that when she cannot use her language of torture victimization it means she is weighted down by forced socio-legal silencing. Isolated, she carries all the NST "boxes" of painful memories alone. Such social isolation and oppression may cause some women or girls to die by suicide—a conditioned femicide.

## What to do?

- When women disclose using the term "torture," assure them that you believe them and that you are so sorry they were "tortured." Do not replace their disclosure of "torture" with another term of victimization such as "abuse" or "assault." This painfully discredits their truth-telling (WG-USA, 2021).
- As advocates, examine country laws to see if the law on torture is non-discriminatory. Question if impunity is being legally granted to non-State torturers. Consider whether the law is used appropriately or whether violence against women that amounts to torture is being renamed as another crime such as assault. When NST is reframed as assault it fails to identify that NST crimes exist. It discredits the validity of women's truth-telling (Sarson and MacDonald, 2021).
- At the United Nations level there needs to be a declaration that identifies non-State torture as a specific human right violation inflicted against women and girls. This would apply socio-cultural pressure to dismantle the patriarchal oppression that has positioned the human right of women and girls not to be subjected to torture by non-State actors as non-applicable. Deconstructing such patriarchal otherization, discrimination, and oppression would create global awareness so that ALL human rights are women's and girls' equal rights. Absolutely including their right not to be subjected to NDT crimes regardless of whether the torturers are family or non-family. This is the meaning of women's and girls' human being equality.

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## Stalking: A Crime in Person and Online?

Pat Black and Linda Witong

*"It's not easy to describe the fear you have when you see the stalker or signs of the stalker everywhere you go. I have given up all hopes of ever having a safe life, I will be looking over my shoulder, expecting to see him there."*<sup>43</sup>

Despite the heightened attention to intimate partner violence (IPV) toward women and girls, "stalking"<sup>44</sup> has received much less attention until recently. While there are now various definitions of stalking, the details vary from country to country and within law enforcement agencies.

### What is stalking?

Stalking also known as psychological torture occurs in a wide variety of contexts, including in social contexts, such as domestic violence, mobbing, cyberbullying, and political or discriminatory persecution.<sup>45</sup>

As early as 1993, the United Nations defined violence against women as including "any act of gender-based violence that results in, or is likely to result in...mental harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life."<sup>46</sup> Thereafter, it was also argued that stalking or psychological violence not only involved psychological and emotional harm and abuse, but it could also amount to torture. For example, by 1996, jurists and experts had documented that the physical and/or psychological abuse characteristic of both official torture and domestic violence was also comparable in both kind and severity.<sup>47</sup>

Physical violence was not the sole weapon of the batterer. Like the act of torture, batterers often used a debilitating combination of physical and psychological violence in a process of domination and exertion of control, meant to destabilize, victimize, and render the woman powerless. Psychological abuse resulting from the spoken word, limitations on and control of social mobility, and deprivation of economic resources generally accompanied physical battering. The mere threat of violence against women in general and in domestic violence in particular

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<sup>43</sup> SPARC (Stalking, Prevention, Awareness and Resource Center" accessed 1/16/22

<https://www.facebook.com/FollowUsLegally/photos/quotes-from-victims-and-survivors-remind-us-how-traumatic-this-crime-can-be/2241839096067650/>

<sup>44</sup> Also referred to as "unwanted pursuit behaviors (UPBs)" or e.g. "persecutory acts" In Italy, criminal law Act No. 38 of 23 April 2009. Italy introduced the new crime of persecutory acts (stalking), together with penalties, including where stalking takes place in the workplace

<sup>45</sup> **A/HRC/43/49** Torture and other cruel, inhuman or degrading treatment of punishment Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment of punishment 2020 Para 78

<sup>46</sup> **General Assembly resolution 48/104 Declaration on the Elimination of Violence against Women 1993**

Ibid at Article 1 and 2 Source: United Nations General Assembly, 1993, Declaration on the Elimination of Violence against Women

<sup>47</sup> E/CN.4/1996/53 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

5 February 1996 accessed 1/17/22

<http://hrlibrary.umn.edu/commission/thematic52/53-wom.htm>



spread fear among women, often restricting the way they led their lives. In addition, many victim-survivors of battering reported that the psychological violence was even worse than the physical brutality. Beatings leave scars as an external proof of the private reality. However, with no scars, no wounds to dress, women reported that, in addition to the terror they suffered, they were also often made to feel mentally destabilized.<sup>48</sup> Recently, the courts also acknowledged that stalking or psychological torture was "a form of mental torture and a form of public terrorism in a way."<sup>49</sup> when dealing with a victim who was not in a relationship with the suspect. In addition, the Centers for Disease Control and Prevention, The World Health Organization and the UN Women and ILO also now recognize that stalking or psychological violence should be included within their definitions of violence.<sup>50</sup>

In addition, the Suzy Lamplugh Trust is the United Kingdom's pioneering personal safety charity and leading stalking authority, established in 1986, following the disappearance of 25-year-old Suzy Lamplugh who was an estate agent who went alone to meet a client and never returned. The Suzie Lamplugh Trust defines stalking as :"*a pattern of fixated and obsessive behaviour which is repeated, persistent, intrusive and causes fear of violence or engenders alarm and distress in the victim.*

A recent report from Her Majesty's Inspector of Police, United Kingdom has also recognized harassment and stalking as "crimes of persistence," as it involves unrelenting repeat behaviour by the perpetrator experienced in its totality, which seems inescapable and inevitable, and has such a detrimental effect on the victim. The actions in themselves may seem unremarkable, and this may partly explain why some victims suffer repeat behaviour over a prolonged period before reporting it to police, or do not report it at all. Harassment and stalking can often also be crimes of control. This is particularly the case when the victimization is associated with a current or previous controlling and coercive relationship.

For example, Australian Women's Weekly magazine November 2021 recorded the story of Grace, the Australian Women of the Year, who has been instrumental in changing legislation. She had been subjected to grooming, a form of coercive control, stalking and sexual assault by her Maths teacher over a number of years as a vulnerable child and young woman. Eventually she was able to speak out and report what had happened to her. <https://www.nowtolove.com.au/celebrity/celeb-news/grace-tame-66974>

An even more horrific case was reported by The Sydney Morning Herald in 2020. The mother had been subjected to a long period of coercive control by the children's father, and eventually

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<sup>48</sup> E/CN.4/1996/53 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 5 February 1996 accessed 1/17/22

<http://hrlibrary.umn.edu/commission/thematic52/53-wom.htm>

<sup>49</sup> Cresco Man Will Spend a Decade in Federal Prison for "Tormenting" Minnesota Woman for Two Years August 2, 2021 Department of Justice US Attorneys Office Northern District of Iowa Press Release accessed 1/17/22

<https://www.justice.gov/usao-ndia/pr/cresco-man-will-spend-decade-federal-prison-tormenting-minnesota-woman-two-years>

<sup>50</sup> Breiding, Basile, Smith, Black, & Mahendra, 2015 see also American Academy of Family Physicians Position Paper <https://www.aafp.org/about/policies/all/violence-position-paper.html> see also Handbook Addressing violence and harassment against women in the world of work ILO and UN Women pp 6, pp 15, pp 25 and pp 67 2019 <https://www.unwomen.org/sites/default/files/Headquarters/Attachments/Sections/Library/Publications/2019/Addressing-violence-and-harassment-against-women-in-the-world-of-work-en.pdf>

summoned up courage to leave. The perpetrator tracked her down and attacked her and the children, leading to their murder.

<https://www.smh.com.au/lifestyle/life-and-relationships/intimate-terrorism-why-the-murders-of-hannah-aaliyah-laianah-and-trey-must-spark-change-20200910-p55ubz.html>

### **Who are the victims?**

A report by Dr. Lorraine Sheridan and the Network for Surviving Stalking, in which 829 victims of stalking were surveyed, found that the victims in that survey were aged between 10 and 73. Men and women from all backgrounds were affected and many were professionals (38%). Dr. Sheridan concluded that almost anyone could become a victim of stalking.<sup>51</sup> The findings also stated that 70% of victims did not report these incidents to the police until the hundredth incident.<sup>52</sup>

In the United States, former California Prosecutor and Attorney Linda Witong observed that, in the United States "1 in 6 women may have experienced stalking victimization at some point in their lifetime. Using a less conservative definition of stalking, which considers any amount of fear (i.e., a little fearful, somewhat fearful, or very fearful), 1 in 4 women and 1 in 13 men have reported being a victim of stalking in their lifetime".<sup>53</sup> She added that "stalking cases are also unique because they can involve ongoing behaviour that can last for years creating a victim who, if they survive, are among the most emotionally traumatized victims because of the ongoing and threatening nature of the crime."

### **Who are the stalkers?**

- As far as motivation is concerned this is very individual and usually related to personal experience or circumstances. Dale Hartley, a Canadian Psychologist writing in Psychology Today, quotes Dr. Ronald M. Holmes, Professor Emeritus of criminology, who proposed 6 categories of stalkers:<sup>54</sup>
- Domestic: stalking a former spouse or paramour. This is the most prevalent kind of stalking and one which can manifest in the workplace, putting innocent bystanders at risk.
- Lust: serial predators who stalk victim after victim. Serial rapists and murderers may begin as lust stalkers.
- Love-Scorned: an acquaintance, coworker, neighbor, etc. who desires an intimate relationship with the victim, but is rebuffed.
- Celebrity: those who stalk famous people.

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<sup>51</sup> Paper on Key findings from the [www.stalkingsurvey.com](http://www.stalkingsurvey.com), L. Sheridan, 2005. Data quoted in Introduction to stalking, risk & advocacy, Home Office, undated. Available from [www.data.gov.uk](http://www.data.gov.uk)

<sup>52</sup> Paper on Key findings from the [www.stalkingsurvey.com](http://www.stalkingsurvey.com), L. Sheridan, 2005. Data quoted in Introduction to stalking, risk & advocacy, Home Office, undated. Available from [www.data.gov.uk](http://www.data.gov.uk)

<sup>53</sup> Stalking Prevention Awareness and Resource Center (SPARC) accessed 1/17/22

[https://www.stalkingawareness.org/wp-content/uploads/2019/01/SPARC\\_StalkngFactSheet\\_2018\\_FINAL.pdf](https://www.stalkingawareness.org/wp-content/uploads/2019/01/SPARC_StalkngFactSheet_2018_FINAL.pdf)

<sup>54</sup> The 7 Types of Stalkers, and How to Spot Them Most stalkers are men, but female stalkers often share a similar approach. Posted May 27, 2016 |

<https://www.psychologytoday.com/us/blog/machiavellians-gulling-the-rubes/201605/the-7-types-stalkers-and-how-spot-them>

- Political: stalking motivated by political beliefs, which could include either agreement or disagreement with the victim.
- Hit (murder for hire): stalking of a victim by a hired killer in order to commit murder

Hartley also proposed adding one additional category to the list:

- Revenge: an angry former employee, an aggrieved business partner, a resentful neighbor, a vindictive relative, or any other person—usually known to the victim—whose motive for stalking is payback."

### **What Behavior is Involved in Stalking Cases?**

Stalking can include many types of unwanted behavior. In January of 2021, the US National Centre for Victims of Crime Stalking Resource Centre Programme created a list regarding common stalking behaviors including:

- Repeated phone calls, voicemails, emails, and text messages;
- Monitoring a victims phone activity or computer use;
- Driving by, waiting at, or showing up at the victims home, school, or work;
- Sending unwanted gifts, letters, or cards;
- Posting information or spreading rumors about the victim on social media sites, in public places, or by word of mouth;
- Searching for information about the victim by conducting public records or online searches, hiring private investigators, digging through the victims garbage, or contacting the victims friends, family, neighbors, or co-workers;
- Using technology, such as hidden cameras, to watch the victim;
- Following the victim, either in person or via the use of technology (e.g., GPS or location-based apps);
- Using a third party to contact or stalk the victim (i.e., proxy stalking);
- Committing identity theft or financial fraud against the victim, such as opening, closing, or taking money from accounts;
- Using children to harass or monitor the victim;
- Vandalizing or destroying a victims property, car, or home;
- Violating protective orders or other injunctions;
- Threatening to hurt the victim or their family, friends, or pets; and
- Threatening to kill the victim or others, self, or pets.

The US National Centre for Victims of Crime Stalking Resource Centre Programme also described the most dangerous perpetrators as being those who were engaged in the following conduct:

- Engaged in the actual pursuit of the victim;
- Possessed or were interested in weapons;
- Committed other crimes such as vandalism or arson;
- Were prone to emotional outbursts and rage;

- Had a history of violating protection orders, substance abuse, mental illness and/or violence, especially toward the victim; and
- Had made threats of murder or murder-suicide.

And it also observed that the most dangerous times for a stalking victim occurred when:

- The victim had separated from the stalker;
- The stalker had been arrested or served with a protection order;
- The stalker had a major negative life event, such as the loss of a job or being evicted; and
- The stalking behaviors had increased in frequency or escalate in severity.

### **What is the Impact on Victims?**

*"And you realize ... people who are under this kind of stress on a... on a daily basis sometimes, I can understand how suicides occur. Because people feel that they don't know where to turn."*<sup>55</sup>

Stalking often has a huge emotional impact and can include the following effects on a survivor:

Abuse of drugs or alcohol; Inability to study; Sexual dysfunction; Anger; Irritability; Anxiety; Loss of confidence; Confusion; Loss of relationships; Depression; Minimization; Economic losses; Nightmares; Embarrassment; PTSD; Emotional numbness; Self-Blame; Fatigue; Fear; Shame; Flashbacks; Shock; Frustration; Sleep disturbances; Frustration; Social isolation; Guilt; Suicidal ideation; Hypervigilance; Unable to accomplish daily tasks; Inability to concentrate; and Weight changes.

Victims have also reported that even when they try to report incidents to the law enforcement agencies they may not be believed or their concerns are considered trivial.

### **Cyberstalking**

Technology has now created a form of gender-based violence which can be perpetrated throughout the world without physical contact. In the past, one of the many challenges in the fight against online violence against women or girls was that most United Nations Member States still failed to recognize violence against women in digital spaces as a "real" form of violence. However, States are now beginning to realize the urgency and importance of prohibiting and criminalizing online violence against women and girls as "cyberstalking should be treated as seriously as offline stalking, with a consistent response to victims, whether the stalking takes place online or offline."<sup>56</sup>

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<sup>55</sup> Stalking victim From Living in fear – the police and CPS response to harassment and stalking A joint inspection by HMIC and HMCPSI <https://www.justiceinspectorates.gov.uk/hmicfrs/wp-content/uploads/living-in-fear-the-police-and-cps-response-to-harassment-and-stalking.pdf>

<sup>56</sup> The Suzy Lamplugh Trust. Accessed 15 January 2022. The Suzy Lamplugh Trust is the UK's pioneering personal safety charity and leading stalking authority, established in 1986, following the disappearance of 25-year-old Suzy Lamplugh, an estate agent and worker who went alone to meet a client and never returned.

"Gender-based violence" which is directed against a woman because she is a woman or that affects women disproportionately"<sup>57</sup> now includes physical, sexual, and/or emotional (or psychological) harm and has been committed both offline and online. Referring to gender-based violence online, Powell and Henry (2017) use the term "technology-facilitated sexual violence" to describe the use of information and communication technology (ICT) "to facilitate or extend sexual and gender-based harm to victims," including "technology enabled sexual assault;... image-based sexual abuse;...cyberstalking and criminal harassment;...online sexual harassment; and... gender-based harassment and hate speech"<sup>58</sup> and position these as part of a continuum of violence (across the online and offline world.)<sup>59</sup>

Women are disproportionately subjected to various forms of online abuse in various parts of the world, especially women of specific religions, ethnic or racial groups, sexual orientation, economic status, and with disabilities. For example, a poll by Amnesty International (2017) revealed that approximately one-fourth of the 4,000 women surveyed in the United States, United Kingdom, Denmark, Sweden, Spain, Italy, and Poland experienced some form of online abuse (e.g., cyber harassment) at least once. What is more, 41% of these women who experienced online abuse feared for their personal safety because of this abuse and harassment (Amnesty International, 2017). Women reported that this abuse or harassment included received intimidating messages, threats of violence, and sexually explicit text messages, emails, images, and videos via dating, social media, and other online platforms, as well as in chat rooms and instant messaging services."<sup>60</sup>

General reporting indicates that there is an enormous increase in the use of the various internet platforms to harass, bully and stalk individuals, often targeted at women but not restricted to them. For example, across five regions, 82% of women parliamentarians reported having experienced some form of psychological violence while serving their terms. This included remarks, gestures, and images of a sexist or humiliating sexual nature, threats, and mobbing. Women cited social media as the main channel of this type of violence, and nearly half (44%) reported receiving death, rape, assault, or abduction threats towards them or their families.<sup>61</sup> These threats which also have been directed toward sportsmen and women, celebrities, those in minority and vulnerable groups such as disabled and others via the various platforms on the internet have led to extensive debate about how the social media giant global providers can be held to account for offensive material is posted. Often this form of stalking/harassment or trolling is not recognized as providing sufficient evidence by prosecutors or law enforcement agencies to take action leading to the victim withdrawing from public life.

Few cases have reached the level of prosecution. Anecdotal evidence also indicates that many female political office holders have decided to leave politics as a result of the offensive material aimed at them and their families. In a very small number of cases the incitement, harassment or

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<sup>57</sup> See General Recommendation 19, UN Office of the High Commissioner for Human Rights, Committee on the Elimination of Discrimination against Women, 1992),

<sup>58</sup> Henry and Powell, 2014; Powell and Henry, 2017, p. 205

<sup>59</sup> Powell and Henry, 2017, p. 206; Powell, Henry and Flynn, 2018; McGlynn, Rackley and Houghton, 2017, p. 36

<sup>60</sup> <https://www.ohchr.org/Documents/Issues/Torture/Call/Individuals/Harrasmenttechniques.pdf>

<sup>61</sup> UN Women Facts and Figures; Ending Violence Against Women accessed 1/17/22

<https://www.unwomen.org/en/what-we-do/ending-violence-against-women/facts-and-figures#notes>

bullying has led to death of the victim. This is thought to be especially true in young people with suicides following cyber bullying.

### **Impact of COVID – 19**

As people spend more time online than ever, reports suggest that online violence, harassment and abuse against women has also increased.<sup>62</sup> In addition, new manifestations of psychological violence or threats have emerged in the context of the pandemic and related lockdown policies. This includes women threatened of being thrown out of their homes or having their financial resources and medical aid withdrawn, as indicated by a Special Rapporteur's report in July of 2020.<sup>63</sup> Other stakeholders stressed that some women have been threatened with COVID-19 infection. Likewise, the WHO reported that perpetrators of abuse may use the COVID-19 restrictions to exercise power and control over their partners to further reduce access to services, help, and psychosocial support from both formal and informal networks, as well as restrict access to necessary items such as soap and hand sanitizer or exert control by spreading misinformation about the disease and stigmatize partners.<sup>64</sup>

A survey in 2021 by Suzy Lamplugh Trust United Kingdom to better understand stalking victims experiences during Covid-19 shows a concerning increase in stalking behaviours during the pandemic. The survey was undertaken through interviews with known victims and therefore is a small sample but nevertheless an important contribution.<sup>65</sup> The Survey observed that:

While survey respondents reported a rise in both online and offline behaviours, an increase in online behaviours was more frequently experienced, indicating a rise in cyberstalking over the last year. Furthermore, the intensity and frequency of perpetrators obsessive and fixated behaviours has also increased for some victims, which respondents linked to the impact of lockdown restrictions, highlighting new and increased risks for victims of stalking. In addition, respondents often unsatisfactory experiences with the criminal justice system highlight that stalking behaviours continue to be misrecognized and misunderstood by the police and courts, resulting in a lack of support for victims... Given the inadequate response by the police in a large proportion of cases, many stalking victims unsurprisingly indicated a lack of trust in the police to take appropriate (or indeed any) action if they report stalking behaviours. The survey also reveals the pandemic as having a devastating impact on many victims mental health, exacerbating the trauma, distress and anxiety caused by stalking behaviours. In particular, respondents

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<sup>62</sup> A/75/274 **Intensification of efforts to eliminate all forms of violence against women and girls** UN Secretary General Report 2020 citing UN-Women "Online and ICT-facilitated violence against women and girls during COVID-19", 2020

<sup>63</sup> A/75/144 .

<sup>64</sup> The Impact of COVID 19 on Criminal Justice System Responses to Gender Based Violence Against Women; A Global View of Emerging Evidence April 2021 UNODC pp 14

[https://www.unodc.org/documents/justice-and-prison-reform/Assessment\\_COVID-19\\_and\\_CJS\\_responses\\_to\\_GBVAW\\_23Mar2021.pdf](https://www.unodc.org/documents/justice-and-prison-reform/Assessment_COVID-19_and_CJS_responses_to_GBVAW_23Mar2021.pdf)

<sup>65</sup> From the report Unmasking Stalking: A Changing Landscape

<https://www.suzylamplugh.org/Handlers/Download.ashx?IDMF=fcb781a-f614-48c8-adcf-4cfa830c16a7>

indicated that the physical restrictions of lockdown, as well as the resulting social isolation, had affected their safety and psychological wellbeing – with these elements often interlinked.

As the world emerges from the pandemic and research increases it will be possible to identify the extent of the impact of the various forms of restriction have had on the behaviours of stalkers and their victims. The increase in the need for isolation and the increase in the use of the internet may be shown to have had a severe impact on the numbers of women and girls being affected.

Increased research related to the mental health during the COVID-19 pandemic could focus on the consequences for women and girls who have been targeted as a result of the isolation required by Governments.

### **Where does the law stand?**

#### ○ **In-person Stalking in the United States**

The federal government and all 50 states, the District of Columbia, and United States territories have enacted laws making stalking a criminal act, although the elements defining the act of stalking differ across states.

#### ○ **In-person Stalking in Other Regions of the World**

Although stalking is illegal in most of the other areas of the world, some of the actions that contribute to stalking may be legal, such as gathering information, calling someone on the phone, texting, sending gifts, emailing, or instant messaging. They become illegal when they breach the legal definition of harassment (e.g., an action such as sending a text is not usually illegal, but is illegal when frequently repeated to an unwilling recipient). In fact, United Kingdom law states the incident only has to happen twice when the harasser should be aware their behavior is unacceptable (e.g., two phone calls to a stranger, two gifts, following the victim then phoning them, etc.).

### **Cyberstalking**

No multilateral and regional treaties exist to date that cover cyberstalking and cyber-harassment. Some countries do have national laws that directly cover one or more of these cybercrimes: for example, in the United Kingdom, the Malicious Communications Act 1998 classifies cyberstalking as a crime, and in Australia, the Stalking Amendment Act of 1999 includes the use of any form of technology for the purpose of harassing a particular victim. California has also added definitions of cyberstalking to its legislation.

Instead of laws specifically covering cyberstalking and cyber-harassment, most countries still use stalking and/or harassment laws to prosecute the perpetrators of these cybercrimes. In the absence of specific laws to address cyberstalking and cyber-harassment, countries may have national laws that can be used to address some aspects of these cybercrimes, such as blackmail; extortion; insults; threats; incitement to crime, violence and/or hatred; malicious

communications; indecent exposure; invasion of privacy; defamation; online impersonation; fraud; identity theft; hacking; and other related crimes and cybercrimes.<sup>66</sup>

### **What Needs to Be Done?**

Social Development Goal (SDG) Indicator 16.1.3 requires States to measure psychological violence i.e. any act intended to induce fear or emotional distress however this cannot be accomplished as there is not yet any consensus at the international level of the precise definition of psychological violence.

Recognizing and understanding the motivations of stalkers will also be necessary to ensure that any existing legislation is effective as well as enforced. Collecting relevant data, monitoring and research regarding these issues will be important in creating and enforcing anti-stalking legislation. It is also important for law enforcement agencies to listen to women and girls concerns when reporting these crimes. Recent murder cases in the United Kingdom have shown that the victims had reported abuse, harassment and stalking in various forms but the police had not provided the security and protection for women and their families which could have prevented later deaths.

Education and training, raising public awareness of significant signs of harassment and stalking behaviours are also important, especially for those in the criminal justice system as well as professional law enforcement staff and other professionals such as those in health, social care, education.

Further support for victims involving health, psychological and social care as well as education services, adequate housing and food are also urgently needed. Even in a country such as the United Kingdom there is only limited support and follow up action for those who have been traumatized by the experience. In some countries recognition leading to specific legislation will be required.

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<sup>66</sup> Cyberstalking and Cyber-harassment UNODC The Doha Declaration Promoting a Culture of Lawfulness accessed 1/16/22 citing European Parliament Policy Department for Citizens Rights and Constitutional Affairs, 2016; Cassim, 2013). <https://www.unodc.org/e4j/en/cybercrime/module-12/key-issues/cyberstalking-and-cyberharassment.html>



# **The Impact of COVID-19 Shutdowns on Violence against Women: Evidence from Austria and Germany**

**Barbara Rothmüller**

During the beginning of the pandemic, the home was presented as a place of safety. Yet, gender-based violence was a problem before lockdown orders meant to tackle the spread of the COVID-19 pandemic were introduced in many countries. Women have suffered from structural violence, and initiatives against violence remain underfunded for decades. Research shows that gender inequalities increased during the lockdowns due to the rise in unpaid care work, among other reasons.

At the beginning of the pandemic, women's counselling centres were concerned that isolation and stress related to the pandemic would increase the incidents of violence against women. Specialized intervention centres, such as the Austrian "Frauennotruf", a help-line for women, reported an increase in calls and requests for counselling from women experiencing different forms of violence (UN Women 2020). As known from previous disasters, the violation of women's rights is often an underrecognized consequence of social crises (Sanchez et al. 2020).

Domestic violence has multiple causes and forms. It can happen in heterosexual partnerships, but also in queer relationships, and can affect vulnerable groups, such as poor women, immigrant women, people with disabilities or who are living in institutions where people need help with personal hygiene, or gay, lesbian, bisexual, inter- or transgender people. Domestic and psychological violence can also significantly damage the development of children, who are at a particular risk of internalizing and externalizing disorders such as depression and aggressive behaviour when observing violent behavior in their household (Clemens et al. 2021). Often, perpetrators manipulate women and their environment. They try to gain control of their victims, e.g., through their communication devices, social contacts, and finances. It is also known that intimate partner violence increases over time and might be particularly dangerous when a victim tries to separate from the offender. It is thus important in that case to take the psychological dimension of gender-based violence into account.

Yet, little cohesive data on how stay-at-home orders impacting different forms of violence against women and children were available in the first year of the pandemic in Austria and Germany. Statistics often only document cases in which women sought help. Therefore, dark field studies are important to contribute to research on the prevalence of gender-based violence. A study conducted in Germany in April 2020 found a prevalence of interpersonal violence (verbal, physical and/or sexual) of 5% within four weeks prior to the survey participation. Another representative survey found a 12-month prevalence of (physical) domestic violence of 9% but showed no significant increase of violence in Germany in 2021 compared to 2016 (Kliem et al. 2021). Yet, the authors highlight that they could not verify whether in families already affected by domestic violence the frequency or intensity of assaults increased during the pandemic; nor could they investigate at-risk-groups, such as parents with low socioeconomic status, single parents, or parents suffering from (mental) health problems. The following article looks closely at different indicators of social conflict and violence in intimate relationships during the shutdowns in April and December 2020. Based on research on gender-based violence during the pandemic, I hypothesize that confined living conditions, such as staying at home in a household

without a room where you can be on your own, increase anger and conflict in households (Jung et al. 2020).

### Researching pandemic violence: Methods and analysis

Data on violence against women were collected as part of an online survey on transformations of social and intimate relationships during the first shutdown (1-30 April 2020) and the second shutdown (9 November - 9 December 2020) in Austria and Germany. The survey was distributed via major daily newspapers, radiostations, and social media. The study included several indicators of violence against women, such as psychological, physical and sexual violence, and an overall increase or decrease of household conflict. To assess violence, the paper uses the following items (translation from German to English by the author):

- "Have the conflicts in your intimate relationships increased, decreased or remained the same during the lockdown?" (Lockdowns I + II). The answers were ranging from "strongly increased" to "strongly decreased".
- "In the last two weeks, have you experienced psychological violence in your intimate relationships, e.g. being controlled, having experienced threats, verbal abuse, or similar?" (Lockdowns I + II) The answers were "yes" (several times) and "no" (once).
- "In the last two weeks, have you experienced physical violence in your intimate relationships?" (Lockdowns I + II)
- To what extent do you agree with the following statements (Lockdown II):
  - "The atmosphere in the household is negative and tensions frequently escalate."
  - "Since the beginning of the pandemic, I have had sex at least once only because I was afraid to say no" (Lockdown II). The answers ranged from "does not apply at all" to "applies completely".
  - The relationship status was used as an independent variable. In addition, questions on financial worries and confined domestic conditions were included.

The participation in the survey was voluntary and anonymous. The study adhered to the ethical principles of the Declaration of Helsinki, and respondents provided informed consent. Table 1 shows the sample demographics.

Table I: Sample characteristics

	<b>Lockdown 1 (N=4706)</b>	<b>Lockdown 2 (N=2569)</b>
<b>Education</b>		
- Higher Education, University	63	58
- High School	28	31
- Mandatory School, Apprenticeship	9	11

<b>Gender</b>		
- Female	68	71
- Male	28	25
- Non-Binary / Trans	3	3
<b>Country of Residence</b>		
- Austria	66	78
- Germany	34	22
<b>Age</b>	M = 35.2 SD = 11.9	M = 34.8 SD = 11.6

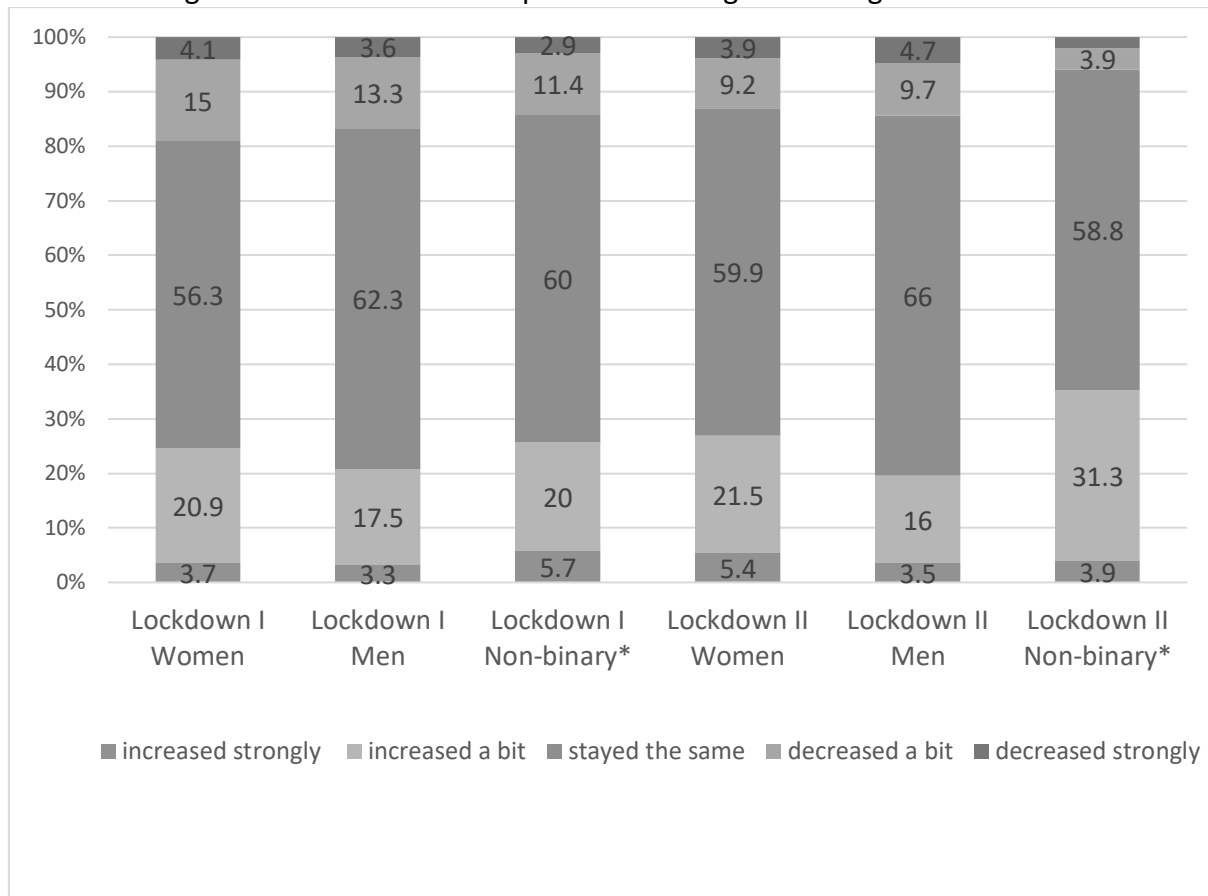
The statistical analysis was conducted using SPSS. Non-parametric tests in the case of non-normally distributed data were used to identify statistically significant differences in experiences of violence by gender and relationship status. A significance level of 0.01 was used for the analyses due to the large sample size.

**Results**

*Intimate relationship conflict*

To what extent did respondents experience intimate relationship conflicts during the pandemic? One in four female respondents noticed an increase in intimate relationship conflicts at the time of the shutdown. Male respondents did not as often report an increase of conflicts as women (see table II). Interestingly, and in contrast to public expectations, 19% of women reported a *decrease* in lockdown I, and 13 % in lockdown II. The perception of changes in intimate relationship conflict was significantly associated with the gender identity of respondents in lockdown II,  $H(2) = 9.19, p = .01$ , but not in lockdown I,  $H(2) = 4.26, p = .12$ . Non-binary and transgender respondents were more likely to experience an increase in conflicts in their intimate arrangements than men or women.

Table II: Changes in intimate relationship conflict among different genders



\*includes trans people

At the time of the second shutdown, 14 % of the women participating in the survey reported a negative atmosphere and frequently escalating tensions in their household. Women with children in the household and living in confined domestic conditions in which they did not have a place to be alone were more likely to experience negative tensions than, for example, women living in a shared flat (see table II).

Table III: Frequently escalating tensions in the household in lockdown II

	<b>Lockdown I</b> Women living in a shared flat	<b>Lockdown II</b> Women living with their partner	<b>Lockdown II</b> Women with children in household	<b>Lockdown II</b> Women without a place to be alone
<i>Applies</i>	<b>8.2 %</b>	<b>15.1 %</b>	<b>19.9 %</b>	<b>29.5 %</b>
<i>Neutral</i>	7.8 %	8.0 %	11.4 %	8.8 %
<i>Does not apply</i>	84.0 %	76.8 %	68.5 %	61.8 %
<i>Sample size</i>	100 % n=257	100 % n=537	100 % n=280	100 % n=68

The increase in intimate relationship conflicts had a small to intermediate effect on the frequency of psychological violence against women in both lockdowns,  $H(4) = 179.22, p < .001, rho = .17$  (lockdown I),  $H(4) = 95.33, p < .001, rho = .25$  (lockdown II).

#### *Psychological violence*

Overall, 8% of the respondents experienced one form of psychological violence at least once in the two weeks prior to their survey participation. No significant difference in the frequency of psychological violence between lockdown I and II was found in the study. The experience of psychological violence was also not related to the gender identity of the respondents.

Table IV: Psychological violence in intimate relationships (all genders)

	<b>Lockdown I</b>	<b>Lockdown II</b>
<i>Yes, several times</i>	2,1%	2.7%
<i>Yes, once</i>	5,6%	5.7%
<i>No</i>	92,3%	91.6%
<i>Total</i>	100%	100%
<i>Sample size</i>	N=4682	N=1332

The frequency of psychological violence was significantly associated with the relationship status of women,  $H(7) = 51.40, p < .001$  (lockdown I),  $H(8) = 54.78, p = .001$  (lockdown II). Of the women who were in a committed relationship at the time of their participation in the survey study, one in ten reported the experience of psychological violence at least once within the two weeks prior to their participation. Among single women, the percentage was 5% during lockdown I and 8% during lockdown II (see table V). Women at the end of a relationship and in unclear

"complicated" relationship arrangements were most likely to experience one or more forms of psychological violence during the lockdown.

Table V: Psychological violence in intimate relationships among partnered and single women

	Lockdown I Women in committed relationship	Lockdown I Single women	Lockdown II Women in committed relationship	Lockdown II Single Women
<i>Yes, several times</i>	2.4 %	1.3 %	2.6 %	3.4 %
<i>Yes, once</i>	7.2 %	3.4 %	6.9 %	4.6 %
<i>No</i>	90.4 %	95.3 %	90.5 %	91.9 %
<i>Sample size</i>	100 % n=1957	100 % n=1340	100 % n=535	100 % n=409

Confined domestic conditions did negatively affect psychological violence against women: Not having a place to be (at least temporarily) on their own was associated with a higher frequency of psychological violence in both lockdowns,  $H(2) = 33.62, p < .001, rho = -.114$  (lockdown I),  $H(2) = 10.86, p = .004, rho = -.102$  (lockdown II). Moreover, psychological violence against women was related to financial worries in lockdown II,  $H(4) = 16.69, p = .002, rho = -.12$ , but not in lockdown I,  $H(4) = 1.27, p = .87$ .

Psychological violence is more widespread than physical or sexual violence. In lockdown I, 0.6% of the participating women reported one or several incidents of physical violence in the previous two weeks, in lockdown II it were 1.1%. In addition, 6% agreed with the statement that they had sex at least once only because they were afraid to say no during the pandemic. Yet, despite the lower prevalence, experiences of psychological violence were significantly associated with both physical violence and sexual violence. The higher the frequency of psychological violence, the higher the frequency of physical violence against women in lockdown I ( $rho = .22, p < .001$ ) and lockdown II ( $rho = .30, p < .001$ ). Moreover, in lockdown II, female respondents who experienced psychological violence were also at a higher risk of accepting sexual activities out of fear of saying no ( $rho = -.19, p < .001$ ).

### Discussion and Limitations

Since the beginning of the COVID-19 pandemic, stay-at-home orders have caused widespread worries about the health and safety of women. Indeed, the study shows the subjective perception of an increase in intimate relationship conflicts and escalating tensions in the household during COVID-19 shutdowns. The experience of psychological violence against women was associated with rising conflicts, existential worries about money and confined domestic

conditions. However, the study did not find an increase in psychological violence against women in the first ten months of the pandemic. The findings support the thesis that the lockdowns do not necessarily result in an overall spread of domestic and gender-based violence. Rather, it is the severity of the incidents that should be causing worries: in some countries such as Austria, Germany, and Australia, empirical data point to the fact that policy makers do not have to face a higher prevalence, but instead need to tackle the increased intensity of conflicts and violence against women in households with multiple stressors (financial worries, job loss, restricted living conditions,...) and a preceding history of violence (cf. Boxall et al. 2020). That includes addressing structural and socioeconomic violence during times of crises because economic constraints limit both autonomy of women and collective support, and financial worries lead to an increase in conflicts and domestic violence.

The study has important limitations. First, the demographic characteristics of the samples deviate from the population as a whole. Characteristically for online surveys, highly educated women were overrepresented in both samples. The sample bias restricts representativeness. Second, data only allow for a comparison between the first and second lockdown during the pandemic. The study does not provide reference values of violence before the pandemic. Third, the indicators used to measure violence are rather limited. Unreported cases of violence are a problem which is why basic research has to collect data independent from police data. Future research needs to collect more comprehensive and representative data on violence against women. Still, the findings offer interesting insights into how pandemic shutdowns impacted violence against women, particularly the correlation of increased household conflict with widespread experiences of psychological violence. Yet, contrary to public expectations, some women even reported a decrease in relationship conflicts during the shutdowns. Furthermore, open-ended responses of women participating in the survey illustrate forms of pandemic-specific agency, for example, when a woman used the fear of contracting the virus to strategically distance and separate from her abusive partner. The pandemic impact on violence against women is thus complex and requires further research.

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# The Relevance of the Femicide Concept in the Austrian Context

## Isabel Haider

This article is based on an intervention at the Webinar on Femicide and Psychological Violence, Especially Against Mothers, in Austria: Current Protection Measures and Recommendations for Further Action, organized by the Coalition of Faith-based Organizations (CFBO), in cooperation with the Sigmund Freud University (SFU) and FEM.A. It poses the question: What's in a name? An analogy was once drawn by Corradi et al. (2016) in their analysis of the significance of theories of femicide for social research. Following this analogy, the article explores the extent to which the term "femicide" and its concept are relevant and necessary in the Austrian context. However, the underlying question may also be of interest in similar political, cultural and societal contexts. It goes down to the more general question whether the femicide concept *fits* a democratic country formally upholding gender equality. Is the use of the femicide concept in the Austrian context a hollow exaggeration?

### 1. Setting the Scene

Austria is considered as one of the pioneers in the implementation of laws for the protection of victims of domestic violence. In 1997, the country introduced emergency barring orders, which allowed the victims of domestic violence to stay in their homes, while the perpetrator had to leave (Council of Europe/GREVIO, 2017, 11). Since then, these protection laws have been amended several times. Austria signed and ratified the Istanbul Convention, which entered into force in August 2014. While the legal framework on violence protection is strong, several deficits regarding intervention and prevention potentials persist. To discuss them all would be beyond the scope of this article. For more details on the current state of Austria's implementation of the Istanbul Convention, see: Council of Europe (2022) *Austria*. Available at: <https://www.coe.int/en/web/istanbul-convention/austria> [17.2.2022]. Yet, many of the missed opportunities for intervention and prevention boil down to the still prevailing lack of awareness and understanding of the structural character of violence against women. The following examples will serve as illustrations of how the political and public discussion in Austria works.

- In the aftermath of an expert meeting on violence against women, the Austrian Minister for Women and Interior Minister announce in a press conference that despite their efforts "it is a sad reality, though, that Austria has not yet managed to reduce the number of violence and femicides significantly".
- Besides an appeal to society's "civil courage" it is stressed that "they would like to encourage women to make use of support services. It is important to bring the police into play since the police is able to help rapidly. The police can and will help, if you call them" (ORF.at, 2021a.).
- A longstanding critique by experts argues that the current police crime statistics are unfit to provide relevant information on gender-based violence, i.e., the variables collected and published do not allow the identification of gender-based violence and femicides among violent crime in general (European Institute for Gender Equality, 2021; Council of Europe/GREVIO, 2017). The yearly security reports, which the Austrian Interior Ministry



submits to the Austrian Parliament and publishes on its website, regularly do not include any assessment on gender-based, intimate partner or domestic violence. In fact, the reports not even mention any of those terms. (e.g., the most recent one for 2019: Bundesministerium für Inneres, 2020). Although separate statistical reports and/or analytic publications are available on other phenomena, like cybercrime, money laundering, crime prevention, cultural property crime, smuggling and trafficking in human beings, drug-related crime as well as extremism and terrorism (Bundesministerium für Inneres, 2022), an analysis of gender-based violence is neither deemed necessary as part of the general crime report nor in the form of special reports. In response to the critique, the Interior Minister recently argued that no changes regarding data collection and publication are deemed necessary, since crime data would show the victim's sex anyway (ORF, 2021).

- A head of operations of the Viennese police in a radio interview, in response to the interviewer's question why there are so many femicides happening in Austria, elaborated as follows: "...nevertheless, I believe that in part it still fails because women seek help too late." She could not say why that was since she was no sociologist. The only thing she could think of, what could still be improved, is to increase awareness and that "women [should] seek help earlier, namely actual help and not only in a way that they inform themselves—but then, they don't act" (Falter Radio, 2022).

### **What messages are insinuated by these statements?**

- *Why don't women simply call the police?*
- *If women do not seek help, nobody can help them and therefore they are to blame.*
- *(Only) women can foresee (an escalation of) violence committed against them. Society is unable to assess the risk for violence happening in private settings.*
- *Violence against women occasionally occurs in problematic relationships from which these women need to detach themselves.*

The political discussion of violence against women in Austria regularly ignores its gender dimensions and the societal context. While similarities between the perpetrators are disregarded, they are construed from an allegedly bad judgment of the victims. Violence against women is treated as a matter of isolated and unrelated incidents. The discussion endorses a somewhat determinist perspective. Consequently, in its strategic approach, Austria acts contrary to the standards set out by the Istanbul Convention. Male violence, as well as the fact that it is often committed against women in a close relationship to the perpetrator and/or women intentionally selected as victims because of their gender, is normalized. It assumes that prevention and intervention can only begin where women victimized by violence give a sign. Only then and in that individual case does the violence become visible in the public sphere. "In doing so, we render invisible what we do see and know about" (Stanko, 2006). The women's lack of compliance is treated as their only barrier to safety. Intervention and prevention are reduced to protection from immediate danger of (physical) violence. It entails that the violence,

or a threat of its use, must have reached a certain threshold already to legitimize intervention. By separating violence against women from its societal context it is avoided to pursue feminist policy as a necessary part of combatting it.

### **Highlighting the Complexity Involved**

The Istanbul Convention defines "gender-based violence against women [as] violence that is directed against a woman because she is a woman or that affects women disproportionately" (Council of Europe, 2014, Art 3 [d]). Similarly, the Vienna Declaration on Femicide defines femicide as "the killing of women and girls because of their gender" (United Nations Economic and Social Council, 2013). The definition of the term "gender" makes clear that the violence is related to "socially constructed roles, behaviours, activities and attributes that a given society considers appropriate for women and men" (Council of Europe, 2014, Art 3 [c]). Male violence against women, both in their deadly and non-deadly forms, is "a manifestation of historically unequal power relations" between genders. It is of a "structural nature" and "one of the crucial social mechanisms by which women are forced into a subordinate position compared with men" (Council of Europe, 2014, Preamble).

What becomes clear from these statements in the Istanbul Convention is that male violence against women, while perpetrated by individuals, is enabled by the societal context. "Gender is more than being male or female" (Stanko, 2006). To understand its complex nature, therefore, means to comprehend how socially constructed characteristics like gender, intersecting with other categories of difference such as ethnicity, sexual orientation, class and age, structures, stratifies and influences society and our everyday lives (Crenshaw, 1995). Women lack equal access to resources in society (Walby, 1995; for empirical data on Austria, see e.g., European Institute for Gender Equality, 2020). In addition, gender norms construe themselves pluralistically for different social groups (Kerner, 2009) and as "situational accomplishments" (De Coster and Heimer, 2021).

The representations of violence against women and femicides by the Austrian political discourse essentialize the different manifestations, diverse experiences of women across marginalized identities and, in terms of intimate partner violence (IPV), oversimplify and trivialize the "multiple barriers [victims face] to safely exiting their relationships" (Storer et al., 2021). They ignore that IPV regularly does not consist in one event but a pattern of coercive control behaviours, including physical, emotional, sexual and economic abuse (Johnson, 2008). They remain silent about "the myriad individual, interpersonal, situational, and structural factors that can impede individual ability to safely exit abusive relationships" (Storer et al., 2021). They reproduce and facilitate perceptions persisting among the general public and criminal justice system that IPV victims could simply leave and if they do not, they would be, at least partially, to blame (Policastro and Payne, 2013).

Taking for granted that police will become active when contacted by IPV victims unsubstantiatedly disregards victims accounts of police and/or criminal justice inactivity in the media (Gaigg and Scherndl, 2021), (international) studies (Storer et al., 2021) and by (Austrian) support organizations (Pausackl and Modersohn, 2021). In eight out of twenty-two intimate partner femicides between January 2018 and January 2019, the perpetrators had been barred from the home one or multiple time(s) before the killing (Haider, 2021). In the following years, the Interior Ministry has used the non-existence of emergency barring orders in femicide cases

as an argument in favour of the good police work (ORF.at, 2021b). Regularly, it was not considered that it logically did not exclude police inactivity in cases where the victim had actually called the police, but no emergency barring order was issued or that the fact that victims did not contact the police prior to the femicide, does not necessarily speak for the polices accessibility or the functioning of femicide prevention in general.

Such misrepresentations about the nature and causes of gender-based violence potentially directly influence external factors necessary for victims safety and IPV victims' own decision making processes to leave. Factors include fear for one's own or family members' life, the risk of losing custody for children, financial resources, partner-dependent residence permits, access to housing, availability of childcare or the flexibility of one's employer or support through the social environment, emergency shelters and the criminal justice system. Socially constructed gender roles and identities as well as the significance of marriage and the nuclear family blur the line between what is being perceived as abuse and culturally expected as a woman to *tolerate*, to *work through it*, *help your partner* and *glue the family together* (Storer et al., 2021).

De Coster and Heimer have highlighted the importance of "gender as a situational accomplishment" to explain how and when gender identities and ideologies reproduce the broader patriarchal order in IPV (2021). Misogynist ideologies or "the use [of] violence as a resource for doing masculinity" therefore depend on context. Building on previous research, the authors argue that IPV is used "in situations where men are confronted with masculinity challenges or threats, [... for] punishing [their women] for deviating from femininity or for challenging the gender order of their relationship. [...] Gendered structural arrangements afford men access to learning the skills for harnessing violence as a control tactic." Therefore, already the threat to use violence, especially in combination with other forms of abuse and when taking into account the "patriarchal structural arrangements" as barriers to safety, can be an effective mechanism of control and entrapment.

### **What is New about Violence against Women?**

All femicides are homicides but not all homicides are femicides. In general, homicides, and more broadly, violence are heterogenous in their causes and contexts (e.g., DeKeseredy et al., 2019). Scientific fields, like criminal law and criminology, as well as the police and justice system have long been or still are dominated by white males (Chesney-Lind, 2006; Corda, 2020; Schulhofer, 2000). Due to statistical predominance and unequal institutional representation, they are shaped by theories of crime and policing customized to male-on male violence while assuming gender-neutrality (Daly and Chesney-Lind, 1988). Globally speaking, "homicide continues to be a largely male phenomenon" (UNODC, 2019). However, the average patterns of male-on-male violence are not identical to male violence against women. In addition, the societal context differs (De Coster and Heimer, 2021). Thus, it appears rather obvious to apply focused analysis as well as intervention and prevention mechanisms.

Violence against women attracted little research and professionalization interests in this androcentric system. However, in the past decades scientific research and international organizations have developed the structural nexus of those forms of violent crime against women and girls where victimization relates to their gender as well as the role of constructions of masculinity and femininity (Daly and Chesney-Lind, 1988; Watts and Zimmerman, 2002).

Law enforcement and the criminal justice system do not reform themselves automatically along scientific progress. New crime phenomena can occur due to new real-life events or knowledge discovery about existing ones. Likewise, crime phenomena, like terrorism or cybercrime, share aspects with previously existing broader phenomena but their specifics and political importance, in further consequence, justified specialization. To identify patterns, develop expertise and customize investigation and prevention measures naming and defining phenomena is essential. By refusing to document violence against women in crime statistics and analysis, "we treat [it] as hidden" (Stanko, 2006). According to the Austrian security report, crime statistics serve as the basis for the allocation of resources, strategic focus and professionalization (Bundesministerium für Inneres, 2020). In consequence, what does it say if crime statistics are silent on gender-based violence against women?

### **Gender Dimensions Influencing Criminal Justice Work**

In 1992 Radford and Russell defined femicides as "the misogynist killing of women by men" (Radford and Russell, 1992). Originally developed as a sociological concept, it cannot directly be transformed into legal categories. In addition, the meaning of the term "misogyny", as an inherent component of the concept, should not be restricted to individual motivations or attitudes but comprise its structural, systemic and institutional forms (Manne, 2017).

The patriarchal societal order forces women into less powerful and dependent positions. "Under patriarchy, masculinity is equated with dominance, independence, rationality, and strength; by contrast femininity is associated with dependence, emotiveness, passivity, and weakness" (De Coster and Heimer, 2021). Socialization processes create a world where men's and women's behaviours internally and externally, consciously or unconsciously, are compared with certain characteristics. These processes are not only relevant for perpetration and victimization but the perception and assessment of violence by society and the authorities as well. "How "seriously" we as a society respond to an incident of violence varies by the situation within which it takes place. "[... S]ocial context is highly relevant to the way in which violence is defined as criminal harm or as harmful by perpetrator, victim, criminal justice official, and society at large. [... F]amiliarity is a central feature of criminal violence to women. Indeed, familiarity facilitates discourses for minimizing the harm of violence" (Stanko, 2006). Gender as "a system of reference" (Stanko, 2006) shapes images of *ideal* victims and perpetrators, and any deviation might lead to doubts about the victims allegations. Without a profound knowledge of the impact of gender in all its dimensions on male violence against women, there is a risk for misinterpretation and misjudgment.

As a result, law enforcement, the criminal justice system and the broader public might ignore the specific risk factors of gender-based violence. Victims might be doubted or blamed for supposedly *suspect* behaviour, such as not reporting instantly, not escaping from a violent relationship earlier, having ambiguous thoughts about the perpetrator or being perceived as *hysterical* instead of *anxious*. As is common in the criminal justice system and our understanding of crime, cases are treated on an individual basis, thereby missing their underlying context and structures. Such an approach misses early opportunities for intervention and prevention by accepting it as a normal, regularly occurring fate committed by isolated pathological individuals.

Gender stratification leads to realities of life which might be invisible to people not sharing the same gender. A lack of gender awareness in combination with unequal representation of

non-male genders in powerful positions within political institutions, law enforcement and the criminal justice system are a stumbling block to gender mainstreaming. At the strategic and management level, this creates the obligation to evaluate all legislative and operational measures based on their effectiveness for diverse settings, including the combatting and prevention of gendered violence. At the operational level, this includes training of law enforcement and criminal justice practitioners on the full complexity and all gender dimensions of violence against women and their impacts on their work. It involves the capability to challenge practitioners own biases in terms of judging behaviours and decisions of victims of gender-based violence as *irrational* or perpetrators threats and violence as *harmless*. It necessitates the ability to comprehend realities of life which might be different to one's own.

Gender-based violence against women lacks recognition as a societal threat important enough for detailed data collection, analysis and gender expertise. Currently, crime data collection and analysis underlie a false belief of gender-neutrality as objectivity. Recognizing violence against women as a crime phenomenon justifying the necessity for specialized expertise would open up the police system to gendered and feminist theories on crime and policing. The concepts needed for its understanding contradict hegemonic masculinity directing policing and the entire structure of the police force (Steinþórsdóttir and Pétursdóttir, 2021; Seidensticker, 2019; Behr, 2008) in Austria and elsewhere.

### **Is There a Patriarchy to Smash?**

According to the Istanbul Convention, "the realization of *de jure* and *de facto* equality between women and men is a key element in the prevention of violence against women" (Council of Europe, 2014, Preamble, emphasis in original). Protection from violence is not good enough. The current strategies and measures applied in combatting gender-based violence in Austria are limited to those which allow to uphold or even reinforce the existing patriarchal order. They exclusively focus on immediate protection instead of gender equality progression. On a political level in Austria, the topic of violence against women is currently misused as token politics on women's issues by focusing exclusively on violence protection, while lacking a holistic approach (Der Standard, 2022). In addition, it is instrumentalized in "femonationalist" attempts by "co-opting violence against women into anti-immigrant and anti-Islam campaigns" (Farris, 2012) and framing the public discourse and policy focus along narratives of "ethnicized sexism" (Jäger, 2000). Farris dubbed the term "femonationalism" as

"the contemporary mobilization of feminist ideas by nationalist parties and neoliberal governments under the banner of the war against the perceived patriarchy of Islam in particular, and of migrants from the Global South in general" (2012).

Along these lines, political discussions are regularly reduced to the notion of "culturally determined" violence against women (Der Standard, 2021). Thereby, perpetrators of non-Austrian nationality are both equated with *being Muslim* and homogenized as a monolithic block naturalistically acting out of patriarchal motivations caused by their cultural backgrounds (Jäger, 2000). Victim-oriented approaches, on the other hand, focus on proclaimed empowerment efforts for migrant women as "victims of their own culture" (Farris, 2012). In this narrative, manifestations of male violence against women are not distinguished. Rather, the current narrative focus on geographically and culturally specific forms, less prevalent in the

Austrian context, promotes the construction of the violence as being a product of *foreign cultures*.

On the other hand, the Austrian societal and cultural context or, in fact, even the prevalence of Austrian-perpetrated male gender-based violence against women is regularly ignored or conceptually negated. The current dominant political discourse follows neo-colonial and cultural racist discursive patterns through othering violence against women as solely existing in *different* and as *less progressive* and *inferior* depicted cultures. This "discursive strategy" pursues the goal to enhance the Austrian culture as "gender-equality progressive, promoting women and violence-free" (Mayer et al., 2016; Sauer, 2017; Kerner, 2009). The discourse has so far peaked in the statement of a government official in 2019, according to which violence against women was an imported problem and that Austrian perpetrators would merely copy the acts of non-Austrian perpetrators (Stajić, 2019).

Intervening in and preventing gender-based violence against women, including femicides, is about societal change. The strive for gender equality has so far not been effectively and swiftly pursued. Thus, answering our initial question about the femicide concepts relevance in the affirmative: all these aspects are in a name.

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## The Position of the Feminist Mothers Association-Austria Andrea Czak<sup>67</sup>

Single mothers are exposed to a wide variety of forms of violence, namely psychological, physical, sexualized, economic, structural and institutional violence. Far too often, this violence against them and their children is overlooked and negated by family court judges, police officers and employees of institutions affiliated to the family court (*Familiengerichtshilfe*). That is why 16 mothers from **Die Feministischen Alleinerzieherinnen – FEM.A (The Feminist Mothers Association)** have decided not to remain silent any longer and are making demands to politicians, the judiciary and society through photos of themselves, taken by the photographer Bettina Frenzel, with their demands superimposed in words. The project was financed by the Women's Service of the City of Vienna, the MA 57.<sup>68</sup>

FEM. A gives single mothers a voice, invites them to make their demands to the world. It empowers them not to agonize about the realities of a patriarchal judicial and social system, but to demand justice for themselves and their children and a dignified, self-determined, and above all non-violent life. FEM.A fights for strong mothers and their right to a carefree life, for their children and their right to a happy childhood.

The association offers a wide range of support options for mothers, such as a FEM. A-Phone, workshops with feminist lawyers, psychotherapists and violence protection experts as well as forums in which mothers can exchange ideas and can network.

The association was founded because of a law that does not sufficiently protect mothers and their children from violence after divorce and separation: the KindNamRÄG 2013. Since February 2013, joint custody has been automatic for parents after divorce, and unmarried fathers have had the option to obtain joint custody against the will of the mother. This law offers committed fathers the opportunity to continue to be a loving father in their child's life. However, it also opens the door to fathers who want to continue exercising power and control over mothers and children through joint custody.

Criticism of this law also came from the Green Party in 2013: "To think that legally prescribed joint custody, even if the parents argue, serves the best interests of the child, is absurd and out of touch with reality," said the Green Family Spokeswoman Daniela Musiol.

"A common view cannot be prescribed by law," added the Justice Spokesman of the Green Party, Albert Steinhauser in 2012.<sup>69</sup> In 2013, Brigitte Hornyik, Board Member of the Austrian Women's Ring, was already warning of the negative effects of joint custody. After long discussions, it was agreed with Albert Steinhauser that the Parliament would ask the Government, in an accompanying motion to the law, to conduct an evaluation of the law, together with the affected parents. However, the evaluation was carried out in 2017 only with experts in Family Law. The single mothers who suffer most from joint custody have not yet been consulted.

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<sup>67</sup> The author would like to thank Andrea Tresco for her valuable inputs to this text.

<sup>68</sup> The links to the presentation can be found at: <https://verein-fema.at/16-tage-gegen-gewalt-an-frauen/> The photos for download can be found at: <https://verein-fema.at/presse-foto-16-tage-gegen-gewalt-an-frauen/>.

<sup>69</sup> Quoted in Der Standard.at on 10 October 2012.

Now the current Federal Minister of Justice, Alma Zadic, is planning a reform of the child law, introducing, among others:

- Automatic joint custody for both parents, regardless of whether they are married or not, beginning from the birth of a child;
- A mandatory at least 1/3 childcare time for each divorced or separated parent beginning from the child's third year of age, in other words, a kind of increasing dual residence<sup>70</sup>, and
- A care app. on mobile phones which automatically calculates the child support based on the parents' childcare time.

Therefore, if the father has the child for more than a third of the care time, the child support will be reduced according to the new law. This will lead to further financial hardship for mothers who will still have almost the same expenses for the child but fewer chances to have a well-paid job than their ex-partners. Furthermore, the mothers will not be able to move away from the town where the child lived before the divorce or separation, as laid down in the new law.

The new law would also be in contravention of the Istanbul Convention. In this respect, *a resolution on the impact of intimate partner violence and custody rights on women and children*<sup>71</sup> calls on European Union Member States who have ratified the Istanbul Convention "to pay special attention to its Article 31 to ensure its full, effective and practical implementation and to take all the necessary measures to ensure that incidents of intimate partner violence are taken into account when custody and visitation rights of children are determined." The resolution, which was adopted by the European Parliament by a huge majority on 6 October 2021, was based on a ground-breaking report on the same subject initiated by Member of Parliament, Elena Kountoura. The Parliament also stressed in the resolution that "the exercise of any visitation or custody rights should not jeopardize the rights and safety of the victim or children" and that "in all actions concerning children, their best interests must be the primary concern .... and should take precedence over other criteria."

The parliamentary resolution further advises against a law granting automatic custody to both parents and recalls that "according to the United Nations Convention on the Rights of the Child, assessing the child's best interests is a unique activity that should be undertaken in each individual case, taking the specific circumstances of each child into account." The resolution further "underlines that intimate partner violence is clearly incompatible with the best interests of the child and with shared custody and care, owing to its severe consequences for women and children, including the risk of post-separation violence and the extreme acts of femicide and infanticide."

FEM.A therefore demands, among others:

- There must still be an evaluation of the KindNamRÄG 2013, specifically regarding joint custody and victims' and children's rights together with the mothers and children concerned as well as the violence protection and victims' rights organizations, before the introduction of a new child law.

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<sup>70</sup> "Dual residence" allows divorced or separated parents to split the time that the child physically lives with each of them equally or as close to 50/50 percent as possible.

<sup>71</sup> [https://www.europarl.europa.eu/doceo/document/A-9-2021-0254\\_EN.html](https://www.europarl.europa.eu/doceo/document/A-9-2021-0254_EN.html)

- Psychological violence should not be called a "high conflict situation" in court decision holding both parents equally responsible for the conflict and not naming the root cause of the conflict, such as violence against one parent, usually the mother, trying to protect herself and the child from violence.
- There must be no joint custody if there is not a good basis for communication and understanding between the parents. However, according to the current jurisdiction communication between parents only in form of emails and telephone messages is already seen as a sufficient basis for making joint decisions and for justifying joint custody.
- Priority should be given to the protection of the mother and the child from violence over the contact rights of violent fathers.
- There must be no automatic joint custody under the cover of joint parental responsibility where there is any form of violence, including psychological violence.
- The best interests of the child should always have utmost priority, as stipulated in the Austrian Constitution.
- There should be no one-sided interpretation of the best interests of the child as "the child's right to both parents". A propensity to violence must always be taken into consideration.
- The existing provisions and laws for the protection against violence, such as §138 ABGB (Austrian Civil Code) concerning the criteria of the best interests of the child and Article 13 of The Hague Convention on the Civil Aspects of International Child Abduction must be applied by judges of courts at all levels, despite political pressure from anti-gender movements in Europe, including by fathers' rights activists. The best interests of the child must have the utmost priority in the jurisdiction by courts at all levels.
- Judges who have the courage to take decisions in the best interests of the child according to the law instead of prioritizing fathers' rights and who are then declared biased by fathers must be supported by courts at all levels<sup>72</sup>.
- There must be a guarantee of child support for every child in Austria.
- The time-consuming, unpaid care work of single mothers must be compensated financially until the child reaches the age of majority.
- The length of the father's contacts with the child should not have an effect on the amount of child support payments, so that there is no financial incentive to extend the length of contacts.
- There should be no mandatory minimum time of child care for both parents in the case of divorce or separation because this is tantamount to mandatory double residence.
- Studies need to be carried out on the effects on children who live in dual residence where there is domestic violence and where there is a stepfamily.

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<sup>72</sup> For example, a judge in Krems, Austria, decided that Diana, a four-year old child whose Austrian mother escaped from her violent husband in California with the child and returned to Austria, could stay with her mother in Austria, applying Article 13 of the Hague Convention on the Civil Aspects of International Child Abduction. However, the father declared the judge biased. The court of second instance confirmed this and the case was given to another judge who decided against Diana staying in Austria with her mother and in favour of sending her back to her violent father (Brickner, Irene, Fall Diana": Vor der Kindesabnahme wurde Richterin abgezogen, Der Standard, 24.1.2022).

- There needs to be an inter-ministerial working group on victim protection as well as women's and children's rights as well as an independent commission to safeguard the best interests of the child.
- An observatory needs to be established to coordinate data collection and research on gender-based violence, especially psychological violence and femicide, and on violence witnessed by children against their mothers.

As can be seen from the aforementioned European Parliament resolution, the roll-back of women's and children's rights and the focus on fathers' rights are not only limited to Austria but are also happening in other European countries.

As the European Parliament has also recognized in the resolution, the present decade is witnessing a visible and organized offensive at the global and European Union levels against gender equality and women's rights.

To counter this offensive, it is important to cut the funding sources of anti-gender movements in Europe and to raise awareness of the public and decision-makers about those anti-human rights activities. As Neil Datta from the European Parliamentary Forum for Sexual and Reproductive Rights revealed in his recent report *The Tip of the Iceberg*,<sup>73</sup> 54 organizations, including non-governmental organizations, foundations, religious organizations and political parties, spent **at least** US\$707.2 million on anti-gender activities in Europe from 2009 to 2018, with annual anti-gender spending increasing by a factor of four in that period.<sup>74</sup> The actual funding might be even much higher.

Those organizations originate in the United States, the Russian Federation and Europe (excluding Russia). Funders include United States Christian Right "mega donors", think-tanks, oligarchs close to Russian President Vladimir Putin, and European aristocrats.<sup>75</sup>

For example, a big anti-gender funder is the Alliance Defending Freedom (ADF) which is based in the United States but has a European branch, ADF International. ADF International has significantly increased its European spending over the period analyzed by Neil Datta. In 2011, it was spending US\$657,000 in the region. By 2018, the sum had increased to US\$4.36 million.<sup>76</sup>

ADF International specializes, among others, in legal advocacy attempting to provoke a desired change through the court. For example, it has been seeking to achieve its anti-human rights aims via litigation, having been involved in legal cases put before the European Court of Human Rights (ECHR) between 2009 and 2018.<sup>77</sup>

It is for this reason that the offices of ADF International are located in Europe's hubs for international human rights institutions: Brussels (the European Union), Geneva (United Nations), Strasbourg (Council of Europe, ECHR, European Parliament) and Vienna (United Nations, Organization for Security and Co-operation in Europe). The Council of Europe, however, has already recognized that ADF International does not "respect and defend the values and principles

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<sup>73</sup> <https://www.epfweb.org/>

<sup>74</sup> Ibid, p. 3

<sup>75</sup> Ibid, p. 3

<sup>76</sup> Ibid, p. 3

<sup>77</sup> Ibid, p. 14

of the Council of Europe" and rejected its application for participatory status at the Council in 2018.<sup>78</sup>

An increasing roll back of human rights, such as women's and children's rights, and a failure to consider the best interests of the child, as laid down in the Austrian law, is also reflected in the jurisdiction of Austrian courts at all levels of the past few years. This results in an increasing discrepancy between the law protecting the best interests of the child and the jurisdiction favouring fathers' rights.

As mentioned in *The Tip of the Iceberg*, in Austria, in particular the von Habsburg-Lothringen and the Turnauer families, have donated funds, among others, to Agenda Europe, a loose anti-gender network of over 300 organizations and individuals from more than 30 European countries closely connected to the Catholic hierarchy.<sup>79</sup> Agenda Europe has held annual members-only meetings since 2013. At those meetings they have strategized over 15 policy and legislative initiatives across Europe, including mobilization against the Istanbul Convention and litigation.<sup>80</sup>

The Catholic and Protestant churches are also significant funders of anti-gender movements, for example, Cardinal Christoph Schönborn and the Theological Institute of Vienna, a Catholic university established by Pope Jean Paul II.<sup>81</sup> This huge funding of anti-gender movements not only represents a human rights challenge but also a "deep political problem in Europe," according to Neil Datta.<sup>82</sup>

Therefore the European Union has, first of all, to make sure that it does not, politically or financially, support any of those anti-gender movements who are claiming to advance human rights but in reality threaten human rights and European values.

In an effort to counter the influence of those anti-gender movements, FEM.A will forge alliances with other mothers associations in Europe to raise public awareness and defend women's and children's rights at the national and European levels. It is also hoped that there will be future directives from the European Commission to implement Article 31 of the Istanbul Convention and, in particular, to prevent and combat gender-based violence and to better protect victims of violence, including children. Hopefully, a European Union directive to stop violence against women and domestic violence, as well as increased awareness-raising and other action by the European Union to counter anti-gender movements, will lead to greater political will on the part of the Austrian Government to fully implement, among others, the Istanbul Convention and to a focus on protecting mothers and children against domestic violence and poverty instead of promoting fathers' rights.

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<sup>78</sup> Ibid, pp. 14 and 15

<sup>79</sup> Ibid, p. 88

<sup>80</sup> Ibid, p. 84

<sup>81</sup> Ibid, pp. 32, 39 and 67

<sup>82</sup> [www.youtube.com/watch?v=FBt\\_AnTpav4&t=7s](http://www.youtube.com/watch?v=FBt_AnTpav4&t=7s)

## **Austria: A Violent Country towards Women**

### **Maria Rösslhuber**

First of all, I would like to speak about the upcoming amendment to the Austrian childhood law. Those planned changes in the law, such as the automatic joint custody and the introduction of the dual residence in the form of a mandatory care time of at least 1/3 for both parents after their divorce or separation, are of course very worrying for us. I think we are not fully aware of the immense impact this will have for single mothers and their children.

Automatic joint custody granted by law immediately from the birth of a child means that mothers are completely deprived of their right to determine what is best for the child. A single mother can then no longer decide to have single custody or joint custody with the biological father, the current partner, or the partner of her choice. We want to, and absolutely have to, prevent automatic joint custody because it will increase systemic and structural violence as well as actual male assaults against women and children.

Secondly, as is common knowledge, the level of violence against women in Austria is very high, reflected in the very high number of attempted murder cases. This year there have already been 53 attempted murders where women were severely assaulted by their ex-partner or partner, were beaten until they were hospitalized, strangled, knifed, or even shot. There have also been 30 femicides. Austria is the only European country where more females than males are murdered. The high level of male violence against women existed before the COVID-19 lockdowns. However, COVID-19 has made the situation even worse. We always wonder why it is like this in Austria, why do we have such massive levels of violence against women, even though we actually have very good laws and very good measures. The Council of Europe has praised Austria for its measures and laws. We have good anti-violence and criminal laws. The rights of victims have also been improved and expanded over the years.

In our opinion, the causes are varied. We still miss a genuine gender equality policy. We are far from real equality. Because of this inequality, many women slide into economic and financial dependencies and thus also into the violence trap. What is also a cause, in our opinion, is our deep-seated patriarchal system coupled with patterns of behaviour, such as abuse of power, possessiveness, desire for total control, and a toxic masculinity that is deeply anchored in our society.

If women want to break out of the traditional role models which still exist in Austria, they are pushed back again and threatened with violence. We also find a very deep social contempt for women and a very explicit sexist language towards women. Male politicians are not necessarily role models for other males either. If they call a woman, for example, a disgusting slut, they do not have to resign. There are no consequences when males use violence against females. This verbal and sexist violence can also be felt online. Hatred on the net mainly affects females. We must also deal with the strong brutality in our society.

This frustration of males towards females is very noticeable. I always say that it is often a short step from verbal to physical violence. The media and politicians want to convince us that the cause of violence lies in migration. But that is not true either. We recently learned from a study that was presented at the 2021 Violence Protection Summit that two-thirds of the perpetrators/murderers were Austrians. That was also backed up by actual data. Moreover,

jealousy, love and passion are not the causes of femicide, but these are the motives that men mention over and over again. A big problem has been that the authorities have taken the wrong decisions in playing down violence against women and passing responsibility for the violence onto the women concerned. Victim blaming often occurs. The authorities are often more likely to protect perpetrators than those affected by violence.

In my opinion, there was a very wrong decision recently in Burgenland on 18 November when a woman went to the police and wanted her spouse to be evicted. She also wanted to get a divorce after years of psychological terrorism. He was extremely jealous. The police turned him away, but the eviction was withdrawn very quickly, on the grounds that the family cannot be taken away from him. Otherwise, he would freak out even more. After the eviction was overturned, he set the house on fire, and only then was he taken into custody. He is now free again. The woman was made responsible and was told, "You could have applied to the district court for an injunction; then it might not have happened." So, it is always the woman who is responsible, no matter what she does. This is a phenomenon that we have to deal with all the time.

Another example is the most recent murder case, where the relatives criticized the authorities for their slow and very poor investigation work. As a result, these femicides occur again and again, and of course that is embarrassing for a country like Austria which originally had a pioneering role in violence protection and is now experiencing a massive regression.

I also think it will take a long time to make the necessary changes. I believe that measures such as the full implementation of the Istanbul Convention would be very important, and as quickly as possible because Austria has actually ratified the Convention.

We need a comprehensive and effective anti-violence package in order to move forward and make a change. Also regular analyzes of what went wrong in murder cases, as Rosa Logar has repeatedly called for, are essential so that we can learn from wrong decisions.

We also need a fundamental attitude change regarding partner and male violence against women. Of course, this requires a lot of financial and other resources for changes to happen.

## **Taking Violence into Account in Custody Proceedings**

**Sonja Aziz**

I was asked to make a contribution on the topic of taking violence into account in custody proceedings. As I am active in family law, I would like to report primarily from my own experience.

We have already heard that our current childhood law in Austria dates from 2013. At that time, there was a comprehensive amendment to the childhood law which, in particular, created the possibility for the court to order joint custody of both parents, even without the agreement of the parents, or ultimately against the will of one parent. This childhood law has basically established joint custody as the rule.

The impression we get from this in practice is that the legislator obviously had mainly "normal" cases in mind when it created this law, without paying attention to highly problematic separation situations or even cases of psychological or physical violence. It was also confirmed to us by the Ministry of Justice that these cases were not really thought about. Of course, the courts also apply this custody arrangement in cases of violence. Since the introduction of this so-called joint custody as a rule, it has become very difficult for women who have been affected by physical or psychological violence and their children, who have often experienced this violence, to detach themselves from this violent family system, because in most cases the contact with the violent ex-partner has to be continued due to joint custody. This means that every conversation between the separated parents is another contact that can be used by the violent father to threaten the other parent, to build up pressure or even to speak badly about the mother in front of the child, for example. I experience this every day.

This is also something I always bring up with the courts, unfortunately mostly without success. The violence continues in this way after the separation, which then leads to a great deal of stress for the women concerned and, of course, also for the children. I would like to point out that victim protection organizations and violence protection experts had already expressed their concern about the safety of the children in the run-up to this law. However, the spokespersons of the Federal Ministry of Justice at the time assured the experts that joint custody would not be granted in cases of domestic violence. The reality is different, because violent fathers usually retain joint custody even after divorce or separation. This is not only my experience, but also the experience of my female colleagues. I also hold training courses for staff of the women's shelters and always ask what the situation is with regard to decisions made by the women living in the shelters. Even there I get the feedback that women who had to flee to the women's shelter with their children because of their (ex) partner's violence usually get joint custody ordered by the court. So joint custody really is the rule and is maintained as the status quo by the family courts.

This is in complete contrast to the definition of the best interests of the child, which was also introduced in 2013, because at that time criteria were legally implemented as to what the best interests of the child are. One of the criteria is precisely the avoidance of the danger for the child to experience violence itself or also to witness it against important caregivers. It was this provision that was introduced after intensive lobbying by victim protection organizations and violence protection experts. It was really a struggle to get this point into the law, but it is not adequately implemented by the courts in practice today.



Also in the current government programme—as we have heard from Andrea Czak— a new amendment to the law is planned, which provides for a further automation of joint custody. The victim protection experts are again actively involved in these working groups discussing the amendment and sharing their experiences with the experts who are represented in the working groups. They report on the pressure exerted on mothers in custody proceedings, expressly by institutions that prescribe joint custody or even dual residence. However, dual residence does not even correspond to the legal situation. For the law still provides for the primary residence of a child and not for dual residence. Nevertheless, there are numerous decisions or even settlements, for example, regarding extended contact rights for fathers even in cases of domestic violence, where mothers are often pressured to agree because, as they are threatened, things could get worse otherwise.

This planned automatic joint custody through the new amendment basically means that fathers, from the birth of the child, completely irrespective of the previous relationship between the parents, previous involvement, or interest in being involved in the care of the child, are simply to be automatically granted joint custody. This is certainly something that should be decided on a case-by-case basis and not automated.

I also refer here to the Istanbul Convention, which has already been mentioned several times today. In its current government programme, Austria has not only opted for a new childhood law, but also for the full implementation of the Istanbul Convention. Article 31 of the Convention deals with the issue of custody and visitation rights. By ratifying the Istanbul Convention, Austria has committed itself to ensuring that all acts of violence, that is, not only physical but also psychological and sexual violence, are taken into account in all decisions on contact rights and custody. By ratifying the Convention, Austria has undertaken to implement and ensure that the exercise of custody and contact rights does not jeopardize the rights and safety of the victim or the children. Courts must therefore take violence into account in custody decisions. This point is already included in §138 ABGB which deals with the best interest of the child, but it is currently not applied by the courts. Austria introduced another provision in 2013, namely §107(3) (*Außerstreitgesetz*).

These are measures that courts can impose to safeguard the best interests of the child. These measures provide, for example, for the possibility of imposing anti-violence training on a violent father. We have already heard today from Andrea Czak that the law of 2013 was evaluated in 2017, but unfortunately without the involvement of the mothers concerned. Only judges, employees of the family court assistance (Familiengerichtshilfe) and the youth welfare office, lawyers and experts were questioned. It turned out on that occasion that this anti-violence training, which is stipulated in the law, is hardly used by the judges. Anti-violence training is hardly ever imposed in a case. Of course, the judges were also asked why they did not consider it useful. They said that such a measure is basically meant to secure the child's best interest, but that violence usually took place between the parents, and that therefore anti-violence training would not be a means to secure the child's best interest. This statement again shows the importance of training judges in domestic violence and also the effects of violence on children who witness violence against close caregivers. It is also surprising that judges made such statements, because the experts interviewed in the study said, in reply to the same question, that they were highly convinced that anti-violence training would be a very important,

meaningful, and suitable instrument to end violence. So the opinions between the judiciary and the experts interviewed were quite different.

I find it important to emphasize that violence in any form must be recognized as a threat to the welfare of the child, including witnessing violence against the mother. We have already heard, for example from Renate Winter, that witnessing violence naturally has an impact on the children. The fact that the circumstance of violence is still not taken into account in court decisions, as I and my colleagues experience in practice, makes it clear to us that more knowledge on this topic is needed for all decision-makers in custody proceedings. Those are not only the judges, but also the staff of the family court assistance, who are commissioned by the judges to conduct surveys and to write recommendations for the courts. In these sessions at the family court assistance centre, my clients unfortunately also repeatedly experience the situation that insufficiently trained persons talk to them about the topic of violence. Physical and psychological violence can also lead to retraumatisation if the questioning is not done gently. My clients are always told by the staff of the family court assistance when it comes to the topic of violence: "That's the past, let's please leave the past alone and look to the future." This avoids the issue and very much remains unconsidered. This has also an impact on the recommendations.

As long as violence is being used, I think there can be no compulsory imposition of educational counselling. Imposing educational counselling, sometimes even joint educational counselling, is also a measure that is very popular among judges. This means that a woman who has been affected by violence has the possibility in criminal proceedings to be questioned separately and to be protected and not to have to meet the perpetrator, which is also a right according to the Istanbul Convention. This is enshrined in our code of criminal procedure. However, the same woman who perhaps had a main hearing on Tuesday and was still protected and questioned separately by video, has a hearing on Wednesday at the family court in a family law case, where of course the case continues in parallel and where she has to sit next to the perpetrator. Or the following day she has an appointment at the family court assistance and has to sit there together with the perpetrator at the "clearing" and deal with him there. Or a week later she gets a decision from the family court judge that she has to attend ten sessions of joint educational counselling with the father of her children who has beaten her for years and has to pay for it herself.

Thus, the absurdity that the police always recommends to a victim of violence for her own protection: "Stay away from the perpetrator, call the police immediately if he does not comply with the prohibition to enter, contact the intervention centre and see that you get process support." At the same time, however, the woman is pushed into a situation at the family court where she has to be with the perpetrator. That is completely absurd to me. That is one has to look at the issue of violence holistically in any case. I welcome Rosa Logar's proposal to set up a comprehensive working group in the Government specifically on this issue.

I still have the following comments on the subject of dual residence or extended contact and joint custody. This requires functioning communication and cooperation between the parents. Only SMS or email communication are not enough. Nevertheless, this is considered a sufficient basis of communication for joint custody, as currently provided for by case law. There really needs to be more than that. I think in families where there is good communication, there is agreement on joint custody. All other cases where there is violence, which are highly contentious and end up in court, must be treated differently by the law. That is why I think it is very important to clearly define this detail again in the new law amendment, now that we have the chance, so

that the judges can apply this measure in a differentiated way and do not treat all cases the same, according to the principle: "This is the rule, we cannot do anything about it."

What I notice again and again is that the continuity principle, namely the question of who—the mother, the father or both—has taken care of the children to date, is far too often disregarded. When a father comes to court now, he is seen as committed because he makes applications to the court. In my view, this is more or less a misunderstood commitment. Just because a father makes many applications to the court does not mean that he is a committed father who is also prepared to take real responsibility for the children. I sometimes have the feeling that the staff of the family court assistance and the family court judges think they have to comply with the father's wishes and help him to get his rights, whereas it is actually more about the fathers' rights than about the rights of the children.

For the best interests of the child, the added value for the child must be examined as a priority. Training courses, which I have already mentioned, are also important. In addition, the will of the child should be taken into account from an early age, as we have already heard from other experts today.

## The Child's Best Interests in Austrian Law

### Irmgard Griss

What are the best interests of the child in Austrian law? Everything seems to be more or less in order on paper. Austria ratified the United Nations Convention on the Rights of the Child of 1989 and implemented it in 2011 through the Federal Constitutional Law on the Rights of Children ("*Bundesverfassungsgesetz, BVG, Kinderrechte*")—albeit only partially. The Charter of Fundamental Rights of the European Union, which is also binding for Austria, recognizes children as independent bearers of rights, regardless of the status of their parents or other third parties. This constitutionally ensures that the material assessment of the best interests of the child in civil law, asylum, and aliens law and in procedural design must be based on child law standards. The diversity and differentiation of needs and interests of children in the development process must be taken into account.

Child development is a holistic process in the interaction of biological, psychological and social factors. This includes adequate nutrition and care, ensuring physical and mental health, education, protection from physical, psychological, sexual and structural violence, legal representation and custody, and existential security. It is the task of the State to create framework conditions so that the factors favorable to development can take effect. At the same time, it must be ensured that risks do not materialize. This requires comprehensive protective and preventive measures.

Do Austrian laws and legal practice do justice to this? Probably only partially. This is especially true for legal practice. Not only in asylum and alien law proceedings, but especially there, the "human factor" is often decisive, namely, whether the judge is ready to really accept the child as independent bearer of rights and to allow his / her behavior towards them to be guided by it. It should also not be overlooked what an important role experts play. Whether the child's well-being is safeguarded by a measure or whether it is impaired by it cannot be answered on the basis of the law alone. This requires psychological expertise. These are obtained by judges through the consultation of experts.

However, the law is an important tool if, like §138 of the Austrian Civil Code ("*Allgemeines Bürgerliches Gesetzbuch, ABGB*"), it lists the criteria that must be taken into account when assessing the best interests of the child. There is no such catalogue of criteria for the asylum and aliens law procedure. Although § 138 ABGB is to be used as a guideline, there are no criteria that take into account the special needs of refugee children.

The Commission for the Best Interests of the Child recommended that the catalogue of criteria be amended accordingly. The Commission also recommended that the structure and criteria of the child welfare assessment be laid down in instructions. The recommendation refers to speakers from the Federal Office for Immigration and Asylum and to judges from the Federal Administrative Court because that was the subject of the Commission's investigation, but it applies to all proceedings that involve the fate of children. In all proceedings, the right of children to access child-friendly information about the proceedings in a language they understand must be guaranteed.

A further recommendation by the Commission also affects all children. Uniform child rights standards are needed for the whole of Austria. This is intended to counteract objectively unjustified differences in child and youth welfare in the federal states of Austria.

The demand for child rights monitoring is essential for all children. A comprehensive and independent monitoring of children's rights is to be set up. The subject of the monitoring should be the observance of children's rights in all legislation and enforcement. A report on this is to be published annually. Children and young people should be appropriately involved in the preparation of the report.

## **The Importance of a Place Where Children Feel Safe and Protected**

**Renate Winter**

When we think about children witnessing violence in the family, we seem to believe that, most of the time, they will be terrified and helpless. Although this is often the case, there are more issues to consider, especially as the family should be the place where children feel safe and protected against what is sometimes not a very child-friendly environment.

A boy who sees his father beating his mother might ultimately take the side of the "strong" father and not of the "weak" mother and will follow the father's behaviour to "become a real man".

A girl who has witnessed the father blaming the mother, calling her names and destroying her self-esteem while sexually abusing the daughter, will feel more comfortable about getting "preferential treatment" in exchange for compliance and will continue to obey a dominant male later on. Her empathy for women with problems (including herself) might be seriously compromised.

A child born with disabilities due to the mistreatment of the mother will not have the chance of a normal life later.

Children who witness a bitter divorce or the separation of their parents will retain a sense of feeling unwelcome and can often believe that their parents' divorce is their fault. This will make them feel guilty and influence their future chances of forging a successful relationship.

These are only a few cases showing the possible consequences for children in the context of violence in the family.

It is for good reason that the United Nations Convention on the Rights of the Child states in its Article 12 that a child has to be heard in all cases where their interest is at stake. This means that all children have to be heard in all cases concerning them. There is no age limit or any other limit to be found in the Convention which has been ratified by Austria.

It is further stated that the views of the child have to be taken into consideration commensurately with their development and maturity level.

It seems logical that in decisions where the best interest of the child must be served, a child has to be heard in order to know what the best interest is in their view. Children witness and remember a lot. And the consequences of something happening may look quite different to an adult than to a child.

## **Effects on Children Witnessing Domestic Violence, including Psychological Violence, against a Primary Caregiver**

**Thomas Beck**

Domestic violence is any form of violence that occurs between people living in the same household. The violence is not necessarily dependent on family relationships and can be physical, sexual, psychological violence, or various mixed forms. As it progresses, domestic violence usually intensifies, with the intervals between violent assaults becoming shorter and in most cases, the violence becoming stronger and more severe.

Regarding trauma and attachment: in many cases the experience of domestic violence, including the mere witnessing of it, are traumatizing events, especially for children. This is important for the relationships children form with their adult caregivers, on whom children are both physically and psychologically dependent. The way children's minds usually work is: "If I am smaller and younger and needier, then he/she will certainly take care of me". So when children witness domestic violence their development is often abruptly interrupted. Just observing abuse by close caregivers can be particularly harmful. It is also known that disorganized attachment and relationship behaviors are passed down through the generations; children virtually adopt their parents' relationship model as their own even if they have only observed it.

One of the leading researchers in the field, Martin Teicher, recognized the far-reaching neurobiological consequences of witnessing abuse, which tend to lead to the brain flooding with stressful chemicals and hormones, reducing neural connections between the visual cortex and amygdala. This has far-reaching consequences leading to a marked impairment of emotional and memory responses to what has been seen. In turn, this impairment has a strong negative impact on the social and emotional learning of those affected, which may lead to increased incidences of persistent physical complaints or pains for which no sufficient physical explanations can be found despite a thorough examination. For example, over-arousal of the hippocampus and amygdala when abuse is witnessed leads to the development of anxiety, depression, eating disorders, pain disorders, aggressive behavioral disorders and also cognitive performance impairments with neurobiological correlations (Teicher 2010).

According to Teicher (2010) witnessing domestic violence affects the hippocampus, the amygdala and the limbic system, which are the areas in the brain responsible for memory, the distinction between past and present, and emotional and affective reactions being activated. The large amount of free-floating anxiety generated when witnessing abuse leads in turn to the inability to use cognitive functions in a concentrated manner. The direct consequence of this is a significant reduction in performance and also the appearance of symptoms that can be attributed to attention deficit disorder and hyperactivity.

There are development-sensitive phases while children witness domestic violence. Full details can be found in Teicher and Parigger (2015). Based on further scientific evidence (Holt et al. 2008), the consequences from witnessing domestic violence for babies and toddlers include:

- Increased irritability and jumpiness;
- Sleep disturbances;
- Significantly increased clinginess as a result of strong separation anxiety; and

- Additionally witnessing domestic violence so early in life poses a significant risk to later attachment development.

Further implications of domestic violence on children can be summarized as follows: for children at the preschool age (Holt et al. 2008), they include difficult emotion regulation and as a consequence often defiant behaviour and an increase in psychosomatic complaints, such as the classic abdominal pain in the morning, arise. Particularly problematic are the feelings of guilt that develop so early in life and then possibly become so typical in later relationships of their own. Already at this age thoughts of "*I am to blame for my mum getting beaten up*" can form. They are very similar to the self-recrimination that sufferers experience later-on.

The consequences of witnessing domestic violence are more complex for children of school age (Holt et al. 2008; Roebbers et al. 2010). At this age metacognition and thus reflections may lead to feelings of shame and low self-esteem. Closely related to that is the tendency to keep family secrets, for example, not to betray either the person affected or the perpetrator. Further, for the children of that age, witnessing domestic violence may also quickly lead to isolation and social withdrawal. They also often seek explanations for the observed events which can lead to, inadmissible attributions and especially in the case of boys, to identification with the perpetrator. Another long-term consequence is the difficulties children will face in the social relationships they form and possibly the development of aggressive behaviour, which will impair social integration. Furthermore, performance problems at school also frequently occur at this age; along with seemingly inexplicable drop in the general performance.

Following the findings of Wood & Sommers (2011), the implications for adolescents can lead to emotional and instrumental parentification (when the children are forced to take the role of an adult). In some cases this may well occur earlier than adolescence. What this means is that adolescents feel they are taking on responsibilities too early and responsible for protecting the affected party, taking the burn and the pressure off the mother. Often these feelings are accompanied by a feeling of failure if it doesn't work out, with severe consequences. This situation often makes young people want to break away from the parental home far too quickly, without being able to manage this necessary developmental step at all. Further consequences involve substance abuse or serious disturbances in the development of one's own intimate relationships, as well as a disruption in the establishment of intimate relationships and aggressive patterns vs. withdrawal.

Based on the above findings, children do not have to be directly affected by domestic violence to face or suffer consequences. Mere observation is enough, as Martin Teicher's findings clearly demonstrate. However, witnessing domestic violence against a primary caretaker has clear psychological consequences for the child. It can be said, "*the perpetrator never attacked the child, he never did anything to him*" may be true, however, the child will almost invariably witness this and bear the consequences. It has to be emphasized that indirect violence also has consequences. As a result, witnessing domestic violence cannot be in the best interest of the child and has a serious psychological impact.

There is no doubt that even in the case of separation, contact with both parents is important for the child's psychological development; however a few key points must be taken into account: living in a violent relationship for a very long time has a very big impact on the self-image and the self-worth of the person affected. Breaking out of such relationships is incredibly difficult. Very



often there is also a lack of confidence in one's own abilities to survive without one's partner. No wonder, when she has heard for years that she is incapable and good for nothing. Yet, the danger of returning to the violent partner is very high. The decisive factor can be that the familiar form of relationship with him can convey a deceptive sense of security. The violence experienced can also provide a lot of structure and predictability—especially shortly after the separations, it is precisely this predictability that is often missed.

Finally, to summarize the above conclusions it is very important to bear in mind that for a child's psychological development close contacts with both parents is necessary, also following their parents' separation or divorce. However, it must be taken into account that:

- Prolonged violent relationships have a great impact on the self-esteem of the victims;
- It is very difficult to break out of these relationship patterns: and
- Even in the case of accompanied and short-term confrontations, it is very difficult for those affected not to fall back into the maladaptive patterns of relationships.

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## **Patriarchal Narratives in Family Court Proceedings**

### **Sybille Möller**

Patriarchal narratives are experienced by those affected in family court proceedings as an increasing threat to children and mothers. As a result, the MIA - Mothers Initiative for Single Parents (**Mütterinitiative für Alleinerziehende e.V. i.G.**) - emerged in Germany in autumn 2017 from the digital networking of separated mothers who are affected by ongoing family court proceedings. These cases very often have an abusive background. The association itself was founded in 2018, and its network includes around 2,500 affected mothers. Since January 2020, MIA has been a member of the Istanbul Convention Alliance (BIK), an association of 20 organizations and experts in the field of violence against women. As part of civil society, the BIK aims to support and promote the implementation of the Istanbul Convention in Germany. MIA is particularly concerned with Article 31, which Mrs. Aziz has already mentioned at today's event.

Abuse in partnerships is often followed by post-separation abuse. In addition to the father's right of access to the children, which ensures continued access to the former partner and often undermines protection against abuse, the abuse that has occurred and continues to occur is not taken seriously (enough) by institutions. Instead, women affected by abuse regularly experience victim blaming and perpetrator-victim reversal by family courts and those involved in the proceedings. The means of pressure is the threatened loss of the children. The dynamics in family courts are experienced by victims as institutional violence: they often not only enable further abuse by perpetrators, but institutions inflict additional violence on women and their children.

#### **Institutional Violence against Mothers**

To make this problem visible, MIA launched the White Lily Revolution in 2020. The action, which starts annually on the International Day for the Elimination of Violence against Women (25 November), aims to give affected women a space to be heard and to make institutional violence visible. On this day, mothers who have experienced institutional violence lay white lilies on the steps of local courts, higher regional courts or youth welfare offices and publish their photos together with their reports on social media under #whitelilyrev.

On the campaigns website one can read about the threats mothers sometimes have to suffer: "If you don't agree to shared custody,<sup>83</sup> the father gets the child" or: "If you don't cooperate with the father (despite a background of abuse), then I will make sure that the child goes to a home." These and many similar statements by family court judges, youth welfare officers, etc., were reported to us by affected mothers.

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<sup>83</sup> "Shared custody" allows the parents to split the time that the child physically lives with them equally or as close to 50/50 percent as possible. "Shared custody" may also be referred to as „joint physical custody".

## **Violence Does not Play a Role**

According to a study by Anja Eichhorn (Alice-Salomon-Fachschule für Sozialwesen Berlin), in practice domestic abuse is perceived neither as a violation of human rights against women nor as responsibility of state actors associated with it. The human right to a life free of violence often takes a back seat to the right of access. Possible explanations for the causes of these dynamics are provided by training materials for the actors involved in the family court. These can be found online and allow a glimpse of the contents taught in training and further education of family judges, youth welfare officers, and experts.

The slides of the speaker from the Association for Solution-Oriented Assessment, for example, show serious professional deficiencies in addition to patriarchal narratives: conflicts are generalized as symmetrical, neglecting the fifth axiom of communication theory. The conflict is interpreted as a mutual build-up of the conflict parties. Thus, according to Prof. Jopt, the author of the slides, two subjective truths emerge: Both parents feel like (abuse) victims, and both see the other parent as the perpetrator. Prof. Jopt, a psychologist, refers to the conflict theories of Glasl and Watzlawick, which stem from the systemic approach, as well as the communication-theoretical concept of "punctuation". He states that separation suffering and abuse are always gender-neutral. The fact that interpersonal communication processes often alternate between symmetry and complementarity and that asymmetrical power relations can be predetermined by different roles within a family, by institutional or specific social contexts, is ignored. Against this one-sided professional background fixated on punctuation, an abusive situation is often wrongly interpreted in courts or during assessments as non-existent or as a psychological mishandling of the separation instead of a real abusive situation. The victims are not believed.

On the training slides, Prof. Jopt also claims that the parent in charge, usually the mother, inevitably instrumentalizes the children. The father, on the other hand, does not act, he can only react. If the child lives more with the mother than with the father, then she automatically exercises control over the father by taking care of the child.

Prof. Jopt states that the power always lies with the parent with whom the children live. This would give him or her the benefit of a "psychological locational advantage". Prof. Jopt assumes that the latter will, in all likelihood, exploit the locational advantage, transfer his or her injuries to the child and thus "alienate" the child from the visiting parent. The result would be a "monster image" of the visiting parent, which a child would almost inevitably develop if s/he did not live half-and-half in the shared custody. As a result, the child avoids the visiting parent, usually the father, and the mother can then invoke the child's will to prevent visits.

In his slides, Jopt clearly resorts to an anti-feminist victim narrative: the myth of the male oppressed by the feminist, patriarchal society.

The network to which Prof. Jopt belongs is linked, among other things, to a research institution at the University of Tübingen. The so-called "Kimiss Institute" collects data on how fathers or visiting parents judge the care parent and their mistakes, and scales these statements. These are not cross-checked; there are no control groups or any other scientific standard to scientifically validate the statements of the visiting parent. Finally, statements about the so-called "parent-child alienation" are derived from the untested, subjective statements of the visiting parents, the causation of which is attributed to the caring parent. In this scientifically questionable study, there are no questions regarding the possible behavioural errors of the visiting parent or questions regarding possible violence against the mother or the child. The data collection was

done via fathers' rights networks on the internet. It is not possible to verify whether the information provided by the visiting parent is correct.

### **Junk Science: "Parental Alienation"**

Large campaigns and information materials are produced by actors of this lobby on the pseudo-scientific narrative of "parental alienation": Jürgen Rudolph, ex-family judge and an actor in Prof. Jopt's network, for example, advised the scriptwriter of the SWR film "Weil Du mir gehörst". The fact that a mother negatively influences her child, as depicted in the film, can certainly be part of separation-related dynamics. However, such intentional ("induced") alienation is rare according to studies and, moreover, hardly provable in family courts. Relationship dynamics are usually subject to great complexity, which the black-and-white narrative of alienation in no way does justice to. However, very few actors in family court proceedings are able to cope with the complexity of such cases, which is why simple explanations and attributions of guilt such as "attachment intolerance" or other synonymous terms for the "alienating behaviour" of a parent are often used. The accusation of "alienation" can be adopted in courts through hearsay from litigants and is mostly directed against mothers, and without even checking whether the accusation is true at all. Statistics on the existence of "parent-child alienation" are invented and disseminated in fathers' rights networks, and statistical surveys on contact breakdowns are sometimes deliberately distorted. For example, the claim is circulated that because 85% of all children in Germany live mainly with their mothers, the cause always lies with the mothers because they withhold the children from the fathers. Employees of youth welfare offices were specifically trained with the film "Because you belong to me" in large campaigns. The negative, misogynistic view of mothers that is reproduced and promoted in this way can be extremely damaging to mothers and thus to children before the courts.

To counteract the "alienation" of the child from the father, the demand is made to reduce the power that the mother allegedly has over the child through extended contact with the father, thereby counteracting the (perceived) injustice towards the father.

Another common narrative is the claim that sexual abuse of children is mostly fabricated by women to gain advantage in family court proceedings. The actual rate of false accusations is much higher than is generally known. According to the Federal Criminal Police Office, however, only one in 15 to 20 cases of abuse is ever reported - here, too, statistics are demonstrably distorted and misinterpreted.

Victims in MIA are sometimes confronted with the narrative that a "real family" can only consist of a genetic father, a biological mother and child(ren). Stepfamilies or families with same-sex parents are sometimes not perceived as real families. Single parents and their children are often seen as deficient per se.

### **The Holy Family and its "Natural Right"**

The masculinist and fathers' rights activist Franzjörg Krieg, whose wife Angela Hoffmeyer coordinated the lobbying for shared custody internationally as Secretary General of the "International Council on Shared Parenting", has adopted the ultra-right-wing conservative family image of the Novae-Terrae Foundation (Italy) for the association Väteraufbruch für Kinder (VafK) (Fathers Awakening for children). According to this, parenthood is the assumption of responsibility by genetic-biological parents for their child, and parental responsibility is the

"natural right of parents" to share responsibility. The term "natural right" is used here by Krieg and the VafK in a double dimension of meaning: It is not only aimed at the formulation in Article 6 (2) of the German Basic Law, but at the same time at the fundamental Christian image of the "natural order", which is defined exclusively as a patriarchal nuclear family consisting of a (genetic) father, mother and child. The ideological goal of Novae Terrae, led by Luca Volonte, is the "restoration of the genetic family". This was included in the programme of the Fathers Awakening.

The international network, which includes, among others, the Novae Terrae Foundation, the Dignitatis Humanae Institute (Chair: Luca Volonte) and the Ioana Institute (Ireland), partners with ECLJ, Hatze Oir, The Heritage Foundation, Fondation Jerome Lejeune, the Observatory on Intolerance and Discrimination against Christians, works with CitizenGo to organize petitions and fundraising for the network.

Due to this ideological background, the term "parenthood" is understood as the assumption of responsibility by the birth parents as the basis of the child's genetic identity:

By parental responsibility we understand the fundamentally inviolable natural right of parents to assume joint responsibility for the child (for the child's bodily and psychological development) and to represent it legally to the outside world."

From this definition of parenthood and family, the definition of "family life" is derived as "lived time of genetic parents with their child". This means: parents would have the right to equally distributed time with the child for the development of the relationship.

This inevitably leads to the parity shared custody by state requirement as well as to the demand that relocation even domestically should be outlawed under criminal law, so that separated parents should generally no longer be allowed to move away. "Parental alienation" or "thwarting of access" should be punishable and dual residence should be implemented as the "best care" after separation.

The narratives Krieg uses in the "Fathers Express", a publication of VafK, correspond to the communications strategy of the fundamental Christian Agenda Europe to reinterpret existing (human) rights in terms of content in an ultra-conservative sense, as can be seen in the study by Neil Datta:

[https://www.profamilia.de/fileadmin/publikationen/Fachpublikationen/Agenda\\_Europe.pdf](https://www.profamilia.de/fileadmin/publikationen/Fachpublikationen/Agenda_Europe.pdf) (Chapter 5, p. 21).

### **Studies on Shared Custody and What They Do Not Say**

Following the communications strategy of fundamental Christian actors it is then claimed that shared custody is the best and healthiest form of care for children, completely independent of all other variables. Since 2013, it has been attempted to back up this claim by numerous studies on shared custody. So far, not a single study has been able to substantiate the claim that the best interests of children depend causally on the form of living and that shared custody is the best for children.

In MIA, there are single-parent and patchwork families in which one child lives in shared custody, but whose half-siblings always live permanently with the mother/family. There are constellations in which severe partner abuse has occurred. A common communication level with

each other is then impossible. Nevertheless, mothers affected by abuse are forced by courts and youth welfare offices to cooperate with the perpetrator under threats such as losing custody. Even in cases of abuse and high conflict, it is claimed that shared custody is the "healthiest" arrangement. There is no serious, scientific evidence for these claims.

Prof. Maurice Berger, child psychiatrist, former associate professor of child psychopathology at the University of Lyon 2, former head of the department of child psychiatry at the CHU of Saint Etienne and member of several ministerial commissions on child protection in France, took up the issue of shared custody studies when they were discussed at the EU level. He tried to communicate with the European Commission because he was misquoted and the important, methodologically very rigorous study by McIntosh on the risks of shared custody in conflictual separation families was not mentioned in the lobbying at the European level. More information <https://docplayer.org/119680438-Impressum-herausgeberin-kommunikationszentrum-fuer-frauen-zur-arbeits-und-lebenssituation-e-v-baaderstr-30-muenchen-tel.html>). Prof. Berger writes that he received no response to his submission. When we looked at the studies on shared custody that were circulated by the lobbyists or cited by individual family judges in their decisions, we noticed massive deficiencies in some of them.

The narratives about the alleged findings of the studies on shared custody published since 2013 were widely disseminated through PR via the media and at expert events. Again and again, errors were noticed. For example, in an interview with DLF, Prof. Hildegund Sünderhauf mentioned a "cortisol study" that proved that children are better off in shared custody. When asked, the author of the study, Jani Turnunen (2015) from Stockholm University, stated that he had never done any cortisol study.

He referred to another study by peers (Fransson et al.), which, however, had only looked at a very small cohort. A comparison to cortisol levels of residential model children never took place because there was no comparison group (residential model children) at all.

In Germany, there is a sometimes very emotional debate about what the available studies actually say about the psychological consequences of shared custody. The result of the scientific debate is that the data of the studies that speak in favour of shared custody come predominantly from a positively self-selected group. Those families who volunteer to participate in surveys mostly live the arrangement voluntarily, the parents have hardly any conflicts with each other and a high socio-economic status. However, the results from these surveys have been used to justify, in lobbying, a legal requirement for shared custody aimed at families where all these criteria do not apply at all, but on the contrary cannot agree due to severe ongoing conflicts. Prof. Anja Steinbach states: "However, this positively self-selected group has now been the focus of most existing studies, on the basis of which statements are being generalized at the moment" (Steinbach 2020).

Unfortunately, false narratives still find their way into training curricula, e.g. on training slides for guardians at the Weinsberg Forum. There it is claimed that children in shared custody are generally healthier and more satisfied with their family life situation than children in sole custody arrangements.

### **Enforced Shared Custody and its Consequences in Practice**

In our association there are many mothers who are affected by court-ordered or otherwise enforced shared custody. In the families of these mothers, shared custody does not relieve the

burden, but rather, due to the stress and the often very complex conflicts, it acts as a strong additional burden.

The narrative that shared custody is an instrument of equality policy is not tenable due to the experiences of those affected. The ideological goal of shared custody was originally not to relieve mothers, but to make divorce or separation from the husband more difficult. In Italy, many initiatives have been formed in recent years to draw attention to the false narrative.

Mothers, especially if they have several children, usually earn only a fraction of the lifetime income that fathers earn over a lifetime (Bertelsmann 2020). Shared custody prevents mothers from being able to take on a better-paid job if, for example, they have to move for it or the working time do not fit with the children's alternating rhythm. As a result, they often remain trapped in lower-paid jobs and later slip into old-age poverty, as they are chained to the father and his place of residence in terms of both time and place.

Court-ordered contact times prevent flexibility, also professionally. This can mean that mothers have to work exactly during the time they are legally allowed to care for their child, and that the child is with the father exactly when they cannot work because of certain conditions imposed by the employer. With inflexible working hours, shared custody brings neither relief to the mother nor to the child, but can complicate everyday life enormously.

Care work and mental load remain predominantly women's business even in shared custody. The care of the children is often taken over by other women in the father's household: the father's mother, the father's new partner, the father's girlfriends or nannies. If the father was used to being the "fun dad" before the separation, this often continues in shared custody and makes parenting more difficult for the mother during the time the child is with her.

Care work and educational tasks in shared custody are extremely time-consuming, exhausting, and associated with many frustrations and tensions. It often happens in constellations with great tensions that one parent undermines the upbringing of the other, and children subsequently play the parents off against each other.

If stepfamilies are established when the parents have shared custody over a child, life in the stepfamily can become very stressful and complicated. The everyday life of the stepfamily then has to be completely subordinated to the alternating rhythm, which can also lead to great tensions. Interestingly, there is hardly any scientific research on how shared custody children fare when, for example, one sibling lives permanently in one place and the other siblings have to commute. The state of research on the conditions for success of shared custody is more than rudimentary.

### **International Network**

In 2013, at a lobbying event in the European Parliament, actors were represented who have not only been trying to push shared custody legislation throughout Europe, but also belong to the anti-rights and anti-gender movement. The network of the Fathers Awakening includes:

- Ioannis Papparigopoulos: His sister was in Athens on the commission that drafted the new shared custody law for Greece;
- Anton Pototschnig, chairman of the [doppelresidenz.at](https://www.doppelresidenz.at) platform. He was a project partner of the project group Doppelresidenz of the Fathers Awakening for Children (Germany) and was present at several events of the Fathers Awakening;

- Hans-Christian Prestien, a former family court judge from Brandenburg, who is currently quite active on the COVID deniers scene and belongs to the core of the German COVID deniers and conspiracy theorist party "Die Basis" within the framework of the "Network of Critical Judges and Prosecutors";
- German attorney Prof. Hildegund Sünderhauf;
- Italian Senator Simone Pillon (Lega);
- Paediatrician and PAS lobbyist Vittorio Vezzetti; and
- Ned Holstein, founder and chairman of the National Parents Organization from the United States, formerly "Fathers for Families".

Intensive lobbying for shared custody began in Germany in 2012 with the founding of the "Projektgruppe Doppelresidenz" of the Väteraufbruch für Kinder. Pototschnig calls himself a project partner of the project group Doppelresidenz of the Väteraufbruch für Kinder, has been a member of the working group "Obsorge und Besuch" (custody and visitation) of the Austrian Federal Ministry of Justice since 2010 and is active in the current working group in the Austrian Ministry of Justice for the new child law.

Vittorio Vezetti founded the fathers' lobby organization Colibri in Italy and moved the headquarters of his think tank to Brussels to get easier access to European institutions. Colibris policy advisor, the Lega politician Simone Pillon, sat on the board of trustees of the Novae Terrae Foundation, effectively an Italian counterpart of CitizenGo.

His task was to establish the networks connection to parliaments and European politics. There are contacts with Brian Brown, the president of the right-wing populist World Congress of Families, a large network of the religious right that operates worldwide. Simone Pillon was the chief organizer of the right-wing populist World Congress of Families in Verona in March 2019.

Through this network, the "shared custody studies" were lobbied from 2013 onwards. After the lobby meetings of the actors in 2013 in the European Parliament, Vezzetti coordinated the collection of studies on shared custody with positive results through his association Colibri and established the connection to the Council of Europe.

He self-published the material he had collected as a book and had it printed in an edition of over 20,000 copies. He took it to Strasbourg to the EU in October 2013, where he presented his idea of shared custody with Prof. Sünderhauf, a German lawyer, with Simone Pillon, and with the support of the Vice-President of the European Parliament, Christian Democrat and former chairperson of the youth organization of the neo-fascist party Movimento Sociale Italiano, Roberta Angelilli.

The next step was Council of Europe Resolution 2079 (2015) in December 2015, where Vittorio Vezzetti, according to his website, was able to win Françoise Hetto-Gaasch, then Minister for Equality in Luxembourg, as an initiator. She then introduced the motion for the resolution on gender equality/fathers in childcare. The Parliamentary Assembly of the Council of Europe adopted the resolution on 2 October 2015 with 48 votes. The resolution recommends to EU Member States that dual residence/shared custody be enshrined in law as the preferred model to be adopted.

In Italy, the right-wing populist party Lega and other conservative forces tried to make divorces more difficult to the maximum. Simone Pillon (Lega) was, among others with Vittorio Vezzetti,



the author of the Legas draft law DDL 735 in 2018 under Minister Salvini, which provoked fierce protests from women's rights activists in Italy.

Pillon himself works as a lawyer specializing in family mediation. The aim of the law, whose draft ultimately failed to gain acceptance, was to make divorces as difficult as possible for women in order to strengthen the genetic family. According to Pillon: "The only thing that works is a man and a woman who love each other".

The content of the bill was mandatory, cost-intensive family counselling with paid coaches, even if abuse had occurred. During counselling, a "parenting plan" was to be drawn up. The draft contained the requirement that the time between the parents had to be precisely divided - at least 10 days were to be allocated to each parent per month. Associated with the draft, in addition to compulsory mediation, was a reform of the law on maintenance, the aim of which was to eliminate child maintenance in shared custody.

The "European Stability Initiative" has been able to reconstruct some of the networks money flows. According to Neil Datta (EFP), Italian MP Luca Volonte, one of the main actors within Agenda Europe, was involved when money flowed from Azerbaijan to parliamentarians of the Council of Europe. It has been proven that in the course of the corruption affair in the Council of Europe, money amounting to 2,390,000 Euros was transferred to Luca Volante's Novae Terrae Foundation between December 2012 and December 2014 in order to prevent a resolution in the Council of Europe that was against the interests of the Azerbaijani Government.

### **Summary**

*"The Novae Terrae Foundation is committed to defending human rights conceived according to the natural law and to controlling the expansion of essentially inhuman "insatiable rights" (i.e., the right to abortion and the right to marriage for same-sex couples)."*

### **Patriarchal Demands Arising from the Narratives**

- The right of co-determination by the father in abortions, if this should be necessary;
- Automatic custody for fathers from birth, prenatal paternity tests;
- Making divorce more difficult;
- If possible, a 50/50 division of the care time of children after separation and divorce;
- Softening of the protection against domestic abuse up to the legalization of sexual child abuse within the family. In this context, it is worth mentioning that at the first meeting in the European Parliament in 2013, Vezzetti gave his lecture on Robert Bauserman, among others. Bauserman was one of the first authors to publish a meta-study (2002) on the best interests of the child in the shared parenting model. The study contains claims that children in the shared custody model have fewer behavioural problems and better school performance than children in sole custody arrangements, that the age of the children is not significant, that a medium frequency of contact creates most conflicts and that either no contact at all or shared custody are the best solutions for children of highly contentious parents. Just four years earlier, Bauserman had published about sexual abuse of children and questioned whether "voluntary" sexual contact between adults and children was harmful at all.
- A softening of the procedural law and the roles of the professions involved in family law proceedings;

- The penetration of elements of mediation into family court proceedings, also in cases of abuse (undermining the rule of law).
- A compulsory mediation under threat of loss of custody if it is not possible to "come to an agreement";
- A strengthening of the "systemic" and "solution-oriented" approach. The aim is to preserve the ("sacred") genetic family as a "system" after separation, even if (severe) abuse has occurred;
- A weakening of the legal position of the stepfamily;
- Inclusion of "parental alienation" in criminal law and in laws on domestic abuse.

The patriarchal demands and their narratives, which are encountered by those affected in the courtroom, can be felt everywhere as an anti-feminist backlash: The shared custody, the pseudo-scientific accusations of the (almost always unproven) "PAS"/"parental alienation" or "symbiotic mother-child relationship" are difficult to scale, but are constantly used. In cases of abuse, the obligation to reach an agreement in family court proceedings means that the protection against abuse and the Istanbul Convention are undermined by the law of parent and child.

Shared custody and the accusation of "parental alienation" are two sides of the same coin. They regularly lead to child protection being undermined in family court proceedings and to less and less attention being paid to the best interests of the child.

## Biographies



**Michael Platzer, Co-Editor**, is a retired senior United Nations official who has served 34 years in various capacities in human rights, African affairs, human settlements (Habitat), peace building, technical cooperation, development, crime prevention, criminal justice, youth programs, and assistance to refugees. He has developed projects for East African refugees, Bosnian women, Caribbean migrants, African detainees, and most recently Syrian refugees, as a volunteer in the “Refugees Welcome” movement. Since retirement, he has served as the Liaison Officer for the Academic Council on the United Nations to the Vienna-based UN organizations. He has organized many conferences on UN themes. Dr. Platzer has also chaired the Vienna Alliance of NGOs for Crime Prevention and Criminal Justice and has convened many side-events at various inter-governmental bodies. His interests have been conveying UN values and history to young people, utilizing social media and lecturing in various universities; he has co-founded the Regional Academy on the United Nations in Central and Southern Europe. Dr. Platzer has been advisor to the International Catholic Commission on Prison Pastoral Care, prepared manuals for Chaplains, as well as visiting African adults and migrant children in prisons in Austria. He has directed and produced teaching videos on the UN Standards for treatment of prisoners, victims’ rights, and on crime prevention. His primary interests now are the prevention of extreme violence against women, femicide, and offering practical assistance to refugees. He graduated from Cornell University (BA, MA, J.D) and Columbia University (PhD) he also attended Woodstock and Union Theological Schools (M.Div.). He has taught at various universities, including Bond University in Australia and lectured at the Austrian Centre for Peace Studies, University of Tilburg (Netherlands), University of the West Indies (Barbados, Jamaica, Trinidad), University of Otago (New Zealand), University of Graz, Diplomatic Academy (Vienna), Economic University of Bratislava, University of Szeged (Hungary), London School of Economics, Kingston University (UK), University of Katowice (Poland). He has published numerous articles and edited many publications. E-Mail: [michaelkplatzer@yahoo.com](mailto:michaelkplatzer@yahoo.com)



**Ourania Roditi, Co-Editor**, currently works as an independent consultant based in Vienna, Austria. She collaborates mainly with NGOs, but also with all Vienna based international organisations and academics on projects focusing on human rights, refugee women, Gender based Violence and Femicide. Previous professional positions include: coordinator of the Femicide Team with the Academic Council on the United Nations System, ACUNS, Vienna Liaison Office; head of a field office with the (Organization for Security and Co-operation in Europe) OSCE Mission to Bosnia and Herzegovina, Democratization Officer with the OSCE Mission to Kosovo. Dr. Roditi has also worked with the NGO 'Mission of Hope' on the integration of refugees in Vienna and the OSCE Secretariat in Vienna.

Dr. Roditi has carried out extensive research on Femicide and gender, state responsibility and Femicide, contemporary forms of enslavement and women, human rights and refugee women, integration of Afghan refugee women and has organised high-level expert meetings, conferences and Symposia. She has also published and edited academic articles, as well as coordinated the publication process of edited volumes and online publications. Dr. Roditi holds a PhD on democratisation and civil society from the University of Sussex in the United Kingdom.



**Alma Zadic** is a Bosnian-born Austrian lawyer and politician of the Green Party. She has been serving as Minister of Justice since 7 January 2020, in the Governments of Chancellors Sebastian Kurz, Alexander Schallenberg and Karl Nehammer. Originally, from Tuzla in Bosnia and Herzegovina, she studied law at the University of Vienna and at Columbia University in New York. Before entering politics, she worked for six years as a senior associate at the Vienna office of the London-headquartered multinational law firm Freshfields Bruckhaus Deringer, specializing in human rights issues.



**Elena Kountoura** is a Member of the European Parliament for Greece. She is appointed coordinator of the Left Group at the Transport and Tourism Committee, TRAN, and member of the Committees on Women's Right and Gender Equality- FEMM, Industry Research & Energy- ITRE, and Artificial Intelligence- AIDA. She previously served as Minister of Tourism of Greece (2015–2019), and was recipient of several prestigious awards, including "Tourism Minister of the Year 2019" in ITB Berlin, and "Global Champion 2019" for Destination Stewardship by the World Travel & Tourism Council-WTTC. During her long-standing political career as Member of the Greek Parliament (2004 -2019) she was appointed

Secretary to the Standing Committee on Monitoring the Decisions of the European Court of Human Rights, and Member of the Greek Parliamentary Assembly at the Council of Europe, PACE. Elena Kountoura was European Parliament Rapporteur on the resolution on "*The impact of intimate partner violence and custody rights on women and children* " adopted by a vast majority on 6 October 2021.



**Julia Emma Villatoro Tario** has been the Ambassador of the Republic of El Salvador to the Federal Republic of Austria and the Permanent Representative to the United Nations and other international organizations (Vienna) since January 2020. She previously served as Ambassador to the Kingdom of Belgium and to the Grand Duchy of Luxembourg while being the Head of the Mission of the Republic of El Salvador to the European Union in Brussels. Prior to joining the Foreign Service, Ambassador Villatoro Tario participated in the drafting of the procedural legislation that enable implementation of El Salvador's Authority on Competition. Given her tenacity, integrity and outstanding performance in the field of competition, Ambassador Villatoro Tario was a recipient of an award that allowed her to gain first-hand experience as an Expert Lawyer at the Products and Brand Division at the Swiss Competition Commission (WEKO). Furthermore, Ambassador Villatoro Tario possesses a vast experience as a Professor and Lecturer in her native country, El Salvador.



**Reem Alsalem** was appointed United Nations Special Rapporteur on violence against women, its causes and consequences by the United Nations Human Rights Council for a three-year tenure in July 2021. She started her tenure on 1 August 2021. She is an independent consultant on gender issues, the rights of refugees and migrants, transitional justice and humanitarian response. She has consulted extensively for United Nations agencies and entities, such as UNWomen, OHCHR, UNICEF and IOM, as well as for non-governmental organizations, think tanks and academia. Previously, she worked as an international civil servant for UNHCR in thirteen countries. During her service, she planned, implemented, and monitored programmes that served to protect persons that were survivors of gender-based violence, particularly women and girls. She was also a visiting researcher with the Feinstein International Centre of Tufts University in December 2008 and a visiting professional of the Investigation Unit of the Prosecutor Office, International Criminal Court, The Hague, the Netherlands, from January to March 2009.



**Mirella Dummar Frahi** has led the UNODC Civil Society Team since 2008, and is currently responsible for a large programme engaging civil society on drug control, the implementation of the United Nations Convention against Corruption (UNCAC) and the United Nations Convention against Transnational Crime (UNTOC). She oversees, among others, the UNODC anti-corruption project for civil society in Southeast Europe entitled "Southeast Europe Together against Corruption" implemented in partnership with the Regional Anti-Corruption Initiative (RAI). The project is building capacities of relevant stakeholders on UNCAC and creating opportunities for governments and civil society organizations to work together on anti-corruption, including in the UNCAC review mechanism.



**Anna Alvazzi Del Frate** is the Chair of the Alliance of NGOs on Crime Prevention and Criminal Justice and an Honorary Advisor to the Board of the Organização das Famílias da Ásia e do Pacífico (OFAP). She spent 20 years working as a Research Officer for the United Nations (UNICRI and UNODC), and nine years at the Small Arms Survey in Geneva, of which she was the Research Director and Director of Programmes. She holds a PhD in Criminology and has vast experience in global studies on crime prevention and criminal justice, with a special focus on gender-related matters.



**Luis Javier Campuzano Piña** has been the Permanent Representative of Mexico to the United Nations in Vienna since July 2020. He previously worked as advisor to the Under-Secretary for Multilateral Affairs and Human Rights, Ministry of Foreign Affairs; Director-General for the United Nations Organization (2017-2018); Ambassador in Norway (2014-2017); Ambassador in Kenya and Permanent Representative to the UN Environment Programme and UN-Habitat (2009-2014); Deputy Representative of Mexico to the Organization of American States (2006-2009); Attaché for Human Rights to the International Organizations in Geneva (2004-2006); Deputy Representative of Mexico to the International Organizations in Vienna (2001-2004); Attaché for Economic and Social Affairs at the Mission of Mexico to the United Nations (1999-2001); Technical Assistant, Office of the Foreign Minister (1998-1999); Personal Assistant to Under-Secretary for International Cooperation (1996-1998); Representative of Mexico to the International Atomic Energy Agency (IAEA) (1990-1996); and Advisor, Ministry of Foreign Affairs (1989-1990).



**Miriam Estrada Castillo** holds a Doctorate degree in Jurisprudence and Social and Political Sciences as well as a Master's degree in Human Rights with a mention in Migration and Refugee Law from the National University of Spain (UNED). She is a lawyer specialised in International Law, International Criminal Law, Human Rights, Democracy, Gender and Counterterrorism.

Currently, she serves as the Vice-Chairperson of the United Nations Working Group on Arbitrary Detentions of the Human Rights Council. Previously, she was General Coordinator for the Global South of the United Nations Security Council: Post-Conflict Programme: Syria-Iraq-Kurdistan and member of the United Nations Security Council Executive Directorate of the Counterterrorism Committee. She is a former member of the Committee for the Elimination of all Forms of Discrimination against Women and a former Minister of Social Affairs of Ecuador. In Ecuador, she is the Director of the UNESCO Chair and Professor of International Law, Constitutional Law, Gender and Human Rights at Casa Grande University, Professor of the Bard College in Palestine and External International Advisor to the Municipality Guayaquil.



**Jeanne Sarson** and **Linda MacDonald** are retired public health nurses and have spent the past 28 years as grassroots supporters of women who have survived non-State torture (NST), trafficking, and sexualized exploitation perpetrated within intimate relationships. As feminist human-right defenders and independent scholars/researchers, they have exposed the global invisibility of organized NST family-based crimes with many published works, including their recently released book, "WOMEN UNSILENCED: Our Refusal to Let Torturer-Traffickers Win." Their work includes ground-breaking insights into NST victimization-traumatization informed care. As co-founders of Persons Against NST, they have connections with other women identifying NST as a distinct human rights crime in Canada, the United States, the United Kingdom, Mexico, Western Europe, the Philippines, Papua New Guinea, Australia, and New Zealand. They develop resources, offer educational presentations nationally and internationally, and since 2004 have participated in NGO panel presentations at the United Nations in New York, Geneva and Vienna.



**Pat Black** and **Linda Witong** are Advisers to Soroptimist International (SI), a global organization in consultative status with the United Nations Economic and Social Council working to advance human rights for women and girls. Pat Black is a long time activist for gender equality, both in the UK and internationally. She has led the National Alliance of Women's Organisations (NAWO) in the UK and is also an advisor of Women7 (W7), which is a group of civil society organizations promoting proposals on gender equality and women's rights within the G7. She works with



women's rights organizations in the United Kingdom. Linda Witong is a member of the Board of the Alliance of NGOs on Crime Prevention and Criminal Justice in Vienna. She is also a former prosecutor and attorney in California, United States who still acts as a consultant regarding unsolved homicides. Both contribute extensively to advocacy and lobbying work for SI at the United Nations.



**Barbara Rothmüller** is a sociologist and research associate at the Faculty of Psychology, Sigmund Freud University Vienna. In 2020-2021, she was the principal investigator of the research project "Intimacy, Sexuality and Solidarity in the Covid-19 pandemic" which received financial support by the City of Vienna and the Chamber of Labour Vienna. Her research interests include gender and sexuality studies, social inequalities, education, and feminist psychology. Among her most recent publications are the following: "Psychologization in and through the women's movement." In: *Journal of the History of the Behavioral Sciences*, 2022 (together with Nora Ruck, Vera Luckgei, Nina Franke und Emelie Rack); "Aufblühen trotz Corona? Intimitätsgewinne und andere positive, unentenderte Nebeneffekte pandemiebedingter Gesellschaftsveränderungen." In: *Psychosozial* 44(4), 2021; "The Grip of Pandemic Mononormativity in Austria and Germany." In: *Culture, Health & Sexuality* 23(11), 2021; "Distanzierung in der Covid-19 Pandemie: Die Marginalisierung nicht-traditioneller Formen von Intimität und Verbundenheit." In: *Migrazine - Onlinemagazin von Migrantinnen für alle* 1/2021.



**Isabel Haider** is a researcher and PhD candidate at the Department of Criminology at the University of Vienna and recipient of a DOC Fellowship of the Austrian Academy of Sciences. She holds Master's degrees in Law and Criminal Justice from the University of Vienna and the Queen Mary University of London. Her research focuses on femicides, gender-based violence against women and hate crime. She co-authored a study on femicides in Austria conducted in co-operation with the Austrian Federal Criminal Police Office. She is a regular speaker and author in her research fields and provides expertise to the media. Besides her academic work, she served as a consultant to the Organization for Security and Cooperation in Europe (OSCE) and the European Network against Racism (ENAR).





**Andrea Czak**, as the Chair of FEM.A, (Die Feministischen Alleinerzieherinnen –The Feminist Single Mothers Association) represents the association externally at relevant events. She is a single mother of a daughter, and, since 2017, has been a political activist for single mothers and their children. She founded the association because she wanted to stand up against the injustice that single mothers and their children experience in court.



**Maria Rösslhuber**, a political scientist as well as a trainer, gender and violence expert, is the managing director of the Association of Autonomous Austrian Women's Shelters (AÖF) and leading the Women's Helpline against Violence. She is actively involved in WAVE (Women against Violence Europe), the European Network against Violence against Women and Children, and a Board member of the Austrian Women's Ring.



**Sonja Aziz** is a lawyer specialising in family law and legal process support. She represents victims in criminal proceedings. In addition to her work as a lawyer, she publishes and gives lectures on the topic of violence against women and family law issues. She works as a volunteer for the association Allianz GewaltFREI Leben. Moreover, she was a member of the Task Force Criminal Law, Victim Protection and Perpetrator Work as well as of the parliamentary dialogue "Together against Violence against Women". She also advised the women's petition for a referendum on the protection against violence.



**Irmgard Griss** is a prominent Austrian politician, lawyer and judge. She studied law at the University of Graz and International Legal Studies at Harvard Law School. After having passed the bar exam and obtained the authorization to teach civil and commercial law, she worked as an honorary professor at the University of Graz. She served as a judge from 1979 to 2011 and as an alternate member of the Constitutional Court from 2008 to 2016. From 2007 to 2011 she was the President of the Supreme Court, and from 2017 to 2019 Member of the Austrian National Council. In the first half of 2021 Irmgard Griss chaired the Child Welfare Commission (Kindeswohlkommission) established by the Federal Ministry of Justice which developed criteria to assure the child's best interest in asylum procedures and submitted recommendations in this regard to the Ministry in July 2021.



**Renate Winter** is a prominent Austrian judge. She started to work as a judge in the Special Court of Sierra Leone in 2002 and was its President from 2008 to 2010. Since December 2016, she has been a judge at the successor court, the Residual Special Court for Sierra Leone. She was President of the United Nations Children's Committee in Geneva and is a member of the Council of Experts on Integration in the Federal Chancellery. She is considered an expert on issues of juvenile criminal law, family law, and children's and women's rights.



**Thomas Beck** is a clinical psychologist at the University Hospital Innsbruck, with extensive experience in the treatment and diagnosis of patients with acute and complex trauma disorders. He currently works at the University's Department of Psychiatry, Psychotherapy, Psychosomatics and the Medical Psychology Department of Psychiatry II - Division of Psychotraumatology. For many years he has also been active in the protection of victims of domestic violence. In this context, he founded the victim protection group at the University Hospital Innsbruck and currently leads this group.



**Sybille Möller** is the chairperson of the Mothers Initiative for Single Parents (MIA) in Germany. The MIA emerged in 2017 from the digital networking of single mothers. The aim of MIA is to raise public awareness about the grievances of single mothers and their children and to improve their situation. MIA is now a nationwide initiative comprising about 2,000 affected mothers in various associated groups. The federal office of MIA is in Berlin.

# ANNEXES

## ACTION PLAN



By Sabine Aichhorn

### VIENNA VIOLENCE PROTECTION DECLARATION AND ACTION PLAN

10/12/2021

On the occasion of the 16 days of activism against gender-based violence 2021

#### DECLARATION

We, the organizers of the online expert meeting on 24 November 2021 about femicide observatories and psychological violence against women, especially against mothers, and on 1 December 2021 about femicide and psychological violence, especially against mothers in Austria as well as the speakers of the online expert meeting on 1 December 2021 declare the following<sup>84</sup>:

#### **I. Increase in cases of femicide and gender-based violence**

We are concerned about the doubling of the number of cases of femicides since 2014 and the increasing number of cases of gender-based violence, especially psychological violence against mothers, in Austria.<sup>85</sup>

<sup>84</sup> More information about these two events at: <https://verein-fema.at/online-expertentreffen-femizide-und-psychische-gewalt-gegen-frauen-insammlung-gegen-muetter/> and <https://verein-fema.at/online-expert-meeting-femicides-and-psychological-violence-especially-against-muetter-in-Austria/>

<sup>85</sup> In 2014, a first EU-wide survey was conducted which already showed that in Austria 38% of the women surveyed had experienced severe psychological violence by their partner (as compared to 43% in the EU) and 13% had experienced physical

### We agree on the following:

- Violence against women and children is a persistent human rights violation and a structural problem. It reveals the still prevailing disadvantage of women, which is what makes ongoing gender-based violence possible in the first place.
- The protection of women and children from violence must be given priority over other interests in accordance with the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (the "Istanbul Convention") (Article 18 of the Istanbul Convention).
- As a signatory to the Istanbul Convention, Austria is obliged to take the necessary legislative or other measures to ensure that violent incidents are taken into account when decisions are made on the right of custody and contact with children and that the exercise of the custody and contact rights do not endanger the rights and safety of the victim and/or children (Article 31).
- In the current Childhood and Name Rights Amendment Act (KindNamRÄG 2013) ("Childhood Act 2013"), the legislators had an "ideal-typical" case in mind and not highly problematic and complex separation situations where psychological and/or physical violence is exercised by a parent.
- With the Childhood Act 2013, following intense pressure from victim protection institutions, numerous criteria for assessing the best interests of the child were included in § 138 of the Austrian Civil Code (ABGB), such as "*7: Avoiding the risk for the child of being assaulted or experiencing violence itself or of witnessing violence against important caregivers*". By experiencing any form of violence, including psychological violence, against their mother, children are themselves victims of violence, as is scientifically undisputed. That is why they are also explicitly named as victims in the preamble to the Istanbul Convention.
- However, the 2013 Childhood Act introduced automatic joint custody in the event of divorce and possible joint custody in the event of separation, in contradiction to the provisions on victim, protection and children's rights as well as the best interests of the child of the Istanbul Convention, the United Nations Convention on the Rights of the Child and the Federal Constitutional Law on the Rights of Children ("BVG Children's Rights"). In practice, joint custody is also regularly imposed in cases of intimate partner violence and against the will of the mother.
- Partnership violence often does not end after a divorce or separation, but is very often still exercised by the perpetrators, sometimes in new ways, e.g. assaults in the case of unaccompanied handovers of children and through abuse of institutions, such as family courts and youth welfare offices. Violence is always characterized by the perpetrators' need to exercise power and control over the victim. Violent behaviour can

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and/or sexual violence by their partner (as compared to 22% in the EU) (FRA - European Union Agency for Fundamental Rights, Violence against women: an EU-wide survey, 2014).

also manifest itself in harassment by the perpetrator, such as continuous demands in court application.

- Violence after divorce or separation is made possible by the existing jurisprudence of courts, which, in contrast to existing laws<sup>86</sup>, sees joint custody as the rule and which generally values contact with the genetic or legal father more highly than the victim and protection rights of women and children and the best interests of the child.

- Violence against women in partnerships and after divorce or separation is still rarely or not punished, although a high number of cases before family courts have a violent background. The victims (mostly women or mothers) are still not protected by the family courts despite the violence protection laws and the Istanbul Convention, especially if the couple has children. Instead, violence is often played down or not recognized by the judges and is instead referred to as a symmetrical "parental conflict" or "high contentiousness" in order to ascribe the blame to both parents, even though the mother only tries to protect herself and the child and therefore defends herself against the father.

- Court-ordered joint custody and contact rights as well as extensive care scenarios up to dual residence (DR) (from at least one third of the child care period of one parent)<sup>87</sup>, even with clearly documented violence, often break the violence/victim protection of the mother and the child and lead to continued violence and lack of protection for victims. Mothers are repeatedly tied to violent fathers through a joint custody and contact rights. "Relocating" children to violent fathers is also a reality in the courts, for example if the mother refuses contacts in order to protect herself and the child or if children refuse contact, e.g. as a result of experiences of violence.

- The parents are expected to make amicable decisions in the form of settlements - against which no legal remedy is possible, and which are therefore final. Mothers are often threatened that if they do not give in to the fathers' demands and agree to the settlement, they will lose custody and/or habitual residence of the child to him.

- Togetherness cannot be forced; every attempt is at the expense of the children. Children are increasingly used as leverage to enforce joint custody. The best interests of the child are sacrificed in favour of extended contact rights of fathers, even if the fathers were and are violent.

- In addition, the criteria for assessing the best interests of the child in accordance with § 138 of the Austrian Civil Code (ABGB) are rarely used by judges when assessing the best interests of the child in decisions on custody or contact rights. Instead, the fathers' rights are often given priority. Also, the legal possibility for family courts according to § 107 Paragraph 3 Z 3 Außerstreitgesetz (Non-Contentious Proceedings Act) to oblige violent fathers to anti-violence training is hardly used in practice.

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<sup>86</sup> For example, §177 ABGB states: "*If the parents are not married to each other at the time of the child's birth, the mother alone is entrusted with custody.*" In addition, the Federal Constitutional Law on the Rights of Children (BVG-Kinderrechte) states the following, "*In all measures concerning children taken by public and private institutions, the best interests of the child must be a primary consideration*" (Article 1) and "*(1) Every child shall be entitled to regular personal relations and direct contact with both parents, unless this is contrary to his or her best interests*" (Article 2).

<sup>87</sup> Dual residence or shared parenting is defined as the situation where a child moves between two separate households.

- Joint custody is not only decreed by the court in spite of intimate partner violence, but also in spite of a poor communication level between the parents. The mere exchange of information between the parents is not to be equated with the making of joint and meaningful decisions and therefore may not be used by judges as an argument for an existing well-functioning communication between the parents and thus the decision for joint custody. Mothers who refuse to exchange information for good reasons are often threatened with losing custody. If they then exchange information with the father under pressure, e.g. because of the obligatory contacts between the father and the child, this is used as evidence of good communication and therefore for the granting of joint custody.

- So far, most judges and politicians have lacked the awareness that court-ordered care scenarios, especially shared parenting as well as joint custody enable continued violence, in particular economic and psychological violence. Human rights, protection rights and victim rights of mothers and children are sometimes seriously and persistently violated by such a priority enforcement of paternal rights.

- The fact that violence is not yet taken into account in decisions by family courts clearly shows that there is an urgent need for basic and in-depth training and awareness-raising among decision-makers (judges, social workers in family court assistance, judicial sworn experts, etc.) with regard to narcissistic parents, psychological violence and its effects on children, if they are affected by violence themselves or if they witness violence against an important caregiver (usually the mother).

## **II. Increasing discrimination against women and children through the 2013 Childhood Act and the planned amendment to the Childhood Act**

- We regard the current Childhood Law as a step backwards in victim protection, in self-determination and the equality of women as well as in strong contradiction to the Istanbul Convention and the United Nations Convention on the Rights of the Child as unconstitutional because it does not align with the best interests of the child if, with joint custody, children have to witness the violence of the father against the mother.

- We are extremely concerned about the planned amendment to the Childhood Act which will entail a further deterioration of the situation for mothers and children by granting an immediate automatic joint custody at the child's birth and a mandatory minimum one third care time from the child's third birthday for both parents upon divorce or separation.

### **We note the following:**

#### **1) The automatic joint custody for all genetic fathers from the birth of the child**

- Implementing this requirement would result in a reversal of the burden of proof for the mother: She would then have to bring legal proceedings immediately after giving birth and prove that she and her child are to be protected from the perpetrator.

- In view of the fact that violence against women is already neglected in custody proceedings, these women would remain incapable of acting for their newborns (naming, place of residence of the child, etc.) and become fully exposed to the perpetrator, whereas today the mothers sole custody provides at least some protection.

- It is clearly against the best interests of the child if both parents are assigned automatic joint custody or mandatory minimum parental care/DR according to the law. According to the United Nations Convention on the Rights of the Child, assessing the best interests of the child is an individual measure that should be carried out in each individual case, taking into account the particular circumstances of the child in question. Violence in couple relationships because of its serious consequences for women and children and also the risk of excesses of violence after the separation, such as femicide and infanticide, is clearly incompatible with the best interests of the child and joint custody (see also the attached European Parliament resolution on the impact of intimate partner violence and custody rights on women and children (2019/2166 (INI)) of 6 October 2021, paragraph 9).

**2) The DR as a mandatory legal requirement, with at least a third of mandatory care time from the child's third birthday for both parents in the event of divorce, separation or without a partnership in the past**

- This already means today in the case of a court-ordered DR: A mother must, for example, fully align her employment opportunities with regard to time and place according to the shared parenting scenario implemented by the father. She has no way of improving a poor employment situation, for example, by moving and getting a new job.

- The hidden demand for the extension of contacts up to the DR is that with an expansion of the proportionate care by the father (currently more than a third) the child support should decrease proportionally or be eliminated.<sup>88</sup> This leads directly to an immediate increase in poverty in the mothers' household, with costs remaining almost the same, as opportunities and pay for women in the labour market are still not equal to those for men, especially for single mothers. This discriminates against women and children and exacerbates maternal and asymmetrical child poverty in the current legal framework.

- The linking of child support to the care time also creates the wrong incentives, which in practice is harmful to the child's welfare as well as fuels disputes. Experience shows that after a divorce or separation, some fathers only seek more care time because they want to pay less child support and not because they are interested in a good relationship with the child.

- There must be no mandatory minimum childcare time either. Enforcing social development by law is structural violence against children. A mandatory minimum care time does not take into account the will of the child, nor the quality of the care time and thus the child's best interests.

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<sup>88</sup> This is already the case today, based on a ruling by the Constitutional Court in 2017, but now it is to be explicitly enshrined in law.



- DR and the shared parenting scenarios are still controversial and little researched, especially in cases of intimate partner violence. Because of the very poor current state of research, some scientists advise caution in introducing them as a norm and, above all, as a new legal model.

### **3) Secondary victimization**

- At the moment, the current legal situation and prevailing legal practice in custody proceedings offer little reliability and protection for women and children, even against secondary victimization. The reason for this is a prioritization of the fathers' rights in legal practice instead of the legal provisions in § 138 of the Austrian Civil Code (ABGB).

- Joint parenting counselling, mediations, clearings, etc., which are mandated by the courts despite violence, can lead to ongoing retraumatization of victims of violence and secondary victimization. Recovery, which is often protracted, is impossible, as the necessary therapeutic prerequisite is the termination of contacts with the perpetrator.

- Custody proceedings are prone to pseudoscientific concepts, such as the Parental Alienation Syndrome (PAS). If violence that has occurred is denied or played down at the same time, mothers who want to protect themselves and their children from contact with the perpetrator that has been enforced by the court are accused of "alienating" the children from their father and of being "intolerant of ties". "Attachment intolerance" is then taken as a reason to threaten the mothers with withdrawing custody, habitual residence or even the children from them if they do not agree to extending contact or joint custody.

### **III. Current interpretation of the best interests of the child in legal practice**

We are concerned that at present, it is not the child's best interests but the rights of fathers that are in the foreground, contrary to the provisions of the BVG Children's Rights and applicable regional and international conventions which are mandatory for Austria as a signatory state, and that there is still no active mechanism in Austria which reviews laws and their implementation for child rights or the child's best interests.

#### **We agree on the following:**

- In custody proceedings, the child's best interests are not as important as they should be. Increasingly, the best interests of the child are equated with the "right of the child to both parents", even if violence was present and, according to § 138 of the Austrian Civil Code (ABGB), witnessing violence should be taken into account when determining the best interests of the child.

- Failure to take into account violence between parents in court decisions on custody and contact rights is a negligent violation of the human rights to life, a non-violent life and the healthy development of children and women. All forms of violence, including when children witness violence against a parent or loved one, are legally and in practice

considered to be a human rights violation and a crime against the best interests of the child.

We are concerned that judges dealing with children in custody proceedings do not need to have special qualifications or attend compulsory training programmes. Child welfare assessment, children's rights and child-friendly procedural management are not sufficiently taken into account in the training and further education programmes of those responsible in court. This contradicts the international child rights standards and the requirements of the EU Strategy on the Rights of the Child of March 2021.

According to international standards, special knowledge and skills are necessary in order to deal appropriately with children in custody proceedings. This applies to the way questions are asked as well as the evaluation of the answers. Above all, it must be taken into account that the ability to remember and time horizons differ significantly between children and adults. Children's experiences, such as violence and loss of social relationships, must also be taken into account when assessing evidence.

#### **IV. Importance of hearing children**

We emphasize the importance that the child, of any age, in accordance with Article 12 of the United Nations Convention on the Rights of the Child and Article 4 of the BVG Children's Rights, must be given the opportunity to be heard, which is essential for determining the best interests of the child when examining custody proceedings. Currently, according to section 105 (1) of the Außerstreitgesetz (Non-Contentious Proceedings Act), children are only required to be heard on matters of custody and the right to personal contact from the age of ten. It may be necessary to forego a hearing of the child if that could lead to further coercion of the child by the perpetrator, for example.

We would like to point out that hearings of children in any case and absolutely in those cases in which there is suspicion of violence between the parents, in a child-friendly environment by trained specialists such as doctors or psychologists -- for example those with an additional qualification in children's and adolescent psychiatry -- should be carried out so that the effects of custody and contact rights regulations on the harmonious development of the child can be studied, the traumatization is not exacerbated and no further victimization is provoked.

#### **V. Lack of data collection and analysis on gender-based violence and femicide**

We are concerned about the lack of data collection and analysis of cases of gender-based violence and femicide in crime statistics and situation reports in Austria. In the police statistics, for example, the number of victims by gender is given, but there is no collection of other relevant characteristics in order to be able to assess whether it is a question of femicide. In addition, cases of gender-based violence, such as domestic violence, are not listed separately from general violent crime. For this reason, for example, the only available

femicide figures in Austria are based on media monitoring by Austrian women's shelters instead of on official information.

We emphasize the importance of official crime statistics with regard to gender-based violence and femicide, not only as a recognition of these phenomena, which are otherwise lost in violent crime, but also as a basis for decision-making for resource allocation, priority setting and professionalization as well as for the evaluation of measures taken and the development of further, tailor-made investigative and preventive measures.

**Need for specific bodies to coordinate, implement, monitor and evaluate measures to prevent and combat gender-based violence and femicides.**

We regret that in Austria there is still no active coordination office, systematic data collection and research on gender-based violence, as is mandatory for contracting states according to Articles 10 and 11 of the Istanbul Convention.

We also regret that the Austrian Government has still not set up a femicide observatory, as the Special Rapporteur on violence against women, Dubravka Šimonović, called for in 2015 to compare data at national, regional and global levels and, among others, to examine the reason for the increasing number of femicide cases.

**VI. Need to coordinate actions in criminal and civil proceedings**

We emphasize the importance of integrating criminal, civil and other procedures more closely with one another so that the reactions of the judiciary and other legal authorities to intimate partner violence can be coordinated (see attachment, paragraph 33) and the burden on victims can be reduced.

**VII. We adopt this declaration and the following action plan for the implementation of our declaration:**

**ACTION PLAN**

We call on the Austrian Government to take the following measures in the fight against femicide and gender-based violence, especially psychological violence against mothers:

**I. Implementation of the Government Programme 2020-2024 regarding:**

(1) Protection of children and weaker partners; (2) Gender equality and non-discrimination; (3) Full implementation of the Istanbul Convention<sup>89</sup>; (4) Raising awareness of gender-based violence among the judiciary and police; (5) Awareness campaign on violence against women and children; (6) Substantial increase in the women's budget for the

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<sup>89</sup> We do not only demand the "best possible" implementation of the Istanbul Convention, as mentioned in the Government programme, but the full implementation of the Convention.

protection against violence, women's and family counselling centres as well as emergency housing and other victim protection measures; and (7) Violence prevention programmes for those posing a threat.

## **II. Full implementation of the Istanbul Convention regarding:**

### **(1) Rights of custody and contact in the event of violence (Articles 18 and 31)**

- Evaluation of the Childhood Act 2013 with regard to protection against violence and victims' rights (Articles 7, 18 and 31) with the affected mothers and children as well as violence protection organizations;
- Evaluation of the concept paper on parental responsibility in connection with the amendment of the Childhood Act with regard to protection against violence and victims' rights (Articles 7, 18 and 31) with the affected mothers and children as well as violence protection organizations.

### **(2) Establishment of coordination and monitoring bodies for the implementation, observation and evaluation of measures to prevent and combat gender-based violence (Articles 10 and 11) and femicide**

- Strengthening or setting up of a permanent and interdepartmental/interministerial violence protection board to develop holistic strategies and measures against gender-based and intimate partner violence and an interministerial coordination body/working group at a higher level to implement measures to prevent and combat gender-based violence and femicide, involving NGOs, scientific experts and representatives of the provinces;
- Establishment of a competence centre/observatory for gender-based violence and femicide, including ongoing crime statistics and analysis. This centre would be responsible for the coordination of data collection and analysis and the evaluation of measures to prevent and combat gender-based violence and femicide with the involvement of NGOs, scientific experts and representatives of the federal states. This is intended to identify and eliminate gaps in the respective legislation, deficiencies at the level of the investigative authorities or in the implementation. The data collection should also include cases of witnessed violence by children as well as the consideration of psychological violence and witnessed violence of children in custody proceedings.

### **(3) Prevention of secondary victimization**

- Evaluation of all draft bills, laws and other measures, whether they are based on a gender-based understanding of violence against women and domestic violence, focusing on human rights, the safety and protection of the victim and aiming to prevent secondary victimization (Article 18);
- Deprivation of custody and contact rights of the violent partner and the granting of sole custody to the mother if she is a victim of violence and this is the only

way to prevent further violence against her and secondary victimization; violent, unmarried parents must not be granted custody in the first place;

- No compulsory prescription by courts of alternative dispute resolution, such as mediation or joint educational counselling, in cases of violence against women and children in order to avoid further harm to the victims;
- A well-founded compulsory follow-up training in violence protection for all family judges and trainee judges as well as for the entire helper system (family court assistance, employees of child and youth welfare agencies, child supporters, visiting companions, experts, family, parenting and educational counsellors in accordance with § 107, paragraph 3, no. 1, Außerstreitgesetz (Non-Contentious Proceedings Act), parent counsellors according to § 95, paragraph 1a Außerstreitgesetz (Non-Contentious Proceedings Act) to raise awareness of victim rights, protection rights and children's rights, narcissistic parents and psychological violence, for the prevention and detection of such violence as well as the prevention of secondary victimization (Article 15) and the mandatory inclusion of these trainings in the curricula of the above-mentioned professional groups; and
- Elaboration and distribution of guidelines for professionals dealing with custody and contact law cases in order to promote a respectful and blame-free handling of the victims of violence and to put the rights of the victims and children in the foreground.

**III. Implementation of the demands and recommendations of the European Parliament to the EU Member States in its resolution on the impact of intimate partner violence and custody rights on women and children**, such as the full implementation of Article 31 of the Istanbul Convention, the prohibition of the use of the pseudoscientific concept of parent-child alienation in legal proceedings, especially in investigations to establish violence, and the establishment of specialized courts or sections, as well as appropriate laws, training, procedures and guidelines for all professionals dealing with victims of intimate partner violence, including raising awareness of gender-based violence and gender stereotypes, in order to avoid discrepancies between judicial decisions and discrimination or secondary victimization during judicial, medical and police, child protection and guardianship proceedings.

This resolution (2019/2166 (INI), see attachment) is the result of a report on the same subject initiated by Elena Kountoura, Member of the European Parliament. The resolution was adopted by the Plenary of the European Parliament on 6 October 2021 with a large majority and then submitted to the European Commission so that the Commission can take it into account in its forthcoming directive on combating gender-based violence in the EU.<sup>90</sup>

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<sup>90</sup> As the European Parliament also points out in the resolution, the current decade brings with it a visible and organized offensive at global and EU level against gender equality and women's rights. To counter this offensive, it is important to raise public awareness and reduce the sources of funding for anti-gender movements in Europe. Neil Datta of the European Parliamentary Forum on Sexual and Reproductive Rights shows in his recent report, *The Tip of the Iceberg*, 2021, that 54 organizations, including NGOs, foundations, religious organizations and political parties, spent at least \$707.2 million on anti-gender activities in Europe, including Austria, from 2009 to 2018 ([www.epfweb.org/sites/default/files/2021-](http://www.epfweb.org/sites/default/files/2021-)

#### **IV. Complete implementation of the United Nations Convention on the Rights of the Child and the BVG Children's Rights**

(1) Evaluation of the Childhood Act 2013 with regard to the protection against violence (Article 19 of the United Nations Convention on the Rights of the Child and Article 5 of the BVG Children's Rights) and the child's best interests (Article 3 of the United Nations Convention on the Rights of the Child and Article 1 of the BVG Children's Rights) with the affected mothers and children, violence protection organizations and the children's rights monitoring office (see point V.1 of this document);

(2) Evaluation of the concept paper on parental responsibility in connection with the planned amendment to the Childhood Act with regard to the protection against violence (Article 19 of the United Nations Convention on the Rights of the Child and Article 5 of the BVG Children's Rights) and the child's best interests (Article 3 of the United Nations Convention on the Rights of the Child and Article 1 of the BVG Children's Rights ) with the affected mothers and children, violence protection organizations and the children's rights monitoring agency (see point V.1 of this document);

(3) Restriction of custody and contact rights if this is necessary. According to Article 9 of the United Nations Convention on the Rights of the Child and Article 2 of the BVG Children's Rights, the child has the right to stay in contact with both parents after their separation, unless this contradicts the best interests of the child. The best interests of the child must always be given priority in all measures that affect children (Article 3 of the United Nations Convention on the Rights of the Child and Article 1 of the BVG Children's Rights);

(4) Evaluation of the "Diana case": The best interests of the four-year old Diana must have priority. The Supreme Court ruled that returning Diana to her abusive father in the United States and separating from her mother posed a child welfare risk. If the best interests of the child are not given priority and a return to the United States takes place, this will be against the provisions of the United Nations Convention on the Rights of the Child and Article 1 of the BVG Children's Rights.

(5) Listening to/participation of children:

- Listening to children, of all ages, in all cases/procedures that affect their interests (Article 12 of the United Nations Convention on the Rights of the Child and Article 4 of the BVG Children's Rights), with the support, where necessary, of trained specialists who are responsible for dealing with children; and
- The child's right to appropriate participation and consideration of his/her opinion in all matters relating to the child in a manner appropriate to his/her age

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06/Tip%20of%20the%20Iceberg%20June%202021%20Final.pdf). The actual funding is probably considerably higher. According to Neil Datta, this massive funding of anti-gender movements is not only a challenge to human rights, but also a "profound political problem in Europe" ([www.youtube.com/watch?v=FBt\\_AnTpav4&t=7s](https://www.youtube.com/watch?v=FBt_AnTpav4&t=7s)).

and development (Article 12 of the United Nations Convention on the Rights of the Child and Article 4 of the BVG Children's Rights).

## **V. Implementation of the recommendations of the Child's Best Interest Commission in its report of 13 July 2021**

### **(1) Establishment of a permanent body for child rights monitoring**

An independent, permanent and comprehensive body for child rights monitoring is to be set up, as recommended by the United Nations Committee on the Rights of the Child. The subject of the monitoring should be the observance of children's rights in all legislation and law enforcement.

If necessary, the monitoring body reminds people and institutions dealing with children and young people, as well as family courts, of compliance with the United Nations Convention on the Rights of the Child. The monitoring body advises the federal, state and local government as well as the judiciary, lawyers and civil society on the interpretation and child-friendly implementation of the Convention.

The monitoring body also advocates research based on children's rights. To this end, it works closely with civil society, government agencies, research institutes and, of course, with children and young people themselves, because participation, as defined in Article 12 of the Convention, is the basis of its work. The monitoring body also prepares an annual monitoring report with children and young people for the United Nations Committee on the Rights of the Child on the implementation of children's rights in Austria.

One of the first important tasks of the monitoring body would be the evaluation of the Childhood Act 2013 and the concept paper on parental responsibility in connection with the planned amendment to the Childhood Act.

**(2) Issuance of instructions regarding the structure and criteria of examining the child's best interest for judges as well as their entire helper system and uniform child rights standards for the whole of Austria.**

## **VI. Civil and criminal law**

(1) To improve coordination between civil and criminal courts and to take other measures to strengthen the linkage between the criminal and civil cases of a family, so that contacts between the courts are facilitated in order to urgently find and ensure a solution to custody and contact law issues and discrepancies between court decisions that are detrimental to children and victims can be effectively avoided. This should make it easier for the family courts to be able to take into account all issues relating to gender-based violence against women when determining custody and contact rights (see also attachment, paragraph 33).

(2) Establishment of a platform for the regular exchange of best practices between civil and criminal courts, members of the legal professions dealing with cases of domestic and gender-based violence, child abuse, separation and custody cases and all other relevant actors (see also attachment, paragraph 34).

## **VII. Summary and conclusions**

### **We have the following demands to the Austrian Government:**

Victims and children's rights, protection against violence and the best interests of the child must have priority over the contact rights or other rights of violent parents (mostly the father) when enacting and enforcing laws. Otherwise it is unconstitutional and contrary to the provisions of international and regional conventions that are mandatory for Austria as a contracting state.

In particular, we demand:

- The full implementation of the provisions regarding victims and children's rights, protection against violence and the best interests of the child in the Austrian Federal Constitution as well as the Istanbul Convention and the United Nations Convention on the Rights of the Child;
- No automatic joint custody in case of birth of a child, divorce or separation of parents;
- No mandatory minimum care time for both parents in case of divorce or separation, as this is tantamount to a mandatory DR/shared parenting;
- Conducting studies on the impact of shared custody on children in cases of domestic violence and in stepfamilies;
- No linking of maintenance payments to care time -- because that sets the wrong incentives;
- A well-founded and obligatory post-training in violence protection for all family court judges and trainee judges as well as their entire assistance system;
- The application of the existing provisions and laws for the best interests of the child and the protection against violence, such as §138 ABGB and Article 13 of The Hague Convention, by judges in all instances, despite political pressure, among others from the anti-gender activists, in the courts.<sup>91</sup> Judges who are against violence and in favour of the best interests of the child and who are declared biased by fathers must not be replaced by judges who do not put the best interests of the child first;
- The strengthening or re-establishment of a permanent and inter-departmental Violence Protection Board for the development of holistic strategies and measures against gender-based and intimate partner violence and an inter-ministerial working group for the coordination and implementation of measures

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<sup>91</sup> Neil Datta, *The Tip of the Iceberg* (2021), p. 14, last paragraph and p. 15, second paragraph.



regarding the prevention and combating of gender-based violence, especially psychological violence, and femicide;

- The establishment of a centre of excellence/observatory for the coordination of data collection and research on gender-based violence, especially psychological violence, and femicide; and
- The implementation of the Child Welfare Commission's recommendation for a child monitoring body to observe children's rights in all legislation and law enforcement.

If the rights of victims and children, as well as protection against violence and the child's best interest are not taken seriously, this can contribute to a destabilization of families and society as a whole and threaten free democracy.

Austria, as initiator, sponsor, co-sponsor and coordinator of many resolutions on violence against women and human rights by relevant United Nations Commissions and Committees, such as the Commission on Crime Prevention and Criminal Justice, the Committee on the Elimination of Discrimination against Women (CEDAW), as well as the United Nations General Assembly, has always been a role model for other United Nations Member States.

We therefore expect Austria to also fulfil its human rights obligations now in accordance with the provisions in regional and international conventions to which Austria is a contracting state, as well as in the federal constitution.

We hope that our demands will be taken seriously and be implemented and that this will prevent further cases of femicide and psychological violence against women, especially mothers and children, who are also entitled to special care and assistance in accordance with the Universal Declaration of Human Rights of 10 December 1948.

## ATTACHMENT TO THE VIENNA DECLARATION AND ACTION PLAN OF 10.12.2021

### **European Parliament resolution of 6 October 2021 on the impact of intimate partner violence and custody rights on women and children (2019/2166(INI))**

*The European Parliament,*

– having regard to Articles 2 and 3(3) of the Treaty on European Union, and Articles 6, 8, and 67 of the Treaty on the Functioning of the European Union (TFEU),

– having regard to Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime (the Victims' Rights Directive)<sup>(1)</sup>,

– having regard to Articles 21, 23, 24, and 47 of the Charter of Fundamental Rights of the European Union (the "Charter"),

– having regard to the Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention), which entered into force on 1 August 2014,

– having regard to the UN Convention on the Rights of the Child of 20 November 1989,

– having regard to General Comment No 13 of the Committee on the Rights of the Child of 18 April 2011 on the right of the child to freedom from all forms of violence,

– having regard to the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction,

– having regard to the Hague Convention of 29 May 1993 on Protection of Children and Co-operation in Respect of Intercountry Adoption,

– having regard to Directive (EU) 2016/800 of the European Parliament and of the Council of 11 May 2016 on procedural safeguards for children who are suspects or accused persons in criminal proceedings<sup>(2)</sup>,

– having regard to the European Convention on Human Rights,

– having regard to the UN Convention on the Elimination of All Forms of Discrimination against Women adopted on 18 December 1979, and General Recommendation No 35 on gender-based violence against women, updating General Recommendation No 19 of the Committee on the Elimination of Discrimination against Women on violence against women,

– having regard to the European Pillar of Social Rights and in particular Principle 2 thereof,

– having regard to the 2030 Agenda for Sustainable Development, which entered into force on 1 January 2016, and in particular to Sustainable Development Goals 5 on gender equality and 16.2 on ending abuse, exploitation, trafficking and all forms of violence against and torture of children,

– having regard to the Commission proposal of 4 March 2016 for a Council decision on the conclusion, by the European Union, of the Council of Europe Convention on preventing and combating violence against women and domestic violence (**COM(2016)0109**),

– having regard to the Commission communication of 5 March 2020 entitled A Union of Equality: Gender Equality Strategy 2020-2025 (**COM(2020)0152**), in particular its first target on freeing women and girls from violence and stereotypes,

– having regard to the Commission communication of 12 November 2020 entitled Union of Equality: LGBTIQ Equality Strategy 2020-2025 (**COM(2020)0698**),

– having regard to the Commission communication of 24 June 2020 entitled EU Strategy on victims' rights (2020-2025) (**COM(2020)0258**),

– having regard to the Commission staff working document of 6 March 2019 entitled 2019 report on equality between women and men in the EU (SWD(2019)0101),

– having regard to its resolution of 12 September 2017 on the proposal for a Council decision on the conclusion, by the European Union, of the Council of Europe Convention on preventing and combating violence against women and domestic violence<sup>(3)</sup>,

– having regard to its resolution of 28 November 2019 on the EU's accession to the Istanbul Convention and other measures to combat gender-based violence<sup>(4)</sup>,

– having regard to its resolution of 17 December 2020 on the need for a dedicated Council configuration on gender equality<sup>(5)</sup>,

– having regard to its resolution of 21 January 2021 on the gender perspective in the COVID-19 crisis and post-crisis period<sup>(6)</sup>,

– having regards to its resolution of 21 January 2021 on the EU Strategy for Gender Equality<sup>(7)</sup>,

– having regard to Directive 2011/99/EU of the European Parliament and of the Council of 13 December 2011 on the European protection order<sup>(8)</sup>,

– having regard to Regulation (EU) No 606/2013 of the European Parliament and of the Council of 12 June 2013 on mutual recognition of protection measures in civil matters<sup>(9)</sup>,

– having regard to Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility (the Brussels IIa Regulation)<sup>(10)</sup>,

– having regard to the European Institute for Gender Equality (EIGE) 2020 Gender Equality Index,

– having regard to the EIGE study of 12 June 2019 entitled Understanding intimate partner violence in the EU: the role of data,

– having regard to the EIGE study of 18 November 2019 entitled A guide to risk assessment and risk management of intimate partner violence against women for police,

– having regard to the report by the European Union Agency for Fundamental Rights (FRA) of 3 March 2014 entitled Violence against women: an EU-wide survey,

– having regard to the Platform of Independent Expert Mechanisms on Discrimination and Violence against Women (EDVAW Platform), and its statement of 31 May 2019 entitled Intimate partner violence against women is an essential factor in the determination of child custody,

– having regard to the statement of 24 March 2020 by the President of the Council of Europe's Group of Experts on Action against Violence against Women and Domestic Violence, Marcelline Naudi, entitled For many women and children, the home is not a safe place, on the need to uphold the standards of the Istanbul Convention in times of a pandemic,

– having regard to Rule 54 of its Rules of Procedure,

– having regard to the joint deliberations of the Committee on Legal Affairs and the Committee on Women's Rights and Gender Equality under Rule 58 of the Rules of Procedure,

– having regard to the report of the Committee on Legal Affairs and the Committee on Women's Rights and Gender Equality (**A9-0254/2021**),

A. whereas gender equality is a fundamental value and a core objective of the EU, and should be reflected in all EU policies; whereas the right to equal treatment and non-discrimination is a fundamental right enshrined in the Treaties<sup>(11)</sup> and the Charter<sup>(12)</sup> and should be fully respected; whereas gender-based violence in all its forms constitutes an extreme form of discrimination against women and a violation of human rights entrenched in gender inequality, which it helps to perpetuate and reinforce; whereas this kind of violence originates from and maintains gender stereotypes about the roles and capabilities of women and men and from unequal power relations in societies; whereas it remains widespread and affects women at all levels of society, regardless of age, education, income, social position or country of origin or residence, and whereas it is one of the most serious obstacles to achieving gender equality;

whereas women and children across the EU are not equally protected against gender-based violence due to differing policies and legislation across the Member States;

B. whereas, in spite of numerous instances of formal recognition and progress having been made on gender equality, women are still discriminated against and disadvantaged, and social, economic and cultural inequalities persist; whereas according to the EIGE 2020 Gender Equality Index, no Member State has fully achieved equality between women and men yet; whereas the EUs progress on gender equality is still slow, with the index score improving on average by one point every two years; whereas at this rate, it will take almost 70 years for the EU to reach gender equality; whereas this Parliament has already called for the establishment of a new Council configuration of ministers and secretaries of state in charge of gender equality;

C. whereas different forms of oppression do not exist separately but overlap and affect individuals simultaneously, triggering intersectional forms of discrimination; whereas discrimination on the basis of gender often intersects with discrimination on other grounds, such as race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinions, membership of a national minority, property, birth, disability, age and sexual orientation;

D. whereas the present decade is witnessing a visible and organised offensive at global and EU level against gender equality and women's rights, including in the EU;

E. whereas gender equality is an essential condition for an innovative, competitive and prosperous EU economy, leading to the creation of new jobs and increased productivity, especially in the context of digitalization and the transition to a green economy;

F. whereas intimate partner violence refers to any act of physical, sexual, psychological or economic violence that occurs between former or current spouses or partners, whether or not the perpetrator shares or has shared a residence with the victim; whereas intimate partner violence is one of the most prevalent forms of gender-based violence, with an estimated 22% of women having experienced physical and/or sexual violence, and 43% having experienced psychological violence by their partner<sup>(13)</sup>; whereas women and children are disproportionately affected by this type of violence; whereas domestic violence refers to 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<sup>(14)</sup>; whereas domestic violence is a serious and often long-term and hidden social problem that causes systematic physical and/or psychological trauma with serious consequences for the victims and with a severe impact on the emotional, economic and social well-being of the whole family, as the perpetrator is a person the victim should be able to trust; whereas between 70% and 85% of children who are victims of violence know their abuser and whereas the vast majority of these children are victims of people they trust<sup>(15)</sup>; whereas victims are often subjected to coercive control from their abuser, characterized by intimidation, control, isolation and abuse;

G. whereas the rates of intimate partner violence in rural and remote communities are even greater than those in urban areas; whereas women in rural and remote areas experience higher rates of intimate partner violence and greater frequency and severity of physical, psychological and economical abuse, which is intensified by the fact that they reside farther away from available resources and services where they would be able to seek assistance; whereas poor understanding of domestic violence by health, social and legal services in rural and remote regions can be identified as a significant problem for survivors of intimate partner violence;

H. whereas at EU level, the majority of single-parent households are headed by single mothers who are particularly vulnerable economically, especially those in the low-wage categories, and more likely to leave the labour market early when they become parents, thus putting them at a disadvantage when they try to re-enter the labour market; whereas in the EU, 40,3% of single-parent households were at risk of poverty or social exclusion in 2019<sup>(16)</sup>;

I. whereas 30% of women who have been sexually victimized by a former or current partner also experienced sexual violence in childhood, and whereas 73% of mothers who have been victims of physical and/or sexual violence by a partner indicate that at least one of their children has become aware of such violence taking place<sup>(17)</sup>;

J. whereas in many Member States, the lockdown and social distancing measures during the COVID-19 pandemic have been associated with an exponential increase in the prevalence and intensity of cases of intimate partner violence, psychological violence and coercive control and cyber violence, and with a 60% increase in emergency calls reported by victims of domestic violence<sup>(18)</sup>; whereas requirement to stay at home and the alarming upsurge in the shadow pandemic made it difficult for women and children to access effective protection, support services and justice and revealed that support resources and structures were insufficient and that victims had limited access to support services, leaving many of them without adequate and timely protection; whereas best practices in specific measures to provide timely and accessible assistance to victims, including setting up emergency texting systems or creating contact points to seek help in pharmacies and supermarkets should be shared among the Member States; whereas in spite of the prevalence of the phenomenon, intimate partner violence against women remains under-reported in the EU by the victims, their families, friends, acquaintances and neighbours, for various reasons, especially during the COVID-19 pandemic, and whereas there is a significant lack of comprehensive, comparable and gender-disaggregated data, making it difficult to fully assess the impact of the crisis; whereas the survey by FRA on violence against women indicates that victims report their most serious incidents of partner violence to the police in only 14% of cases, and that two thirds of female victims systematically do not report to the authorities, either out of fear or a lack of information about victims' rights, or due to a general belief that intimate partner violence is a private matter, which should not be publicized<sup>(19)</sup>;

K. whereas domestic and gender-based violence has increased as a result of the lockdown measures put in place during the COVID-19 pandemic and whereas according to the latest Europol Report<sup>(20)</sup>, online child sexual abuse in the EU has dramatically increased;

L. whereas during the lockdowns, a significant rise in domestic violence against LGBTI+ people, especially young people, was reported;

M. whereas economic violence against women in the form of property damage, restricting access to financial resources, education or the labour market, or not complying with economic responsibilities such as the payment of maintenance allowance, deserves due attention, as hampering the financial independence and the family wealth go hand in hand with other forms of violence, and result in an additional trap for victims; whereas victims who are not financially independent are often forced to continue living with their perpetrator to avoid financial insecurity, homelessness or poverty and whereas this tendency was exacerbated by the COVID-19 pandemic; whereas fair remuneration and economic independence are essential for enabling women to leave abusive and violent relationships; whereas in some Member States, the enforcement of court decisions related to financial compensation can require the victim to stay in contact with her abuser, putting her at risk of further physical and emotional abuse;

N. whereas children may also suffer what is called witnessed violence<sup>(21)</sup> in the home and family environment, through experiencing any form of ill treatment carried out through acts of physical, verbal, psychological, sexual and economic violence against reference figures or other affectively significant figures; whereas such violence has very serious consequences for the psychological and emotional development of the child, and whereas it is therefore essential to pay due attention to this type of violence in separations and parental custody arrangements, ensuring that the best interests of the child are the primary consideration, in particular in order to determine custody and visitation rights in separation cases; whereas witnessed violence is not always easily recognizable and whereas women victims of domestic violence live in a state of tension and emotional difficulty; whereas in cases involving both domestic violence and child protective issues, courts should refer to experts with the knowledge and tools to avoid decisions against the mother that do not properly take all circumstances into account;

O. whereas education plays a fundamental role in building children's and young people's skills to help them to form healthy relationships, notably by teaching them about gender norms, gender equality, power dynamics in relationships, consent and respect for boundaries, and helps to combat gender-based violence; whereas according to UNESCO's International Technical Guidance on Sexuality Education, curriculum-based programmes on comprehensive sexuality education enable children and young people to develop knowledge, positive attitudes and skills in this area, including respect for human rights, gender equality, consent and diversity and whereas it empowers children and young people;

P. whereas in order to address the issue of the eradication of gender-based violence, it is necessary to rely on consistent and comparable administrative data, based on a robust and coordinated framework for data collection; whereas the current available data collected by the

Member States law enforcement and justice authorities fail to reflect the full extent of intimate partner violence and its impact and long-term effects on both women and children, as most Member States neither collect gender-segregated comparable data on violence nor do they recognise intimate partner violence as a specific offence, which results in a grey zone reflecting the fact that the real prevalence and incidence of intimate partner violence is significantly unquantified and unmapped; whereas data are also lacking on the heightened risks and prevalence of domestic and intimate partner violence for specific groups, such as for disadvantaged or discriminated groups of women;

Q. whereas in some Member States, intimate partner violence against women is often neglected and the default rule of shared custody or parental authority appears to prevail in cases of child custody, access, contact and visitation arrangements and decisions; whereas disregarding such violence leads to dire consequences for women and children, which may escalate into femicide and/or infanticide; whereas victims of intimate partner violence need special protection measures; whereas the victims situation considerably worsens if they are economically or socially dependent on the perpetrator; whereas it is therefore essential to fully take into account this type of violence when deciding on separation and custody arrangements and to address allegations of violence before custody and visitation issues; whereas the courts of the Member States should ensure a comprehensive assessment is carried out under the best interests of the child principle to determine custody and visitation rights, which includes hearing the child, involving all relevant services, providing psychological support and taking into account the expertise of all professionals involved;

R. whereas law enforcement risk assessments in most Member States do not systematically include information provided by children about their experiences of intimate partner violence;

S. whereas the best interests of the child should always be the primary consideration in all decisions concerning children, including family disputes and whereas the right of every child to maintain contact with both parents, implied in Article 8 of the European Convention on Human Rights and Article 9 of the UN Convention on the Rights of the Child, should therefore be restricted if necessary in the best interests of the child;

T. whereas according to Article 12 of the UN Convention on the Rights of the Child and Articles 4 and 16 of Directive (EU) 2016/800, children have the right to express their views in all matters affecting them, including in judicial and administrative proceedings, in a child-friendly manner and whereas these views have to always be given primary consideration according to the age and maturity of the child;

U. whereas two of the most prestigious institutions on mental health, the World Health Organization and the American Psychological Association, reject the use of the so-called parental alienation syndrome and similar concepts and terms, since they can be used as a strategy against victims of violence by putting into question the victims parental skills, dismissing their word and disregarding the violence to which children are exposed; whereas according to the EDVAW Platform recommendation, accusations of parental alienation by



abusive fathers against mothers must be considered as a continuation of power and control by state agencies and actors, including those deciding on child custody<sup>(22)</sup>;

V. whereas anonymous complaints and complaints later retracted by victims may hamper further investigation by the authorities and present an obstacle to the prevention of further violence;

W. whereas criminal proceedings arising from a complaint about domestic violence are often dealt with completely separately from separation and custody proceedings; whereas this can mean that shared custody of the children is ordered and/or visitation rights imposed that endanger the rights and safety of the victim and the children; whereas this can have irreversible consequences for children's mental and emotional development, actually affecting their best interests; whereas there is therefore a need for Member States to ensure that victims, according to their needs, have access to confidential victim support services, free of charge, acting in the interests of the victims before, during and for an appropriate time after criminal proceedings, including through a system of psychosocial support – particularly during and after questioning procedures – which takes into account the emotional tensions associated with the circumstances;

X. whereas according to Article 67 TFEU, the Union shall constitute an area of freedom, security and justice with respect for fundamental rights, to which non-discriminatory access to justice for all is instrumental;

Y. whereas it is necessary to ensure that the safety and protection of victims is given primary consideration in family law cases and whereas alternative dispute resolution mechanisms, such as mediation, should not be used in cases where violence against women and children is present, either before or during the judicial proceedings, in order to avoid further harm to the victims;

Z. whereas the Istanbul Convention requires the Parties to adopt legislative or other necessary measures to ensure that incidents of domestic violence are taken into account when determining custody and visitation rights in relation to children, and that the exercise of any visitation or custody rights does not jeopardize the rights and safety of the victim or their children<sup>(23)</sup>; whereas eight years since its entry into the force, the Istanbul Convention has not yet been ratified by six EU Member States or by the EU; whereas the Istanbul Convention is the most important existing international framework to prevent and combat gender-based violence;

AA. whereas shared custody in situations of intimate partner violence exposes women to a continuum of preventable violence, by forcing them to stay in geographical proximity to their abusers, and subjecting them to further exposure to physical and psychological violence, as well as emotional abuse, which can have a direct or indirect impact on their children; whereas in cases of intimate partner violence, the right of women and children to be protected and live a life free of physical and psychological violence should take precedence over the preference for

shared custody; whereas ill treatment of children by perpetrators of intimate partner violence can be used to exercise power over and commit acts of violence against the mother, which is a type of indirect gender-based violence known in some Member States as vicarious violence;

AB. whereas helplines are a critical channel for obtaining support but whereas only 13 Member States have implemented the EU 116 006 helpline for all victims of crimes, and only few Member States have specialist helplines for victims of intimate partner violence;

AC. whereas intimate partner violence is inherently interlinked with violence against children and child abuse; whereas exposing children to domestic violence is to be considered as violence against children; whereas children who are exposed to domestic violence suffer negative mental and/or physical health consequences that could be acute and chronic in nature; whereas child victimisation in situations of violence against women may continue and escalate in the context of parental disputes over custody and care; whereas the mental health and well-being of children has deteriorated due to containment measures put in place to tackle COVID-19; whereas the number of mental health services for children differs significantly between Member States and in many is not sufficient;

AD. whereas growing up in a violent domestic environment has very negative implications for the child's physical, emotional and social development and subsequent behaviour as an adult; whereas exposure to violence as a child, either through experiencing maltreatment and/or witnessing partner violence, constitutes a risk factor for becoming vulnerable to victimisation, committing violence as an adult or experiencing behavioural, physical or mental health problems;

AE. whereas despite progress, recent reports show that victims of crime are still unable to fully exercise their rights in the EU; whereas access to support services is critical to women exposed to intimate partner violence; whereas there remain insufficient numbers of specialised and generalist support services for victims of intimate partner violence, and whereas victims often face difficulties in obtaining justice due to lack of information and insufficient support and protection; whereas victims often face secondary victimisation in criminal proceedings and when claiming compensation; whereas there are several cases in which law enforcement officials and judicial systems are not able to provide sufficient support to women and child victims of domestic violence, and whereas victims of gender-based violence have even been subjected to neglectful behaviour or inappropriate comments when reporting the violence; whereas civil society and public organisations, in particular those working with and for children and victims of domestic and gender-based violence, are important players in preventing and dealing with domestic and intimate partner violence; whereas such organisations can also provide valuable contributions to policies and legislation given their grassroots experience; whereas EU funding programmes such as the Justice Programme and the Citizens, Equality, Rights and Values Programme can be used to support activities for the protection and support of victims of domestic and gender-based violence, including to ensure access to justice and the financing of organisations working with victims;

AF. whereas cross-border separation divorce and custody proceedings are more complex in nature and generally take longer; whereas increased mobility within the EU has led to a growing number of cross-border disputes concerning parental responsibility and child custody; whereas the automatic recognition of rulings on proceedings linked to custody rights where gender-based violence is involved are problematic since legislation on gender-based violence differ in each Member State and not all Member States recognise intimate partner violence as a criminal offence and a form of gender-based violence; whereas the Commission must step up its efforts to promote in all Member States the consistent and concrete implementation of the principles and objectives set out in the UN Convention on the Rights of the Child, which has been ratified by all EU Member States; whereas the Member States, as parties to the UN Convention on the Rights of the Child, must make the best interests of the child a primary consideration in all public action, including when dealing with cross-border family disputes; whereas Article 83(1) TFEU provides for the possibility to establish minimum rules concerning the definition of criminal offences and sanctions in the areas of particularly serious crime with a cross-border dimension resulting from the nature or impact of such offences or from a special need to combat them on a common basis; whereas Article 83(2) TFEU provides for the possibility to establish minimum rules with regard to the definition of criminal offences and sanctions, in order to ensure the effective implementation of a Union policy in an area which has been subject to harmonisation measures;

AG. whereas Article 82(2) TFEU provides for the possibility of establishing minimum rules applicable in the Member States in order to facilitate mutual recognition of judgments and judicial decisions and police and judicial cooperation in criminal matters having a cross-border dimension, in particular as regards the rights of victims of crime;

### ***General Remarks***

1. Condemns in the strongest possible terms all forms of gender-based violence, domestic violence, and violence against women and deplores the fact that in particular women and children, in all their diversity, continue to be exposed to intimate partner violence, which constitutes a serious violation of their human rights and dignity, and also has an impact on women's economic empowerment, this phenomenon having been exacerbated during the COVID-19 crisis;

2. Recalls that the UN Special Rapporteur on violence against women has noted that the COVID-19 crisis has illustrated the lack of proper implementation of international conventions to protect and prevent gender-based violence; calls on the Member States to urgently address the increase in intimate partner violence during the COVID-19 pandemic and encourages them to exchange national innovations, guidelines, best practices and protocols that have proven to be effective in addressing intimate partner violence and in supporting victims, especially during emergencies; calls on the Commission to promote those practices; calls on the Members States and local authorities to measure the extent of gender-based violence and to support victims of gender-based and domestic violence by guaranteeing them safety and economic independence

through access to specific housing and essential public services such as health, transport and professional psychological support; calls on the Commission to develop a European Union protocol on violence against women in times of crisis and emergency to prevent violence against women and to support victims during emergencies such as the COVID-19 pandemic, to establish a safe and flexible emergency warning system and to consider protection services for victims, such as helplines, safe accommodation and health services, to be essential services in the Member States; underlines, in this context, the need for specific measures to address the existing disparities in laws, policies and services between Member States and the increase in domestic and gender-based violence during the COVID-19 pandemic;

3. Highlights that perpetrators often use litigation to extend their power and control, and to continue to intimidate and incite fear in their victims; stresses in this regard that the child and the request for shared custody are often manipulated by the violent parent to continue reaching the mother after the separation; stresses that perpetrators often abuse, or threaten to harm or to take the children, in order to harm their partners and ex-partners, which has a serious impact on the harmonious development of the child; recalls that this is also a form of gender-based violence; notes that the withholding of maintenance allowance can be used by perpetrators as a threat and a form of abuse against their victims; highlights that this practice can cause great psychological harm to the victims, and create or aggravate financial difficulties; calls on the Member States to take measures to ensure maintenance allowance is paid to victims from victim funds in order to avoid financial abuse and the risk of causing further harm to them;

4. Welcomes the Commissions commitment in the Gender Equality Strategy 2020-2025 to fight gender-based violence and stresses the importance of fully and swiftly implementing its key objectives in this regard; points out the alarming figures on gender-based violence, which reveal that patriarchal behaviours need to be reshaped as a matter of urgency; recalls that common action is essential in order to upwardly converge and harmonise women's rights in Europe; calls, therefore, for the creation of a council configuration on gender equality within the European Council so that Member State representatives can regularly meet, legislate and exchange best practices; stresses that measures to combat gender-based and domestic violence need to incorporate an intersectional approach with the aim of being as inclusive as possible and in order to prevent any type of discrimination;

5. Points out that the Istanbul Convention is a pivotal instrument tackling gender-based violence against women and domestic violence; deplores the fact that the convention has not been ratified by the European Union yet, and that to date only 21 EU Member States have ratified it; calls for its swift ratification and implementation at national and EU level; urges Bulgaria, Czechia, Hungary, Latvia, Lithuania and Slovakia to ratify the Istanbul Convention; reiterates its strong condemnation of the recent decision by the Polish Minister of Justice to officially start Poland's withdrawal from the Istanbul Convention, which would be a serious setback with regard to gender equality, women's rights and the fight against gender-based violence; calls on the Commission to continue developing a comprehensive framework of policies, programmes and other initiatives to tackle violence against women and domestic

violence, and to allocate sufficient and appropriate resources to actions related to the implementation of the Istanbul Convention through its funding programmes safeguarded in the provisions of the 2021-2027 multiannual financial framework and through the Daphne strand; commends all campaigns advocating the ratification and implementation of the Istanbul Convention; supports the Commission's plan to continue pushing for its EU-wide ratification; strongly condemns all attempts to discredit the Istanbul Convention and condemns the attempts to set back the progress made in the fight against gender-based violence, including domestic violence, that are taking place in some Member States; notes with great concern that the effective implementation of the convention is still patchy across the EU; calls on the Member States that have ratified the convention to ensure its full, effective and practical implementation, paying special attention to Article 31 of the Istanbul Convention, and to take all the necessary measures to ensure that incidents of intimate partner violence are taken into account when custody and visitation rights of children are determined and that the exercise of any visitation or custody rights does not jeopardise the rights and safety of the victim or children;

6. Calls on the Commission and on the Council to add gender-based violence to the list of areas of crime in Article 83(1) TFEU, taking into account the particular need to combat this crime on a common basis; calls on the Commission to use this as a legal basis to propose binding measures and a holistic EU framework directive to prevent and combat all forms of gender-based violence, including the impact of intimate partner violence on women and children, that contains uniform standards and a due diligence obligation to collect data, to prevent and investigate violence, to protect victims and witnesses, and to prosecute and punish perpetrators; recalls that such new legislative measures should in any case be in line with the rights, obligations and objectives of the Istanbul Convention and should be complementary to its ratification; recommends that the Istanbul Convention should be seen as a minimum standard and aspire to make further progress to eradicate gender-based and domestic violence;

7. Calls on the Member States and the Commission to adopt specific measures to eradicate cyber violence, including online harassment, cyberbullying and misogynistic hate speech, which disproportionately affects children and especially girls, and to specifically address the increase in these forms of gender-based violence during the COVID-19 pandemic; calls on the Commission to put forward relevant regulations and any other possible actions to eradicate hate speech and online harassment;

8. Deplores the underfunding by the Commission and the Member States of the fight against domestic violence given the scale of the phenomenon; notes that the Member States which have significantly increased these funds have obtained results, in particular in terms of reducing femicides; calls on the Commission and the Member States to increase the funds dedicated to the fight against domestic violence; is concerned about the fragmentation of funding, short-term funding and administrative burden, which can reduce the access of associations to funding and therefore have an impact on the quality of support for victims of domestic violence and

their children; calls on the Commission and the Member States to favour stable and long-term financing;

***Protection, safety and support for victims of gender-based violence – addressing intimate partner violence in custody rights and visitation decisions***

9. Recalls that in all actions concerning children, their best interests must be the primary concern; recalls the right of the child who is separated from one or both parents to maintain personal relations and direct contact with both parents on a regular basis, except if it is contrary to the child's best interests; notes that, in principle, shared custody and unsupervised visits are desirable in order to ensure that parents enjoy equal rights and responsibilities, except if it is contrary to the child's best interests; stresses that it is contrary to those interests if the law automatically gives parental responsibilities to either or both parents; recalls that according to the UN Convention on the Rights of the Child, assessing the child's best interests is a unique activity that should be undertaken in each individual case, taking the specific circumstances of each child into account; underlines that intimate partner violence is clearly incompatible with the best interests of the child and with shared custody and care, owing to its severe consequences for women and children, including the risk of post-separation violence and the extreme acts of femicide and infanticide; stresses that when establishing the arrangements for custody allocation, access and visitation rights, the protection of women and children from violence and the best interests of the child must be paramount and should take precedence over other criteria; underlines, therefore, that the rights or claims of perpetrators or alleged perpetrators 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<sup>(24)</sup>; stresses, therefore, that the withdrawal of the custody and visitation rights of the violent partner and the awarding of exclusive custody to the mother, if she is a victim of violence, can represent the only way to prevent further violence and the secondary victimisation of the victims; stresses that awarding all parental responsibilities to the one parent must be accompanied by relevant compensation mechanisms, such as social benefits and priority access to collective and individual care arrangements;

10. Stresses that failing to address intimate partner violence in custody rights and visitation decisions is a violation by neglect of the human rights to life, to a life without violence, and to the healthy development of women and children; strongly urges any form of violence, including witnessing violence against a parent or close person, to be considered in law and in practice as a violation of human rights and as an act against the best interests of the child; is deeply concerned about the alarming number of femicides in Europe, which is the most extreme form of violence against women; is concerned about the inadequacy of the protection granted to women, as evidenced by the number of femicides and infanticides which take place after the woman has reported gender-based violence; stresses that in the best interests of the child, the parental authority of the accused parent should be systematically suspended in cases of femicide for the entire duration of the proceedings; further emphasizes that descendants

should be exempted from maintenance obligations towards a parent who has been condemned for femicide; urges the Member States to ensure that access to justice and victim support is accessible, adequate and free for all women victims of intimate partner violence in all their diversity and status, and to provide interpreting services where needed; calls on the Member States to ensure that services take into consideration the intersecting forms of discrimination suffered by women and children; calls on the Member States to strengthen care, monitoring and protection of women who report gender-based violence; calls on the Member States to ensure that support services take a coordinated approach to identifying women at risk, to ensure that all these measures are available and accessible to all women and girls within their jurisdiction; stresses that when a perpetrator is arrested in flagrante delicto, the victim should be taken to a safe place and the protection of the children from the aggressor should be compulsory and also stresses that, if the legal conditions for arrest are not met, the alleged abuser should nonetheless be immediately removed from the victims house and kept away from the victims workplace to prevent the risk of further violence;

11. Invites the Member States to develop systems to allow third persons and associations to handle the children's visits to the violent ex-partner, to reduce the exposure of mothers who are victims of domestic violence if their former partner has retained a right of visit, accommodation or shared custody rights; considers that these mechanisms must be accessible to women as soon as they report domestic violence; considers that this task requires specific skills and that the people in charge of handling the children must receive adequate training; considers that these mechanisms should be carried by specialised associations and institutions;

12. Is concerned about significant disparities between Member States when it comes to tackling gender-based violence; is worried about the situation of women victims of gender-based violence who live in areas where there is a lack of support structures and access to justice, public and legal services to defend their rights is difficult; is worried that specialist support services are not provided equally within each Member State and calls on them to ensure the adequate geographical distribution of immediate, short- and long-term specialist support services for victims, irrespective of the women's residence status and their ability or willingness to cooperate in proceedings against the alleged perpetrator; calls on the Member States to provide universal access to legal services and tailored services and responses to specific contexts in which the intimate partner violence occurs in rural areas; highlights the need to create networks between different services and programmes in order to successfully combat cases of gender-based violence against women in rural and remote regions; calls on the Commission and the Member States to examine the possibility of dedicating EU funds to this issue, in particular funds dedicated to regional development;

13. Welcomes the EU Strategy on victims' rights (2020-2025), which addresses the specific needs of victims of gender-based violence, in particular the specific approach to psychological violence against women and the impact on their mental health on the long run; calls on the Commission, in its evaluation of the Victims Rights Directive, to address the current gaps in the EU legislation, to examine whether the gender aspect of victimisation is properly and effectively

taken into account, particularly with regard to international standards on violence against women such as those set in the Istanbul Convention, and to adequately enhance the legislation on victims' rights and the protection and compensation of victims; calls for the continued promotion of victims' rights, including through existing instruments such as the European protection order; urges the Commission to ensure that all Member States translate the Victims' Rights Directive into national legislation and calls for its full and accurate implementation, so that victims of intimate partner violence get full access to a range of support services, including through specialist and generic services such as the 116 006 helpline for victims of crime;

14. Recommends that Member States provide alternative mechanisms for victims who do not file a complaint so that they can exercise the recognised rights of victims of intimate partner violence, such as social and labour rights, for example through expert reports drawn up by specialised public services accrediting the status of victim of gender-based violence;

***Protection and support: access to legal protection, emergency accommodation and to victim funds***

15. Highlights the key role of economic support for victims in helping them to achieve financial independence from their violent partner; stresses that the majority of women become poorer during separation and divorce procedures, and that some women give up asking for their fair share and what they are entitled to for fear of losing custody; calls therefore on the Member States to pay particular attention to the risk of the situation of victims of domestic violence becoming more precarious during the separation and divorce process; stresses the need to eliminate any economic barriers that might induce a woman not to report the violence she has suffered; points out that an adequate income and economic independence are key factors in enabling women to leave abusive and violent relationships; calls on the Member States to implement specific measures to tackle economic violence, to protect the capital and income of victims of gender-based violence and to set up a framework which provides rapid and effective decisions on maintenance allowance for children, aiming to ensure empowerment, financial safety and economic independence for victims of gender-based violence, allowing them to take control over their lives, including through the support of women entrepreneurs and workers; calls on the Commission and the Member States to promote and support such independence; welcomes the proposal for a directive on adequate minimum wages<sup>(25)</sup> and the proposal for binding pay transparency measures<sup>(26)</sup>; stresses the importance of the implementation of Work-Life Balance Directive<sup>(27)</sup>, as it is particularly crucial for lone parents, helping them to cope with their specific employment situation and with caring duties -such as by making sure accessible and adequate care facilities are available; calls on the Member States to ensure adequate financial support and compensation mechanisms for victims and to set up a mechanism to coordinate, monitor and regularly assess the implementation and effectiveness of the measures to prevent economic violence against women;

16. Calls on the Member States to promote and guarantee full access to adequate legal protection, effective hearings and restraining orders, shelters and counselling, as well as victim



funds and financial empowerment programmes for women victims of intimate partner violence; calls on the Member States to guarantee support for mothers and their children who are victims of domestic violence by means of community, educational and financial support, such as victim funds for women victims of domestic violence, in order to ensure these mothers have the necessary means to care for their children and to prevent them from losing custody; calls on the Member States to apply particular procedures based on common minimum standards and to give support to victims of domestic violence, in order to prevent them from becoming victims again as a result of shared custody or from completely losing custody of their children; calls on the Member States to ensure that the legal costs of victims of domestic violence are covered when they do not have sufficient resources and to guarantee them proper defence by lawyers specialised in situations of domestic violence; calls on the Commission to assess the establishment of minimum standards for protection orders across the EU; calls on the Member States to ensure that victims of intimate partner violence have access to psychological support and counselling at every stage of their legal procedures;

17. Deplores the lack of appropriate emergency and temporary accommodation solutions for victims of intimate partner violence and their children; calls on Member States to open emergency accommodation spaces specific to situations of intimate partner violence and to make them available at all times, in order to increase, improve and ensure adequate reception and protection services for women who are victims of domestic violence and any children affected; calls on the Commission and the Member States to allocate adequate funds to relevant authorities, including through projects, and calls for funding for the establishment and expansion of shelters, as well as other appropriate measures enabling women who are victims of violence to benefit, with confidentiality, from a safe and local environment;

18. Regrets that women can find themselves without appropriate social, health, and psychological support; calls on the Member States to ensure the provision of effective, accessible, universal and quality medical and psychological support for victims of gender-based violence, including the provision of sexual and reproductive health services (SRHR), especially in times of crisis where such support must be deemed essential, for example by investing in telemedicine to guarantee healthcare services can continue to be provided;

19. Invites the Member States to create patient-centred medical care that would allow early detection of domestic abuse, organise professional therapeutic treatment and set up housing programmes and legal services for victims which could significantly help to reduce the consequences of and prevent intimate partner violence;

20. Calls on the Member States to explore virtual options for helping victims of violence, including mental health and counselling options, paying attention to existing inequalities in access to information technology services;

21. Encourages good practices that already exist in some Member States to prevent further violence, such as the recording of victims telephone numbers in special lists related to stalking

and intimate partner violence, in order to give absolute priority to possible future calls during emergencies and facilitate effective law enforcement interventions;

***Protection and support for children***

22. Stresses the importance of establishing common legal definitions and minimum standards at the EU level for combating gender-based violence and for the protection of children of victims of gender-based violence, as intimate partner violence, witnessed and vicarious violence are not recognised in many legal systems; points out that children witnessing violence in their family environment are not recognised as victims of gender-based violence, which has a direct impact on data collection in the police and judicial sectors, and on cross-border cooperation; stresses the need to assign the status of victim of gender-based violence in criminal and investigation proceedings to children who are witnesses to intimate partner violence or suffer vicarious violence in order for them to benefit from better legal protection and appropriate assistance; therefore recommends establishing systematic procedures for monitoring, including psychological monitoring, of children who are victims of and witnesses to domestic violence, in order to respond to the troubles this causes in their lives and to prevent them from repeating such violence as adults; also calls on the Member States to introduce special measures concerning so-called witnessed violence, including provisions for specific aggravating circumstances;

23. Calls on the Member States to set up an annual campaign to inform children and raise awareness of children's rights; calls on the Member States to set up specific centres to attend to child victims of violence, with paediatricians and therapists specialised in gender-based violence; calls on the Member States to set up contact points for children that are easily accessible, including by telephone, email, online chat etc., where they can talk about and ask questions as well as report violence against themselves, a parent or a sibling and where they can get information, advice or be referred to another organisation for more help;

24. Emphasizes that the child must in particular be provided with the opportunity to be heard, which is essential for establishing what is in the best interests of the child when examining custody and foster care cases, according to the age and maturity of the child; points out that in every case, but crucially in cases where intimate partner violence is suspected, such hearings must be conducted in a child-friendly environment by trained professionals, such as doctors or psychologists, including professionals qualified in child neuropsychiatry, in order to analyse the effect of trust in others on the harmonious development of the child and to avoid deepening their trauma and victimisation; calls for minimum EU standards on how such hearings should be conducted; highlights the importance of ensuring a proper long-term level of psychological and psychiatric care and social counselling for the victims and their children throughout the process of recovery after the time of abuse;

25. Highlights the need for special attention and specific procedures and standards for cases in which the victim or the child involved is a person with disabilities or belongs to a particularly vulnerable group;

26. Welcomes the Commissions presentation of a comprehensive strategy to protect vulnerable children and foster child-friendly justice; underlines the need to protect the rights of the most vulnerable children, with particular attention paid to children with disabilities, the prevention of and fight against violence and the promotion of child-friendly justice; calls for a full and swift implementation of the strategy by all Member States; urges the Commission and the Member States to take concrete measures to combat child sexual abuse and child sexual exploitation by investing in preventive measures and treatment programmes aimed at preventing perpetrators from reoffending, with more effective support for victims, and by enhancing cooperation between law enforcement authorities and civil society organisations; stresses that in suspected cases of child abuse, prompt action needs to be taken to ensure the safety of the child and to stop and prevent further or potential violence, while ensuring the right of the child to be heard throughout the process; believes that such action should include immediate risk assessment and protection comprising a wide range of effective measures such as interim measures or protection or restraining orders while the facts are investigated; recalls that in all proceedings involving child victims of violence, the principle of celerity must be applied; stresses that courts dealing with child abuse should also be specialised in gender-based violence;

27. Urges the Commission and the Member States to take concrete measures to end child sexual abuse by investing in preventive measures and identifying specific programmes for potential offenders and more effective support for victims; calls on the Member States to enhance cooperation between law enforcement authorities and civil society organisations to combat child sexual abuse and child sexual exploitation;

28. Stresses that violence against children can also be linked with gender-based violence, either because they are witnesses of violence perpetrated against their mothers or because they are victims of ill treatment themselves, when it is used in an indirect way to exercise power and psychological violence against their mothers; notes that programmes which support children who are exposed to domestic violence are crucial in minimising long-term harm; calls on the Member States to continue to run innovative programmes in order to address the needs of these children, for example through training providers who work with children to detect early warning signs, provide appropriate responses and support, and provide effective psychological support to children during criminal and civil proceedings in which they are involved; strongly recommends that the Member States put in place systematic procedures for monitoring children who are victims of and witnesses to domestic violence, including psychological support, in order to respond to the trouble this causes in their lives and to prevent them from repeating such violence as adults;

***Prevention: training of professionals***

29. Calls for recurrent, effective capacity-building and mandatory targeted training for professionals dealing with cases of gender-based violence, child abuse and, in general, all forms of domestic violence and its mechanisms, including manipulation, psychological violence and coercive control; stresses that this targeted training should therefore be intended for the judiciary, law enforcement officers, specialised legal practitioners, forensic medical personnel, healthcare professionals, social workers, teachers and child carers, as well as public servants working in these fields; calls for this training to also emphasize the relevance of intimate partner violence to children's rights and to their protection and well-being; calls for this training to improve these professionals knowledge and understanding of current protection measures, as well as of safety, the impact of the crime, the needs of the victim and how to address those needs, and to provide them with adequate skills in order to better communicate with and support victims; calls for this training to also enable them to assess the situation using reliable risk assessment tools and to detect signs of abuse; stresses the need to evaluate the mechanisms for detecting these signs used by the professionals involved; calls for this training to be conducted by focusing on the needs and concerns of victims as a priority and by recognising that violence against women and domestic violence must be addressed through a specific, gender-sensitive and human rights approach upholding national, regional and international standards and measures; calls on the EU and its Member States to develop and finance such training; recalls the importance of European Judicial Training Network in this respect; stresses that civil society and public organisations working with and for children and victims of domestic and gender-based violence should be asked to provide or at least be involved in providing these training courses so as to share the knowledge and expertise they gained from real-life experiences; calls on the Commission to facilitate and coordinate this type of training, focusing especially on cross-border cases;

30. Calls on the Member States to ensure that their police and justice services are adequately financed, equipped and trained to handle complaints of domestic violence and responsive in doing so; regrets that the underfunding and budgetary cuts in these services can result in procedural defects, a lack of information for complainants on the progress of the procedure and excessive delays which are not compatible with the imperative of protection of victims and their recovery; stresses the important role of social and psychological workers in police departments to facilitate concrete and human support for victims of domestic violence; calls on the Member States to provide all associations with the necessary means to help women victims and their children; calls on the Commission and the Member States to enhance their cooperation in order to take measures to improve the identification of victims of domestic and intimate partner violence, as well as to empower the victims and the witnesses to come forward and report the crime, as in many cases the intimate partner violence remains unreported;

31. Calls on the Commission and the European Judicial Training Network to set up an EU platform for mutual learning and the sharing of best practices between legal practitioners and policymakers from different Member States working in all relevant fields;

32. Strongly recommends that the Member States establish specialised courts or sections, as well as appropriate laws, training, procedures and guidelines for all professionals dealing with victims of intimate partner violence, including raising awareness of gender-based violence and gender stereotypes, in order to avoid discrepancies between judicial decisions and discrimination or secondary victimisation during judicial, medical and police, child protection and guardianship proceedings, ensuring that children and women are duly heard and that priority is given to their protection and seeking reparation for them; emphasizes the need to strengthen dedicated courts or sections and child- and women-victim-friendly justice, to set up comprehensive assessment units dealing with gender-based violence composed of forensic doctors, psychologists and social workers who will work in coordination with the public services specialised in gender-based violence in charge of assisting victims; stresses the importance of legal protective measures being fully applied to protect women and children from violence, and of such measures not being limited or restricted by parental rights; urges decisions on shared custody to be postponed until intimate partner violence has been adequately investigated and a risk assessment conducted;

33. Stresses the need to recognise the interconnectedness of criminal, civil and other legal proceedings in order to coordinate the judicial and other legal responses to intimate partner violence and suggests, therefore, that the Member States adopt measures to link the criminal and civil case of one family, so that discrepancies between judicial and other legal decisions that are harmful to children and victims can be effectively avoided; deplores the lack of provisional measures to protect victims and the lack of temporary mechanisms to suspend the parental authority of the violent parent during legal proceedings, which usually lasts for several years; calls on Member States to experiment with and develop such protective measures; calls to this end on the Member States to organise training for all professionals, as well as volunteer workers involved in such proceedings, and to associate civil society organisations working with and for children and victims with these training courses; calls on the competent national authorities to improve coordination between courts by fostering contacts between prosecutors' offices so as to enable issues of parental responsibility to be resolved urgently, and to ensure that family courts are able to consider all issues relating to gender-based violence against women when determining custody and visitation rights;

34. Calls on the Member States to set up a platform for the regular exchange of best practices between civil and criminal courts, legal practitioners dealing with cases of domestic and gender-based violence, child abuse and separation and custody cases, and all other relevant stakeholders;

35. Calls on the Commission and the Member States to involve relevant civil society organisations, in particular those working with and for children as well as victims of domestic and gender-based violence, in the development, implementation and evaluation of policies and legislation; calls for structural support to be provided at EU, national and local level for these civil society organisations, including financial support, to increase their capacity to react and

advocate as well as to ensure adequate access for all people to their services, including counselling and support activities;

36. Reiterates its full support for the strengthening of the capacity of service providers across sectors (justice, law enforcement, health and social services) to record and maintain updated databases; calls on the Member States to establish national guidelines and good practices as well as to provide intimate partner violence awareness training for staff at all levels in each front line sector, it being essential to provide a sensitive response to women seeking protection; calls on the Member States to monitor services for sectors and set the necessary budgets in line with the needs;

37. Recommends that national authorities take action, in particular to draft and circulate a set of guidelines for professionals involved in cases relating to intimate partner violence and custody rights, taking risk factors (relating to children or family members, environmental or social concerns, or potential repetition of violent offences) into consideration to enable intimate partner violence to be assessed, in support of children's and women's rights;

38. Notes that such guidelines and guidance should support health professionals in raising public awareness in their professional environment of the significant impact of violence against women, including intimate partner violence, on their mental health;

39. Stresses the importance in these procedures of the role of all relevant forensic experts and professionals, such as doctors, forensic clinical psychologists and social workers, providing forensic and psychological expertise in caring not only for women victims of domestic abuse or violence, but also for the children affected, in particular when the environment in which they live is not suitable to protect their health, dignity, emotional balance and quality of life; recalls, therefore, the need for the forensic practitioners and professionals involved to be able to benefit, *inter alia*, from guidelines drawn from a set of data, practice and best practices at EU level; notes that, for legal purposes, the specific technical and medical knowledge of forensic doctors make them suitable professionals for assisting specialists (such as paediatricians, gynaecologists and psychologists) in their work, with them having the appropriate training and technical expertise to be able to recognise signs of violence and, where there are grounds to do so, to comply with reporting obligations and liaise with judicial authorities;

40. Recalls the provisions of the Victims Rights Directive; highlights that women victims of gender-based violence and their children often require special support and protection because of the high risk of secondary and repeat victimisation, of intimidation and of retaliation connected with such violence; calls, therefore, for attention to be paid to the victim-blaming attitudes in society, including among professionals in the criminal justice system; calls for institutional violence to be recognised and addressed, which includes all actions and omissions of the authorities and public servants aimed at delaying, obstructing or preventing access to relevant public services or the exercise of the rights of victims, with appropriate sanctions and measures put in place to ensure the victims are protected and compensated; underlines the paramount importance of establishing training, procedures and guidelines for all professionals

dealing with victims in order to help them to identify signs of intimate partner violence even when victims do not make explicit complaints; suggests that such guidelines and guidance should include measures to promote safe, respectful and non-guilt-inducing patient treatment programmes for women who have suffered violence, including intimate partner violence, and to disseminate the best treatments for them and for their children; calls on the Commission and the Member States to tackle the issue of anonymous complaints and retracted complaints by guaranteeing effective and rapid procedures to protect victims as well as by ensuring the accountability of violent partners; encourages the creation of law enforcement databases that keep record of all details pertaining to intimate partner violence statements made by the victim or a third party in order to monitor and prevent further episodes of violence; calls for more community education and awareness raising as well as training and education on intimate partner violence for police and social services in rural and remote areas stressing the importance of education in informing and supporting children as well as programmes for conflict resolution, positive role models and cooperative play;

***Prevention: addressing gender stereotypes and biases – education and awareness raising***

41. Expresses its concern about the impact of gender stereotypes and bias leading to inadequate responses to gender-based violence against women and to a lack of trust in women, in particular concerning presumed false allegations of child abuse and of domestic violence; is also concerned about the lack of specific training for judges, prosecutors and law professionals; stresses the importance of measures aimed at combating gender stereotypes and patriarchal biases through education and awareness-raising campaigns; calls on the Member States to monitor and fight the culture of denigration of women's voices; condemns the use, assertion and acceptance of non-scientific theories and concepts in custody cases which punish mothers who attempt to report cases of child abuse or gender-based violence by preventing them from obtaining custody or by restricting their parental rights; stresses that so-called parental alienation syndrome and similar concepts and terms, which are generally based on gender stereotypes, can work to the detriment of women victims of intimate partner violence by blaming mothers for their children's alienation from their father, calling into question victims parental skills, disregarding the children's testimony and the risks of violence to which their children are exposed, and jeopardising the rights and safety of the mother and children; calls on the Member States not to recognise parental alienation syndrome in their judicial practice and law and to discourage or even to prohibit its use in court proceedings, particularly during investigations to determine the existence of violence;

42. Highlights the importance of awareness-raising campaigns that enable witnesses (particularly neighbours and co-workers) in spotting the signs of intimate partner violence (in particular non-physical violence), and providing guidance on how to support and assist victims; calls on the Commission and the Member States to promote awareness raising, information and advocacy campaigns tackling gender bias and stereotypes as well as domestic and gender-based violence in all its forms, such as physical violence, sexual harassment, cyber-violence, psychological violence and sexual exploitation, particularly in relation to newly created

prevention measures and flexible emergency warning systems, and to encourage reporting on coordination and cooperation with recognised and specialised women's organisations; stresses the importance of actively involving all public structures when carrying out awareness-raising campaigns;

43. Emphasizes that the effective punishment of abusers is essential to both deter further violence and reinforce trust in public authorities, especially by the victims; points out, however, that imprisonment by itself is not enough to prevent future violence and that specific rehabilitation and re-education programmes are necessary; calls on the Member States, as laid down in Article 16 of the Istanbul Convention, to take the necessary legislative or other measures to set up or support programmes aimed at teaching perpetrators of domestic violence to adopt non-violent behaviour in interpersonal relationships with a view to preventing further violence and changing violent behavioural patterns; highlights that in doing so, Member States must ensure that the safety of, support for and the human rights of victims are of primary concern and that, where appropriate, these programmes are set up and implemented in close cooperation with specialist support services for victims; points out that education is pivotal to eradicating gender-based violence, and intimate partner violence in particular; calls on the Member States to implement preventive programmes, including through education on issues such as equality between women and men, mutual respect, non-violent conflict resolution in interpersonal relationships, gender-based violence against women and the right to personal integrity, and age-appropriate sexuality education adapted to the evolving capacity of learners, in formal curricula and at all levels of education, in line with the Gender Equality Strategy 2020-2025; stresses that age-appropriate comprehensive relationship and sexuality education is key to protecting children from violence and giving them the skills they need to build safe relationships free from sexual, gender-based and intimate partner violence; calls on the Commission to support programmes that aim to prevent gender-based violence, including through the Daphne strand of the Citizens, Equality, Rights and Values Programme in order to ensure effective prevention measures;

44. Calls on the Member States to encourage moves to eliminate the ingrained preconceptions still underlying the gender care gap;

45. Highlights that strategies to prevent intimate partner violence should include actions to reduce exposure to violence during childhood, teaching skills necessary to create safe and healthy relationships and challenging social norms that promote supremacy and authoritarian behaviour of men over women, or other forms of sexist behaviour;

46. Calls on the Commission to promote EU-wide public awareness and educational campaigns and the exchange of best practices as a necessary measure for the prevention of domestic violence and gender-based violence and for the creation of a climate of zero tolerance towards violence and a safer environment for victims; highlights the strategic role of the media in this regard; stresses, however, that in some Member States, femicide and cases of gender-based violence are still presented in terms which absolve the violent partner of their



responsibility; highlights that the media and advertising must not spread misogynist and sexist messages, including by trying to excuse, legitimise or minimise violence and the responsibilities of violent partners; considers that domestic violence also originates from a gender-stereotyped approach to parenthood; calls on the Commission and the Member States, therefore, to fight gender stereotypes and to promote gender equality in parental responsibilities, where parental burden is fairly distributed, ensuring women are not assigned a subordinate status; calls on the Commission to facilitate the exchange of best practices at EU level on prevention, protection and prosecution measures and measures to combat violence, as well as on their practical implementation; calls on the Member States to complement this EU campaign by disseminating information about where victims and witnesses can report this kind of violence, including after the end of the campaign, taking into account the specificity of the COVID-19 crisis to also focus on the impact on children; calls on the Commission to support activities in schools and other settings which raise the awareness of crime and trauma issues, where to find help, how to report issues, and how to build resilience among children and those working with children;

***Cooperation between the Member States, including in cross-border cases***

47. Underlines the importance of the exchange of information between courts, the central authorities of Member States and police bodies, especially in relation to cross-border custody cases; hopes that the revised rules under Council Regulation (EU) 2019/1111 of 25 June 2019 on jurisdiction, the recognition and enforcement of decisions in matrimonial matters and the matters of parental responsibility, and on international child abduction<sup>(28)</sup> will enhance the cooperation between judicial systems to effectively determine the best interests of the child, irrespective of their parents marital status or family composition, and the interests of victims of intimate partner violence; stresses that it is important for forensic doctors, or any other professionals involved, to provide the relevant national authority with information relating to intimate partner violence when they believe that this violence puts the life of the adult victim or child in danger, and that the victim is unable to protect themselves because of the moral or economic coercion resulting from the hold exercised by the perpetrator, seeking to obtain the adult victims consent; calls on the Commission and the Member States to ensure enforcement and the effective implementation of the Brussels IIa Regulation; regrets in this regard that its latest revision failed to extend the scope to registered partnerships and unmarried couples; is of the opinion that this leads to discrimination and potentially dangerous situations for victims and children of registered partnerships and unmarried couples; recalls that the scope and objectives of the Brussels IIa Regulation are based on the principle of non-discrimination on the grounds of nationality between citizens of the Union and on the principle of mutual trust between the Member States legal systems; asks the Commission to report back to Parliament on the implementation and impact of these regulations, including in the context of intimate partner violence and custody rights, at the latest by August 2024;

48. Points out that, while all family disputes have a profound emotional impact, cross-border cases are even more sensitive and legally complex; stresses the need for a high degree of public awareness regarding complex issues such as cross-border custody arrangements and

maintenance obligations, including the need to ensure clarity regarding the rights and obligations of parents and children in each country; points out that Member States could contribute to the swifter resolution of such cross-border family law cases by instituting a system of specialist sections within national courts, including units focused on gender-based violence composed of forensic medical personnel, psychologists, and other relevant professionals, and to work in coordination with public services specialised in gender-based violence and in charge of assisting victims; calls for specific attention to be paid to the situation of single-parent households and the cross-border collection of maintenance allowance, since the practicalities of the enforcement of the current provisions in place – namely Council Regulation (EC) No 4/2009 of 18 December 2008 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations and the UN Convention on the Recovery Abroad of Maintenance – setting down legal obligations relating to the cross-border collection of maintenance allowance, remains challenging; stresses that the legal tools for the cross-border collection of maintenance allowance need to be enforced together with public awareness raising regarding their availability; calls therefore on the Commission to work closely with the Member States to identify practical problems linked with the collection of maintenance allowance in cross-border situations and to assist them in developing effective tools to enforce payment obligations; stresses the importance of the issue and its consequences for single-parent families and the risk of poverty;

49. Urges the Member States to continue analysing data on and tendencies in the prevalence of and reporting on all forms of gender-based and domestic violence, as well as the consequences for children, while confinement measures are in place and during the period immediately afterwards;

50. Calls on the Commission and the Member States to enhance their cooperation in order to take measures that empower victims of intimate partner violence to come forward and report the crime, as in many cases intimate partner violence remains unreported; notes the Commissions commitment to carry out a new EU survey on gender-based violence, with the results to be presented in 2023; calls on the Commission and the Member States to cooperate closely in order to establish a permanent mechanism to provide on a regular basis harmonised, accurate, reliable, comparable, high-quality and gender-segregated EU-wide data on the prevalence, causes and consequences for women and children and the management of intimate partner violence and custody rights, making full use of the capacity and expertise of EIGE and Eurostat; recalls that providing national statistics on gender-based violence is an action eligible for funding under the Single Market Programme for 2021-2027; calls on the Commission and the Member States to ensure that data are disaggregated by age, sexual orientation, gender identity, sex characteristics, race and ethnicity and disability status, among others, to ensure that the experiences of women in all their diversity are captured; notes that this will contribute to a better understanding of the scale and causes of the problem, mainly the socioeconomic categories where gender-based violence is more prevalent and other influencing factors, as well as of different legal frameworks and policies across countries, which can be explored closely through detailed country comparisons to identify policy frameworks that might influence the

occurrence of violence; also insists on the importance of Member States collecting statistical data on administrative and judicial proceedings concerning child custody involving intimate partner violence, and particularly on the outcome of the judgments and the grounds they give for their decisions on custody and visitation rights;

51. Calls on the Commission to promote EU-wide public awareness campaigns as a necessary measure in the prevention of domestic violence and the creation of a climate of zero tolerance towards violence;

52. Instructs its President to forward this resolution to the Council and the Commission.

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- (1) OJ L 315, 14.11.2012, p. 57.
  - (2) OJ L 132, 21.5.2016, p. 1.
  - (3) OJ C 337, 20.9.2018, p. 167.
  - (4) OJ C 232, 16.6.2021, p. 48.
  - (5) Texts adopted, **P9\_TA(2020)0379**.
  - (6) Texts adopted, **P9\_TA(2021)0024**.
  - (7) Texts adopted, **P9\_TA(2021)0025**.
  - (8) OJ L 338, 21.12.2011, p. 2.
  - (9) OJ L 181, 29.6.2013, p. 4.
  - (10) OJ L 338, 23.12.2003, p. 1.
  - (11) Articles 2 and 3(3) of the Treaty on European Union and Articles 8, 10, 19 and 157 TFEU.
  - (12) Articles 21 and 23 of the Charter.
  - (13) FRA report of 3 March 2014 entitled Violence against women: an EU-wide survey.
  - (14) The Istanbul Convention.
  - (15) Council of Europe, Human Rights Channel: Stop Child Sexual Abuse in Sport, accessed on 21 July 2021.
  - (16) Eurostat, Children at risk of poverty or social exclusion, data extracted in October 2020.
  - (17) FRA report of 3 March 2014 entitled Violence against women: An EU Wide Survey.
  - (18) Statement to the press by Dr Hans Henri P. Kluge, World Health Organization Regional Director for Europe of 7 May 2020 entitled During COVID-19 pandemic, violence remains preventable, not inevitable.
  - (19) FRA report of 3 March 2014 entitled Violence against women: an EU-wide survey.
  - (20) Europol report of 19 June 2020 entitled Exploiting isolation: offenders and victims of online child sexual abuse during the COVID-19 pandemic.
  - (21) Council of Europe explanatory report of 11 May 2011 to the Council of Europe Convention on preventing and combating violence against women and domestic violence.

- (22)** Statement by the EDVAW Platform of 31 May 2019 entitled Intimate partner violence against women is an essential factor in the determination of child custody.
- (23)** Article 31 of the Istanbul Convention.
- (24)** Convention on the Elimination of All Forms of Discrimination against Women general recommendation No 35 on gender-based violence against women, updating general recommendation No 19.
- (25)** Commission proposal of 28 October 2020 for a directive of the European Parliament and of the Council on adequate minimum wages in the European Union (**COM(2020)0682**).
- (26)** Commission proposal of 4 March 2021 for a directive of the European Parliament and of the Council to strengthen the application of the principle of equal pay for equal work or work of equal value between men and women through pay transparency and enforcement mechanisms (**COM(2021)0093**).
- (27)** Directive (EU) 2019/1158 of the European Parliament and of the Council of 20 June 2019 on work-life balance for parents and carers (OJ L 188, 12.7.2019, p. 79).
- (28)** OJ L 178, 2.7.2019, p. 1.

**Seventy-sixth session**

Item 28 (a) of the preliminary list\*

**Advancement of women**

**Violence against women, its causes and consequences**

**Note by the Secretary-General**

The Secretary-General has the honour to transmit to the General Assembly the report of the Special Rapporteur on violence against women, its causes and consequences, Dubravka Šimonović, in accordance with Assembly resolution 75/161.

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

**Taking stock of the femicide watch initiative**

*Summary*

In the present report, the Special Rapporteur on violence against women, its causes and consequences, Dubravka Šimonović, takes stock of progress made in the implementation of the femicide watch initiative and makes recommendations for further progress on the prevention of femicide or gender-related killings of women and girls.

\* A/76/150.

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## I. Introduction

1. The present report of the Special Rapporteur on violence against women, its causes and consequences, Dubravka Šimonović, is submitted to the General Assembly pursuant to resolution 75/161. The report takes stock of two of the main initiatives implemented by the Special Rapporteur during her tenure: the femicide watch prevention initiative, which is aimed at fostering the creation of observatories or watch bodies to monitor and better inform Governments responses to and prevention of femicide or gender-related killings of women and girls; and the Platform of Independent Expert Mechanisms on the Elimination of Discrimination and Violence against Women (EDVAW Platform), established to promote closer collaboration and coordination between United Nations<sup>92</sup> and regional<sup>93</sup> expert mechanisms on women's rights and violence against women (see also para. 9 below). By providing a synthesis of the achievements and challenges on these two fronts, the Special Rapporteur hopes to contribute to future growth and expansion of those initiatives and calls on all States and other stakeholders to support them.

### **I. Activities undertaken by the Special Rapporteur**

2. Many of the Special Rapporteurs regular and mandated activities have continued to be affected by the restrictive measures imposed as a result of the coronavirus disease (COVID-19) pandemic. She was unable to carry out the planned country visit to Mongolia, despite the Government's willingness to receive her, or the visit to Papua New Guinea.

3. On 7 March 2021, the Special Rapporteur delivered a recorded statement to the fourteenth United Nations Congress on Crime Prevention and Criminal Justice, which was held in a hybrid format in the city of Kyoto, Japan.

4. On 15 March 2021, the Special Rapporteur made a statement<sup>94</sup> to the sixty-fifth session of the Commission on the Status of Women, in which she presented the main achievements of her tenure, with a focus on her thematic work on violence against women in politics, femicide and rape. She called on the Commission to include violence against women as a permanent agenda item.

5. The Special Rapporteur continued to lead the EDVAW Platform. On 17 March 2021, on the margins of the Commission on the Status of Women, a high-level panel of the Platform was held to take stock of its work and its links with the Commission. At that event, the Platform launched two booklets, which compile the contribution of the expert mechanisms towards the implementation of the Beijing Platform for Action and called for a human rights-based approach in the implementation of strategies for the elimination of discrimination and

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<sup>92</sup> In addition to the mandate of the Special Rapporteur, the EDVAW Platform includes the following United Nations entities: Committee on the Elimination of Discrimination against Women, and Working Group on discrimination against women and girls.

<sup>93</sup> Committee of Experts of the Follow-up Mechanism to the Belém do Pará Convention (MESECVI); Council of Europe Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO); Special Rapporteur on the Rights of Women in Africa of the African Commission on Human and Peoples Rights; and Rapporteur on the Rights of Women of the Inter-American Commission on Human Rights.

<sup>94</sup> See [www.ohchr.org/Documents/Issues/Women/CSW/CSW65.pdf](http://www.ohchr.org/Documents/Issues/Women/CSW/CSW65.pdf).

violence against women.<sup>95</sup> The EDVAW Platform also published, on 24 March 2021, a statement<sup>96</sup> issuing several calls to the Commission, States and other stakeholders, such as the inclusion of violence against women as a separate standing agenda item of the Commission and increased collaboration between the Commission and the expert mechanisms by inviting the mechanisms to participate in an interactive dialogue to present their respective reports and recommendations (see also paras. 12–15 below).

6. On 17 May 2021, the Special Rapporteur delivered a recorded statement to the thirtieth session of the Commission on Crime Prevention and Criminal Justice, which was held in a hybrid format in Vienna. In addition to highlighting her work on the issues of rape and femicide, the Special Rapporteur called on the Commission to include violence against women as a permanent and specific agenda item, which should be addressed annually by its members.

7. The Special Rapporteur attended the forty-seventh session of the Human Rights Council in person, where she presented a thematic report on rape as a grave, systematic and widespread human rights violation, a crime and a manifestation of gender-based violence against women and girls, and its prevention (A/HRC/47/26). She also presented a document containing a framework for model legislation on rape, which is envisaged as a harmonization tool (A/HRC/47/26/Add.1). The Special Rapporteur thanks relevant delegations, national human rights institutions, civil society organizations and other stakeholders for the constructive dialogue during the session of the Council.

### **III. Main achievements of the Platform of Independent Expert Mechanisms on the Elimination of Discrimination and Violence against Women**

8. In her vision-setting report from 2016 (A/HRC/32/42 and A/HRC/32/42/Corr.1), the Special Rapporteur announced her intention to work closely with special procedure mandate holders, other mechanisms of the Human Rights Council, the treaty bodies and regional mechanisms. She set out to develop strong cooperation and synergies among independent United Nations and regional mechanisms on violence and discrimination against women, and led the efforts to create the EDVAW Platform, which was formally established on 12 March 2018. The Platform promotes institutional links and thematic cooperation among the mechanisms, with a view to improving implementation of the existing international legal and policy framework on violence against women.

9. The Special Rapporteurs endeavour to establish the EDVAW Platform has been threefold: to increase cooperation between global and regional independent mechanisms on women's rights; to develop harmonized positions, practices and guidelines, and to speak with one voice; and to improve implementation of the mechanisms recommendations on ending violence against women. The Platform includes seven independent expert mechanisms, namely the Special Rapporteur herself; the Committee on the Elimination of Discrimination against Women; the Working Group on discrimination against women and girls of the Human Rights Council; the Committee of experts of the Follow-up Mechanism to the Belém do Pará Convention; the Council of Europe Group of Experts on Action against Violence against

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<sup>95</sup> See [www.ohchr.org/Documents/Issues/Women/SR/EDVAW\\_Booklets.pdf](http://www.ohchr.org/Documents/Issues/Women/SR/EDVAW_Booklets.pdf).

<sup>96</sup> See [www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=26945&LangID=E](http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=26945&LangID=E).



Women and Domestic Violence; the Special Rapporteur on the Rights of Women in Africa of the African Commission on Human and Peoples Rights; and the Rapporteur on the Rights of Women of the Inter-American Commission on Human Rights.

10. The EDVAW Platform has successfully delivered numerous joint efforts, harmonized statements and synchronized guidelines, including on violence against women in politics, on pushbacks against women's rights, on rape and consent, on ending the global epidemic of femicide and gender-related killings, on conflict-related gender-based violence against women, and on domestic violence and child custody. Moreover, the Platform has consistently invited, called on and reiterated to several high-level platforms the importance of using a human rights-based approach in promoting women's rights and gender equality, such as in the review of Sustainable Development Goal 5 in the context of the high-level political forum on sustainable development and in the monitoring and review of the Beijing Platform for Action.<sup>97</sup>

11. The Platforms experts met for official meetings on nine occasions, including three regional meetings, in which the participants from each of the mechanisms updated each other, discussed current priorities and planned joint actions. For example, in 2020, the year of the COVID-19 pandemic, the members met online and discussed the impact of the pandemic on violence against women. Subsequently, the experts issued a joint statement urging States to take steps to combat the global pandemic of gender-based violence by ensuring "peace at home" during lockdown and integrating the elimination of discrimination and gender-based violence against women in the COVID-19 recovery phase and beyond.<sup>98</sup>

12. Also in 2020, the Platform launched a joint publication entitled "25 years in review of the Beijing Platform for Action: contributions of the Platform of Independent Expert Mechanisms on the Elimination of Discrimination and Violence against Women (EDVAW Platform) towards its implementation". This booklet outlines the formation, the activities and the need for formal institutionalization of the Platform as a joint response in respecting, protecting and promoting women's rights around the world.

13. Moreover, in 2021, the experts released a second joint publication during a high-level panel held in the margins of the sixty-fifth session of the Commission on the Status of Women. The publication is aimed at shedding light on the contribution of the EDVAW Platform, as well as providing a unified response to the many challenges that remain for the full enjoyment of women's right to a life free from discrimination and violence. Specifically, it contains updates on the Platform itself and on the Platforms response to the COVID-19 pandemic and highlights examples of the work carried out by the expert mechanisms in detecting systematic obstacles in laws and in practice, as well as in the examination of cases of violence and discrimination against women.

14. Notably, the publication included a joint proposal by the EDVAW Platform to the Commission on the Status of Women on how to improve synergies between the Commission and the Platform. In addition, in a joint statement,<sup>99</sup> the Platform called on the Commission to adopt a human rights-based approach to the implementation of strategies for the elimination of discrimination and violence against women and the implementation of the Beijing Platform for Action, as presented in the publication.

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Information on the activities of the EDVAW Platform is available at [www.ohchr.org/EN/Issues/Women/SRWomen/Pages/CooperationGlobalRegionalMechanisms.aspx](http://www.ohchr.org/EN/Issues/Women/SRWomen/Pages/CooperationGlobalRegionalMechanisms.aspx).

<sup>98</sup> Office of the United Nations High Commissioner for Human Rights (OHCHR), "Urgent action needed to end pandemic of gender-based violence, say womens rights experts", 14 July 2020.

<sup>99</sup> See [www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=26945&LangID=E](http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=26945&LangID=E).

15. The joint proposal includes several recommendations to the Commission on the Status of Women, such as creating a separate standing agenda item on violence against women, expanding cooperation and the focus on implementation of human rights instruments related to eliminating discrimination and gender-based violence against women and girls, and extending formal invitations to regional and global independent women's rights expert bodies to participate in the sessions of the Commission.

16. The EDVAW Platform has demonstrated the benefits of joint and coordinated work among expert mechanisms, and the increased collective impact that the mechanisms can have by speaking in one voice. The Platform's sustainability depends on the commitment by Member States to institutionalize it and ensure continued funding for its activities.<sup>100</sup> In addition, and despite the many calls issued by the Platform, there is still insufficient participation and integration of the expert mechanisms in United Nations forums such as the Commission on the Status of Women and the Commission on Crime Prevention and Criminal Justice, thereby making insufficient use of their work, recommendations and expertise from the perspective of women's human rights. The Special Rapporteur urges all Member States to support the Platform and its calls for further integration at the United Nations and regional levels.

## **IV. Taking stock of the femicide watch prevention initiative**

### **A. The femicide watch prevention initiative**

17. The overall aim of the femicide watch prevention initiative is to contribute to the prevention of femicide or intentional gender-related killings of women and girls through the collection of comparable data at the national, regional and global levels and to contribute to the prevention of these killings through analyses of cases by national multidisciplinary bodies (observatories on femicide or violence against women). Such analyses should be carried out from a human rights perspective, using international human rights instruments on women's rights and on violence against women, and should detect shortcomings within national laws and policies. Such bodies should be mandated to recommend measures for prevention of such cases, including on laws and their implementation.

18. Femicide has been defined by the Special Rapporteur as the killing of women because of their sex and/or gender; "femicide" and "gender-related killing of women" have been used interchangeably to name such killings (see A/71/398). The Special Rapporteur follows General Assembly resolutions 68/191 and 70/176, which address action against gender-related killing of women and girls, while noting it is criminalized in some countries as "femicide" or "femicide". Understanding that each State will decide on the terminology used, the Special Rapporteur stresses that terminology should not be an obstacle for the collection of comparable homicide data, based on the relationship between the victim and the perpetrator. The Special Rapporteur has recommended that States should collect data under three broad categories: intimate-partner femicide and family-related femicide, based on the relationship between the victim and the perpetrator, and other femicides, according to the local context.

19. The femicide watch initiative has been a priority for the Special Rapporteur since the beginning of her tenure. Ahead of the International Day for the Elimination of Violence

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<sup>100</sup> The Special Rapporteur would like to thank the Governments of the Republic of Korea, Spain and Switzerland, whose generous contributions allowed for the implementation of the Platform in its first years.

against Women on 25 November 2015, the Special Rapporteur issued a call<sup>101</sup> for all States to establish a femicide watch, urging them to publish on 25 November each year the number of femicides or gender-related killing of women per year, disaggregated by age and the sex of the perpetrators, as well as the relationship between the perpetrator and the victim or victims. Information concerning the prosecution and punishment of perpetrators should also be collected and published. She also called on the United Nations and other organizations to ensure the global and regional publication of such data.

20. In her vision-setting report to the Human Rights Council (A/HRC/32/42 and A/HRC/32/42/Corr.1) in 2016, the Special Rapporteur included the establishment of a "femicide watch" among her thematic priorities. In her subsequent report to the General Assembly (A/71/398), the Special Rapporteur further expanded on her initiative, describing the previous work carried out by the special procedure mandate holder on femicide, key steps taken at the international level and good practices, and, particularly, elaborated on the modalities for establishing such watch bodies or observatories and the methodology for data collection.

21. Since then, the Special Rapporteur has issued yearly calls for States, national human rights institutions and other stakeholders to submit data on femicide or gender-related killings of women. She also requests information on: (a) legislative models or operational guides for the investigation of gender-related killings of women; (b) good practices regarding collection of data on femicides or gender-related killings of women; and (c) landmark jurisprudence from international, regional and national courts on gender-related killings of women. An additional call for inputs to the preparation of the present report was issued on 15 March 2021.<sup>102</sup> The Special Rapporteur is thankful for the continued collaboration and information provided throughout the years, which have been considered in the drafting of the report.

22. Throughout her tenure, the Special Rapporteur has continuously made calls to States to intensify efforts to prevent and combat femicide. In her yearly addresses to the Commission on the Status of Women and the Commission on Crime Prevention and Criminal Justice, the Special Rapporteur reiterated her calls and invited all States to create their own femicide watch bodies or observatories.<sup>103</sup>

23. The centrality of data collection and monitoring in State efforts to combat violence against women was reaffirmed by the Committee on the Elimination of Discrimination against Women. In its general recommendation No. 35 (2017), updating general recommendation No. 19 (1992), which was developed in collaboration with the Special Rapporteur, the Committee recommended that States parties establish a system to regularly collect, analyse and publish statistical data on the number of complaints of violence. This system should include information on the sentences imposed on perpetrators and reparations, including compensation, provided to victims. The Committee also recommended that data should be disaggregated by the type of violence, the relationship between the victim and the perpetrator and other relevant sociodemographic characteristics. It explained that the analysis of the data should enable the identification of failures in protection and serve to improve and further develop preventive measures, which could include the establishment of observatories on femicide, echoing the Special Rapporteurs previous calls.

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<sup>101</sup> OHCHR, "UN rights expert calls all States to establish a Femicide Watch", 23 November 2015.

<sup>102</sup> See [www.ohchr.org/EN/Issues/Women/SRWomen/Pages/CFI-taking-stock-femicide.aspx](http://www.ohchr.org/EN/Issues/Women/SRWomen/Pages/CFI-taking-stock-femicide.aspx).

<sup>103</sup> See [www.ohchr.org/EN/Issues/Women/SRWomen/Pages/AnnualReports.aspx#csww](http://www.ohchr.org/EN/Issues/Women/SRWomen/Pages/AnnualReports.aspx#csww).

24. On 16 and 17 January 2019, the Special Rapporteur attended a consultation on femicide organized in Vilnius by the European Institute for Gender Equality and the European Observatory on Femicide. The purpose of this consultation was to develop modalities for the collection of comparable data on femicide.

25. On 13 March 2019, in the margins of the sixty-third session of the Commission on the Status of Women, the Special Rapporteur organized a side event on the theme "25 years of the mandate of the Special Rapporteur on violence against women: the femicide watch initiative and the role of international and regional mechanisms in its prevention".

26. In the context of the COVID-19 pandemic, the Special Rapporteur presented a report to the General Assembly in 2020 (A/75/144) on the intersection between the COVID-19 pandemic and the pandemic of gender-based violence against women, in which she highlighted the dramatic increase globally in cases of domestic violence. While national prevention systems often lack reliable data in so-called normal times, the COVID-19 context made it even more difficult to get a clear picture of the potential increase in femicide as a result of the pandemic and the related lockdown measures. The Special Rapporteur emphasized the importance of tracking femicides during the COVID-19 pandemic and stressed that pre-existing gaps in the response to domestic violence and femicide were being compounded by gaps caused by the pandemic. She has stressed that States that have already started collecting data on femicide will be in a position to compare such data in the COVID-19 context and to evaluate the extent of the increase in femicide during the pandemic.

## **B. Recent developments at the United Nations and regional level**

27. The EDVAW Platform has also engaged with the Special Rapporteur in promoting the femicide watch prevention initiative. The Platform issued a joint call<sup>104</sup> on 25 November 2018 for the intensification of international, regional and national efforts for the prevention of femicide and gender-based violence. The experts jointly urged all stakeholders to guarantee every woman and girl a life free from violence by applying holistic integrated policies on prevention, protection and prosecution of violence against women. They also called for the full acceptance, incorporation and implementation of global and regional treaties on women's rights and violence against women.

28. In 2018, the Office on Drugs and Crime (UNODC) made an important contribution to the understanding of femicide by publishing the *Global Study on Homicide: Gender-related Killing of Women and Girls*. The study reveals that gender-related killings of women and girls remain a grave problem across regions, in countries rich and poor. While the vast majority of homicide victims are men killed

by strangers, women make up the vast majority of victims killed by an intimate partner, at 82%. Data the Special Rapporteur has received from States parties reveal a similar pattern.

29. At the regional level, an important initiative was carried out by the Follow-up Mechanism to the Belém do Pará Convention (MESECVI) and the United Nations Entity for Gender Equality and the Empowerment of Women (UN-Women), which, in March 2019, adopted the Inter-American Model Law on the Prevention, Punishment and Eradication of the Gender-related Killing of Women and Girls.<sup>105</sup> While recognising that legislation alone would not

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<sup>104</sup> OHCHR, "International Day on the Elimination of Violence against Women: end the global epidemic of femicide (#NiUnaMenos) and support women speaking up against violence against women (#MeToo)." Available at [www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=23921&LangID=E](http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=23921&LangID=E).

<sup>105</sup> Available at [www.oas.org/en/mesecvi/docs/LeyModeloFemicidio-EN.pdf](http://www.oas.org/en/mesecvi/docs/LeyModeloFemicidio-EN.pdf).

eradicate femicide, the model law was developed as a tool to support States in the important work of reviewing and amending legislation that can effectively criminalize and end impunity for this type of violence.

30. In his statement to the high-level meeting on the twenty-fifth anniversary of the Fourth World Conference on Women, on 1 October 2020, the Secretary-General called for affirmative action to prevent violence against women, including femicide.

31. In March 2019, during its fiftieth session, the Statistical Commission requested UN-Women and UNODC to develop a statistical framework on gender-related killings of women, based on the International Classification of Crime for Statistical Purposes and with close collaboration between the two entities. Through the Global Centre of Excellence on Gender Statistics and the UNODC Centre of Excellence for Statistical Information on Governance, Victims of Crime, Public Security and Justice, a technical consultation has been conducted over the past years and a preliminary statistical framework has been developed. In 2021, UN-Women and UNODC launched a global consultation on a common statistical framework on gender-related killings of women and girls (femicide/feminicide), with stakeholders at the national and international levels to collect technical feedback from a broad range of experts and sectors.<sup>106</sup> The Special Rapporteur supports this initiative and has provided her expert feedback on the framework.

32. In October 2019, the Special Rapporteur participated in the Beijing+25 regional review meeting organized by the Economic Commission for Europe, in which she presented her femicide watch prevention initiative. The Commission supported the initiative and the meeting report calls on all countries to establish multidisciplinary national bodies such as "femicide watch" with the aim of actively working on the prevention of femicide or gender-related killing of women (ECE/AC.28/2019/2, annex I).

### **C. Progress in the creation of femicide observatories or femicide watch bodies**

33. Significant progress has been made in the past five years towards the creation of different types of bodies with the purpose of monitoring violence against women and femicide in particular. Created under different names, mandates and methodologies, with different geographic and thematic scopes, these observatories represent an expansion of institutional capacity to understand, respond to and prevent femicides.

34. In the country visits carried out by the Special Rapporteur during her tenure, she encouraged the creation of femicide observatories and welcomed steps already taken to do so. In Georgia, the Public Defender decided to set up a femicide watch in 2016, in response to the Special Rapporteurs call and the recommendations issued in 2014 by the Committee on the Elimination of Discrimination against Women, an initiative welcomed by the Special Rapporteur during her visit (see A/HRC/32/42/Add.3). The initiative is supported by a consultative council, composed of representatives of local and international organizations working on violence against women and domestic violence, which meets every two months. Since the establishment of the mechanism, the Office of the Public Defender has published yearly reports on femicide in which it analyses cases of gender-based murders, attempted murders and suicides of women in order to identify gaps in the victim protection mechanisms

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<sup>106</sup> Submission by UN-Women.

and to make recommendations to the relevant agencies. The Public Defender has also held conferences on femicide, to share information on local and international practices.<sup>107</sup>

35. After her visit to the Occupied Palestinian Territory/State of Palestine in 2016 (see A/HRC/35/30/Add.2), the Special Rapporteur expressed her concern regarding the absence of nationwide statistics on violence against women, including femicide. She had been informed of the establishment of a technical committee by the Ministry of Women's Affairs to review femicides and to examine legislation from a gender perspective, and recommended the creation of a femicide observatory or watch body, in line with her initiative. In 2019, the Ministry of Women's Affairs set up a national observatory on violence against women.<sup>108</sup>

36. In her report on Argentina (A/HRC/35/30/Add.3), the Special Rapporteur acknowledged the progress made in addressing and collecting data on femicide. The Ni Una Menos movement had brought visibility to the issue and progressive steps had been taken in response. Following the amendment of the Criminal Code of Argentina in 2012 to include femicide as a separate category of aggravated homicide, the first national femicide registry was established in 2015 by the Supreme Court. In 2016, the Office of the National Ombudsman established a femicide observatory. The Special Rapporteur recommended that the Government establish or support femicide observatories and watches in all provinces and collect and publish disaggregated data at the federal and provincial levels.

37. Since the Special Rapporteurs' visit to Argentina, the Supreme Court has continued its work on the national femicide registry, having launched two initiatives to monitor and analyse femicide: an observatory to monitor the causes of femicide and an observatory for follow-up of femicide sentences.<sup>109</sup> In December 2019, with the creation of a Ministry of Women, Genders and Diversity by the national Government, an observatory on violence and inequalities based on gender was established.<sup>110</sup> There have also been several initiatives by civil society to create observatories on violence against women and femicide. The first femicide observatory to be established was the Adriana Marisel Zambrano observatory in 2008, coordinated by the non-governmental organization (NGO) La Casa del Encuentro, which focuses on registering femicides based on information published in the media.<sup>111</sup> Other initiatives include the observatory on gender violence and femicides, *Ahora que sí nos ven*, and the Lucía Pérez Observatory of the Lavaca.org website.<sup>112</sup> In light of the many existing initiatives, the Special Rapporteur reiterates her recommendation for all of the institutions to cooperate and harmonize the collection of data and analysis of cases.

38. After her visit to Ecuador (see A/HRC/44/52/Add.2), the Special Rapporteur regretted that, despite the high rates of femicide in the country, there was a lack of official administrative data on all gender-related killings of women and girls. The Comprehensive Organic Law for the Prevention and Eradication of Violence against Women of 2018 provides for the creation of a national observatory on violence against women, which is now being established and is expected to be operational by November 2021. The observatory will be tasked with preparing reports, studies and proposals for the effective implementation of the Law, through the production, systematization and analysis of qualitative and quantitative data. There is now a technical committee on femicide, an inter-institutional body composed of executive branch

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<sup>107</sup> Submission by the Public Defender (Ombudsman) of Georgia.

<sup>108</sup> Submission by the State of Palestine.

<sup>109</sup> Submission by the Supreme Court of Argentina.

<sup>110</sup> Submission by the Government of Argentina.

<sup>111</sup> Submission by UN-Women.

<sup>112</sup> Submission by the United Nations Population Fund (UNFPA).

bodies, the National Council for Gender Equality, the Office of the Attorney General, the Judicial Council and others. The Committee publishes monthly reports with information on femicide.<sup>113</sup>

39. Many other countries have made progress towards creating their own femicide watches or bodies with similar functions. The Government of Spain established an observatory on violence against women in its Ministry of Equality, which gathers data to support decision-making in developing or implementing policies.<sup>114</sup> In 2014, the Government of Morocco created its national observatory on violence against women. With a triparty composition (the Government, NGOs and academics), the observatory seeks to contribute to research on and monitoring of violence against women. The observatory has published two reports since its creation, in 2016 and 2017.<sup>115</sup>

40. In 2015, the Government of Slovakia established the coordinating-methodical centre for prevention of violence against women, which is responsible for annually gathering and evaluating administrative data on violence against women, including femicide.<sup>116</sup> In Croatia, in 2017, the Ombudsperson for Gender Equality founded a monitoring body for comprehensive monitoring, data collection, analysis and reporting of femicide cases (femicide watch). It is composed of representatives of the Government, the judiciary, civil society and academia, and it collects data on femicide, analyses individual cases and makes recommendations on legislation and policy.<sup>117</sup> The Government of South Africa launched its femicide watch in 2018, which consists of a repository of information for victims and stakeholders. It provides access to a risk assessment tool and resources for victims, as well as articles and information on femicide.<sup>118</sup> In Guatemala, in 2019, the women's observatory of the Public Ministry was created, comprising a centralized system to collect data on violence against women, including statistics on reports of violence and data on convictions, in order to evaluate the public response to violence against women.<sup>119</sup>

41. In many countries, scholars and universities were at the forefront of efforts to create femicide watch bodies. In Romania, the Institute of Sociology of the Romanian Academy maintains the Romanian observatory for the analysis and prevention of murder, which analyses data on intentional killings in the country, including the characteristics of victims and perpetrators.<sup>120</sup> In Honduras, the University Institute on Democracy, Peace and Security at the National Autonomous University of Honduras established a national observatory of violence, as well as regional observatories, to monitor intentional and unintentional killings. The observatory has a gender unit, which prepares reports on violent deaths of women and femicides, based on media reports that are later corroborated with data from the national police and the Division of Forensic Medicine of the Public Ministry. Following this academic initiative, the Government seems to be taking steps towards establishing its own watch body. In 2016, the Government created an inter-institutional commission to follow up on the investigation of violent deaths of women and femicide, which is now working to set up a

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<sup>113</sup> Submission by the Government of Ecuador.

<sup>114</sup> Submission by the Government of Spain.

<sup>115</sup> Submission by the Government of Morocco.

<sup>116</sup> Submission by the Government of Slovakia.

<sup>117</sup> Submission by the Government of Croatia.

<sup>118</sup> Submission by the Government of South Africa to the 2020 femicide watch call.

<sup>119</sup> Submission by Robert F. Kennedy Human Rights.

<sup>120</sup> Submission by the Romanian Institute for Human Rights.

unified information system on violence against women.<sup>121</sup> The Canadian Femicide Observatory for Justice and Accountability was established in 2017, and is connected with the Centre for the Study of Social and Legal Responses to Violence of the University of Guelph. It was created in response to the call by the Special Rapporteur, with the purpose of establishing a visible and national focus on social and State responses to femicide in Canada. In addition to analysing data on femicides to identify trends in Canada, it also documents the social and State responses to femicides.<sup>122</sup> In Israel, the Israel Observatory on Femicide was set up in 2020 at the Hebrew University of Jerusalem, with the purpose of collecting and monitoring data and narratives about the killing of women, with a focus on specific groups such as older women.<sup>123</sup>

42. In other countries, civil society has been key in gathering information about femicides and creating their own observatories. In the Plurinational State of Bolivia, the gender observatory of the NGO Coordinadora de la Mujer has been systematizing and disseminating data from the Public Ministry on femicides. In the Bolivarian Republic of Venezuela, the Centre for Justice and Peace (CEPAZ) and Utopix track and monitor cases of femicide, disaggregating the data at the local level.<sup>124</sup> In Mexico, the National Citizen Observatory on Femicide is a joint initiative of 40 organizations that monitors and systematizes information on lack of justice for the victims of femicide.<sup>125</sup>

43. It is also worth mentioning the role local governments can play in creating these types of watch bodies. For example, Seine-Saint-Denis Department in France and the city of Itzapalapa in Mexico created local observatories on violence against women in 2002 and 2018, respectively. These observatories, as well as others in Rivas-Vaciamadrid and Barcelona in Spain, often combine the roles of monitoring and prevention with victim support and providing advice to policymakers.<sup>126</sup> These initiatives can contribute to identifying trends and shortcomings that refer to specific territories and recommend policy solutions tailored to particular contexts.

44. The Special Rapporteur has also received information on a number of other initiatives that, while not consisting of the watch bodies she has recommended, fulfil some of their roles, such as the task force on domestic violence and COVID-19 of the Government of Switzerland; the Family Violence Death Review Committee of New Zealand; and an investigative commission on femicide of the Legislative Assembly of the Plurinational State of Bolivia, established in 2019, which reviewed the justice systems response and shortcomings in dealing with those cases.<sup>127</sup>

45. Finally, it should be noted that, at the regional level, the Gender Equality Observatory of the Economic Commission for Latin America and the Caribbean (ECLAC) provides consolidated data on 21 countries of the region. Covering a broad range of issues on violence against women and equality, the ECLAC Observatory presents data on femicide, defined as the gender-related murder of women aged 15 or older.

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<sup>121</sup> Submission by the Government of Honduras.

<sup>122</sup> Submission by the Canadian Femicide Observatory for Justice and Accountability to the 2020 femicide watch call.

<sup>123</sup> See [www.israelfemicide.org/](http://www.israelfemicide.org/).

<sup>124</sup> Submission by UNFPA.

<sup>125</sup> Submission by the Government of Mexico.

<sup>126</sup> Submission by United Cities and Local Governments.

<sup>127</sup> Submissions by the Government of Switzerland, the Government of New Zealand and the Office of the Ombudsman of the Plurinational State of Bolivia.



46. While the Special Rapporteur recommended a set of roles and mandates for the observatories, which would be carried out by a single body, the institutional design may vary in each country. Likewise, different institutions may create bodies with different scopes and responsibilities. The key concern for Governments and other stakeholders should be to ensure that the following functions are carried out: that data is collected according to the modalities recommended by the Special Rapporteur and is therefore comparable at the regional and global levels; that data is analysed and made public; that cases are reviewed to identify gaps in protection, services and legislation; that recommendations for improvement based on local trends can reach legislators, policymakers and the general public; and that evidence-based legislation and policy reforms can be implemented. It is equally important that collaboration and integration is promoted between initiatives carried out by different entities (Governments, national human rights institutions, the judiciary, civil society, academia, etc.). In the next sections, the Special Rapporteur reviews some good practices for those functions and some of the challenges that remain.

#### **D. Data collection on femicide or gender-related homicides**

47. In her report on femicide, the Special Rapporteur followed the stance by UNODC regarding the production of data on gender-related violence in its *Global study on homicides* of 2013. In that report, UNODC argued that, given the numerous challenges of comprehensively measuring gender-related violence, exploring intimate-partner and family-related homicide would be one way of gaining a clearer understanding of the killing of women because of gender motives. While proposing a flexible model, which could be adapted to local realities, the Special Rapporteur recommended that data collected should include three broad categories: intimate-partner femicide/homicide and family-related femicide/homicide, based on the relationship between the victim and the perpetrator, and other femicides or gender-related homicides, according to the local context.

48. The submissions received indicate that much progress has been made towards the collection and systematization of data on femicide, although with different methodologies and scopes. One comprehensive initiative is carried out in Argentina by the judiciary. The national femicide registry includes information on cases that have led to judicial proceedings and includes data on violent deaths of women and girls for gender-related reasons. Based on the Latin American Model Protocol for the Investigation of Gender-related Killing of Women, of OHCHR and UN-Women, the registry reviews killings of women or suspected killings and suicides, and then filters them according to a list of criteria to determine gender motivation (including the relationship between the victim and the perpetrator, sexual violence, cruelty in the modus operandi, and whether the victim was a sex worker or had been trafficked, among others). The registry includes transgender women and transvestites and also contains sociodemographic information on victims and perpetrators, such as age, marital status and occupation, as allowed on the basis of legislation. The data from the registry is presented in an annual report and as an open database. In addition, a yearly report is published on the justice systems response to femicide cases, in order to identify the need for improvements.<sup>128</sup>

49. In Slovenia, the Police collect information with a focus on the categories of "gender" and "relationship between victim and perpetrator", covering the following relationships: ex-spouse or intimate partner, intimate partner, child, parent and spouse. Data include cases of

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<sup>128</sup> Submission by the Supreme Court of Argentina.

homicide and other types of violence against women and the number of femicides is obtained from the number of murders and manslaughters of women when committed by perpetrators with those types of relationship to the victims.<sup>129</sup> In Georgia, the Public Defender analyses data collected and published by the General Prosecutors Office. It divides all killings of women into domestic crimes and killings of women on other grounds; and it disaggregates domestic crimes (family killings, by type of relationship between the victim and the perpetrator) and crimes committed by a husband or former husband.<sup>130</sup>

50. In many countries, efforts to collect data focus mainly on intimate-partner killings. In Spain, the observatory on violence against women collects data on victims of violence against women, disaggregating it among victims of deadly gender-based violence (defined as intimate-partner killings); women who suffered severe injuries as a result of gender-based violence; victims of other types of deadly violence against women; and victims (Spanish citizens) of deadly gender-based violence killed outside Spain.<sup>131</sup> Similarly, the observatory of gender equality, created by the regional government of Catalonia in Spain, compiles data on killings of women by current or former intimate-partners, as well as on children killed in the context of such violence.<sup>132</sup> In Morocco, the national observatory on violence against women publishes data on overall femicides and on the number of femicides by current or former intimate partners;<sup>133</sup> in France, the interministerial mission for the protection of women against violence collects and publishes administrative data on the number of persons killed in the context of intimate-partner violence and family violence;<sup>134</sup> and in Croatia, the Ombudsperson for Gender Equality collects information on intimate-partner killings.<sup>135</sup>

51. Femicide is sometimes monitored in the framework of domestic or family violence. In Turkey, data on femicide are collected by law enforcement and include women who lost their lives as a result of domestic violence.<sup>136</sup> In New Zealand, the Family Violence Death Review Committee collates information on femicide cases as they relate to family violence, including cases of homicide when the perpetrator was a current or former intimate partner, parent, sibling, child or other family member. Data in that country points to a majority of femicides being family-related killings.<sup>137</sup> In Switzerland, as femicide is not a legal category, statistics refer to homicides of women. In the context of domestic violence, disaggregated information on the relationship between the victim and perpetrator is available.<sup>138</sup> The Government of Cyprus provided information in 2019 on plans to implement a centralized data collection system on domestic violence, containing a set of indicators (including the sex of the victim and of the perpetrator, the relationship between the victim and the perpetrator and the type of violence), in order to comply with the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence and the victims' rights directive of the European Union.<sup>139</sup>

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<sup>129</sup> Submission by the Government of Slovenia.

<sup>130</sup> Submission by the Public Defender of Georgia.

<sup>131</sup> Submission by the Government of Spain.

<sup>132</sup> Submission by the government of Catalonia, Spain.

<sup>133</sup> Submission by the Government of Morocco.

<sup>134</sup> Submission by the Government of France.

<sup>135</sup> Submission by the Government of Croatia.

<sup>136</sup> Submission by the Government of Turkey.

<sup>137</sup> Submission by the Government of New Zealand.

<sup>138</sup> Submission by the Government of Switzerland.

<sup>139</sup> Submission by the Government of Cyprus responding to the 2019 Femicide Watch call.

52. Some countries, particularly in Latin America, have created a specific criminal offence of femicide and collect data in connection with the criminal justice systems treatment of these cases. In Ecuador, there is a criminal offence of femicide, defined as the killing of a woman for being a woman or for her gender condition. The technical committee for the study of femicide publishes monthly data based on killings that were categorized under that criminal offence; however, there is no disaggregation of data according to the relationship between the victim and the perpetrator or other types of femicide.<sup>140</sup> In the Plurinational State of Bolivia, data on the number of femicides are made available by the Public Ministry; however, no disaggregated data on the victim or the perpetrator or the relationship between them is collected. The Office of the Public Defender reports that different government bodies are working to set up a unified system to provide more broad information on femicide cases.<sup>141</sup>

53. In the absence of data produced by official sources, civil society organizations and initiatives by academia seek to compensate for that gap by gathering publicly available information from other sources on femicide, particularly the media. In the Russian Federation, the civil society organization Femicid.net collects information from the media and disaggregates femicide cases into intimate femicides (murders committed by relatives, intimate partners and acquaintances) and others.<sup>142</sup> Media monitoring is also the strategy adopted by the civil society organization Association of Autonomous Austrian Women's Shelters, which collects information on cases of femicides and attempted femicides committed by current or former intimate partners, family members and other cases with close victim-perpetrator relationships.<sup>143</sup> In the Bolivarian State of Venezuela, despite the existence of criminal provisions on the offence of femicide, no official data has been published since 2016. Therefore, the civil society organization CEPAZ has been collecting information from news articles on femicide and producing detailed monthly reports that include information on the relationship between the victim and the perpetrator, where the crime took place, the motivation, the modus operandi, the history of violence and the age, among other information.<sup>144</sup>

54. In some countries, such as Tunisia<sup>145</sup> and Senegal,<sup>146</sup> data are systematically collected by government bodies on violence against women, but not on femicide. The Special Rapporteur encourages these Governments to make use of the structures and institutions already in place and to expand them to cover the issue of femicide as well.

55. Although much progress has been made, many challenges remain to ensure that comprehensive, comparable data on femicide is produced and made available. One obstacle frequently pointed out in the submissions received by the Special Rapporteur is the lack in criminal legislation of a specific offence of femicide. It is important to note, however, that this should not be an impediment to the collection of data. As the Special Rapporteur pointed out in one of her previous reports (A/71/398), UNODC utilizes the International Classification of Crime for Statistical Purposes, which is based on behavioural descriptions instead of legal codes. Femicide falls under the classification of intentional homicide, that is, unlawful death inflicted upon a person with the intent to cause death or serious injury, alongside other

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<sup>140</sup> Submission by the Government of Ecuador.

<sup>141</sup> Submission by the Office of the Public Defender of the Plurinational State of Bolivia.

<sup>142</sup> Submission by Femicid.net.

<sup>143</sup> Submission by Isabel Jaider, University of Vienna.

<sup>144</sup> Submission by CEPAZ.

<sup>145</sup> Submission by the Government of Tunisia.

<sup>146</sup> Submission by the Government of Senegal.

classification criteria. Any Government may collect information on femicides by applying those criteria and categories, regardless of the specific provisions that will be applied during judicial proceedings. Likewise, the existence of a criminal offence of femicide does not exclude the need to collect disaggregated information on the crime, including the relationship between the victim and the perpetrator.

56. Another issue to be noted is the restrictive definitions of femicide that are sometimes adopted in the production of data. While domestic violence, family violence and intimate-partner violence are all relevant categories for understanding the phenomenon of femicide, none of them is sufficient as a stand-alone proxy for femicide. Methodologies should also allow for the inclusion of other types of femicide, particularly those connected to hate crimes against vulnerable groups such as lesbians, transgender women and gender-diverse persons, and sex workers. The development of a common statistical framework on gender-related killings of women and girls by UNODC and UN-Women is a welcome development that should provide valuable technical guidance for Governments and other stakeholders wishing to improve their data collection practices, and should contribute to increased comparability of data.

### **E. Studies on femicide and evidence-based policy and legislative responses**

57. In the past few years, a growing number of studies have shed light on the different dynamics of femicide and the specific institutional, legal, social and cultural challenges that must be addressed for its eradication. These studies go beyond the data on femicide and provide context and nuance, as well as valuable recommendations and guidance on legislative and policy measures necessary to improve prevention.

58. It would not be possible to summarize all of these studies in the present report; however, it is worth noting that, despite the many different social and institutional contexts analysed, these reports consistently demonstrate that women are the primary victims of intimate-partner killings; the centrality of intimate-partner femicides in heterosexual relationships among all types of femicides; and the prevalence of a prior history of violence leading up to the femicide. This is consistent with research conducted by UNODC at the global level and has significant implications for policymaking.

59. For instance, in Morocco, 56% of femicides committed in 2019 were perpetrated by the victim's husband, according to data from the Public Ministry.<sup>147</sup> Data of the Ministry of Women and Vulnerable Populations of Peru point to 69% to 76% of femicides between 2018 and 2020 having been committed by a current or former intimate partner, while approximately 5% of cases were family-related killings.<sup>148</sup> In Norway, according to a study published in 2015, prior intimate-partner violence was identified in 7 out of 10 cases of intimate-partner killings. With risk factors having been observed by the police, health-care and support services and individuals, there is considerable potential for prevention.<sup>149</sup> Finally, many studies make an explicit connection between femicide and patriarchal social structures, for instance by uncovering as a common motivation the woman's desire to pursue independence from an abuser in a context of violence.<sup>150</sup>

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<sup>147</sup> Submission by the Government of Morocco.

<sup>148</sup> Submission by Centro de la Mujer Peruana Flora Tristán.

<sup>149</sup> Submission by the Government of Norway.

<sup>150</sup> Submission by Kayan Feminist Organization.

60. Information received by the Special Rapporteur points to different strategies regarding studies and the use of their findings in policymaking. In Argentina, the Ministry of Justice and Human Rights leads initiatives to produce studies and systematize information and conducts research on judicial decisions on femicide cases. The Ministry of Women, Gender and Diversity is developing a victimization survey on the prevalence of violence against women, in collaboration with the United Nations Development Programme (UNDP) in the context of the Spotlight Initiative. A study on risk factors in cases of violence against women led to the development of a risk assessment module in Argentina's integrated system on cases of gender-based violence.<sup>151</sup>

61. Ecuador is an example of the cumulative results of a number of investigations and studies on femicide. Starting in 2010, different State institutions (including the National Council for Gender Equality, the Ecumenical Human Rights Commission, the Office of the Attorney General and the Special Commission on Security, Criminal Justice and Transparency) started producing studies and indicators on femicide. As a result of the increased visibility of violence against women brought about by these studies, as well as an increase in violence and social pressure for change, the Comprehensive Organic Law for the Prevention and Eradication of Violence against Women was passed in 2018.<sup>152</sup> Ecuador also implemented, in November 2020, a mechanism to monitor the deadlines and terms in which judicial proceedings are carried out in the crime of femicide and violent deaths of women.<sup>153</sup>

62. The analysis of femicide cases, in order to identify protection gaps and propose improvements, has been one of the key recommendations by the Special Rapporteur; some countries have put in place interesting initiatives in that regard. In France, a report by the judiciary published in 2019 reviewed 88 criminal proceedings of femicide cases and identified several patterns: prior episodes of violence in two thirds of cases, substance abuse, and unemployment of the victim or the perpetrator. Most of the femicides took place when victims separated from the perpetrator or announced their intention to do so. The report made 24 recommendations to improve the criminal justice response to these cases, many of which have already been implemented: amendments to legislation to allow for the notification of domestic violence by health-care professionals when there is a situation of immediate danger, and increased support to services for victims, among others.<sup>154</sup>

63. The observatory of Seine-Saint-Denis Department in France is a good example of implementation of evidence-based policy improvements, resulting from the analysis of cases of femicide. In 2008, the observatory studied 24 cases of femicides in the area and came to important findings, such as that in half of the cases the women were killed by their spouses in the context of visitation or custody arrangements. Based on those conclusions, a number of measures were put in place, including providing telephones to victims of violence to request immediate police assistance and measures to prevent contact between women and their aggressors in the context of visitation of children.<sup>155</sup>

64. The Public Defender of Georgia has been issuing femicide monitoring reports since 2016, reviewing shortcomings in the response to femicide by the criminal justice system and making recommendations. In response to these recommendations, the Ministry of Foreign Affairs

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<sup>151</sup> Submission by the Government of Argentina.

<sup>152</sup> Submission by the Government of Ecuador.

<sup>153</sup> Submission by UN-Women.

<sup>154</sup> Submission by the Public Defender of Georgia.

<sup>155</sup> Submission by the observatory on violence against women of Seine-Saint-Denis Department, France.

established a risk assessment tool and monitoring mechanism of domestic violence and violence against women. In addition to evaluating risks for lethality, the risk assessment tool also ensures that the history of violence is documented by the police. Legislation now makes it mandatory to use the risk assessment questionnaire when establishing a restrictive order and electronic supervision.<sup>156</sup>

65.The Protector of Citizens of Serbia has been active in monitoring and identifying shortcomings in the protection of women from violence and femicide. Two special reports were issued in 2014 and 2015, identifying problems such as the lack of integrated records and data on cases of violence; a lack of adequate response to violence by first responding officers; delays in implementation of measures to sanction perpetrators; and high attrition rates in the number of reported cases that lead to indictments. Following additional recommendations made by the Protector of Citizens in 2016 and 2018, the Government initiated a series of measures, including providing training related to domestic violence and guidelines on standards of professional work for staff delivering social services.<sup>157</sup>

66.Other branches of Government may also play an important role in promoting such studies. The above-mentioned investigative commission on femicide of the Legislative Assembly of the Plurinational State of Bolivia reviewed the justice systems response and shortcomings in dealing with femicide cases, having identified problems including delayed access to justice and negligent and unethical behaviour on the part of administrators and criminal justice system officials. Their findings were shared with the Council of Justice, to implement corrective measures.<sup>158</sup>

67.It should also be noted that international organizations have been playing a key role in supporting local capacities to conduct in-depth studies on femicide, especially in the context of the Spotlight Initiative. The findings of these studies provide meaningful insights for Governments seeking to improve legislation and policymaking to prevent and combat femicide. UN-Women has collaborated with the Government of Mexico to produce a series of research studies and publications on femicide; it worked with civil society organizations in Serbia and Turkey to review social and institutional responses to femicide cases; and it is supporting the conceptual development and cost estimation of an early warning system for femicide cases in Ecuador. UN-Women will also conduct a regional study on femicide through its office for the Americas and the Caribbean using big data analysis tools, mainly through Internet, social media and other digital sources.<sup>159</sup> Likewise, UNFPA has also promoted research on the interrelation between sexual violence and the death of girls in Latin American and the Caribbean; among its findings, the study points to increasing rates of femicide, as well as the viciousness of the killings in the region. UNDP has led a study on the response of the judicial system to cases of femicide/feminicide through its regional programme for Latin America and has conducted analysis of sentences and judicial proceedings on femicide cases, resulting in the identification of the best interpretations of the national regulations on femicide.<sup>160</sup>

68.While not all studies and investigations may lead to immediate recommendations and policy changes, they provide key elements for the social understanding of femicide, for raising

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<sup>156</sup> Submission by the Public Defender of Georgia.

<sup>157</sup> Submission by the Protector of Citizens of Serbia.

<sup>158</sup> Submissions by the Government of Switzerland, the Government of New Zealand and the Office of the Public Defender of the Plurinational State of Bolivia.

<sup>159</sup> Submission by UN-Women.

<sup>160</sup> Submission by UNFPA.

awareness among policymakers and society in general on the main challenges and making sense of the data collected. It is crucial that Governments, legislators, members of the judiciary and of independent State bodies for equality and other stakeholders support the realization of these studies and take their findings into account when deciding on measures to tackle femicide.

## **V. Conclusion and recommendations**

69. As the Special Rapporteur argued in her previous report on the issue of femicide or gender-related killings of women and girls (A/71/398), the obligation of States to prevent and combat violence against women, whether perpetrated by State or non-State actors or private persons, is well established in international human rights law. The due diligence obligation to have legal provisions and a system in place to address gender-based violence against women committed by private actors evidently includes femicides or gender-related killings of women, the most extreme form of violence against women and the most violent manifestation of discrimination against women. Data from all regions of the world consistently show that more than 80% of victims of intimate-partner homicides are women. For many women victims of intimate-partner and domestic violence, the home is the most dangerous place; however, this violence is preventable.

70. The Special Rapporteur would like to recall that collecting and disseminating data is not an end in itself, but a powerful tool to assess the level of gender-based violence against women and improve legislation and policy responses to violence against women. When duly taken into consideration, the trends exposed by data may inform better responses, tailored to national and local contexts, and increase capacity to prevent the escalation of violence into femicides.

71. As presented by the Committee on the Elimination of Discrimination against Women in its general recommendation No. 35 (2017), updating general recommendation No. 19 (1992), which was developed in collaboration with the Special Rapporteur, the due diligence obligation to prevent, prosecute and punish violence against women includes the implementation of measures to monitor and collect data on violence, including on femicide or gender-related killings of women and girls. This data should be disaggregated and include information on the type of relationship between the victim and the perpetrator, which is not yet the case in the majority of States.

72. Comparable data on femicide or gender-related killings of women and girls should be an integral part of the data on violence against women collected and published by States each year.

73. In her previous report, of 2016, the Special Rapporteur presented a framework and methodological guidelines for putting in place an evidence-based strategy to prevent femicide. As the present report, in 2021, demonstrates, while much progress has been made in establishing violence against women observatories, or femicide watch bodies, dedicated to the issue of femicide or gender-related killings of women, the progress has been uneven. While some countries and regions have put significant resources into setting up their femicide watches, in others there is very little progress, if any. Likewise, considerably more data are being collected and disseminated, but these data are not yet comparable as in many cases the modalities proposed by the Special Rapporteur are not observed. States do not include information on the relationship between the victim and the perpetrator in their homicide data. It is also problematic that, in some countries, data

on femicide or gender-related killings of women and girls are limited only to intimate-partner violence. A comprehensive approach should include all types of femicide relevant to a particular context, including intimate-partner and family-related killings and others in which, while there is no relationship between the victim and the perpetrator, there is a gender motive.

74.The Special Rapporteur would like to reiterate that the existence of criminal law provisions establishing the crime of femicide (as a stand-alone offence or as an aggravating circumstance to homicide) is not a prerequisite for the collection of data, which can be disaggregated from homicide data under specific categories. Furthermore, when such legal definitions of femicide as a specific crime are in place, often only prosecuted cases are counted; in those States, data collection should be broader and encompass all gender-related killings of women.

75.The Special Rapporteur very much welcomed information on the analysis of cases and studies on femicide that has been carried out and that has already resulted in changes of laws and practice at the national level based on the analysis of femicide cases from a human rights perspective. Such analyses, findings and recommendations should be incorporated into decision-making processes, both in terms of legislative reforms as well as judicial and government measures to prevent femicides or gender-related killings of women and girls, and to protect victims before violence escalates further, including violence towards children. It is also important that these recommendations are widely disseminated to raise awareness on the issue and influence decision makers.

76.Finally, the Special Rapporteur would like to recall that Governments, national human rights institutions, legislators and civil society organizations may play complementary roles in these efforts. Femicide watches or observatories installed by any of these stakeholders may fulfil some or all of the roles laid out by the Special Rapporteur; it is critically important, however, that these different functions are carried out, and that States promote coordination between existing initiatives and bear the primary responsibility for the collection of comparable femicide data and the prevention of femicides or gender-related killings of women and girls.

77.The Special Rapporteur reiterates the recommendations from her previous report on femicide (A/71/398), and makes the following recommendations.

#### States

78.States should establish a femicide watch or observatory on violence against women, if one has not yet been created, and collect and publish each year comparable data on femicide or gender-related killings of women as part of data on violence against women, as well as recommendations for changes in policy or law for their prevention based on the analysis of such cases.

79.States should promote collaboration with civil society organizations, national human rights institutions, academia and all other entities collecting data and producing information on femicide.

80.States should widely disseminate data and information or analyses produced by femicide watches or observatories, particularly among legislators, government officials, judicial system officials, civil society organizations and other stakeholders.

81.States should gather data on gender-based violence and femicide or gender-related killings of women during the COVID-19 pandemic and conduct a comparison between femicide data collected before and during the COVID-19 pandemic.



## United Nations system

82. United Nations agencies should continue and expand their support to States in the setting up of information systems on femicide or gender-related killings of women, femicide prevention watches or observatories and analysis of cases with recommendations for their prevention. In particular, UN-Women and UNODC, with the support of OHCHR and the Special Rapporteur on violence against women and the EDVAW Platform, should continue their work in developing a statistical framework on gender-related killings of women, which could support the collection of comparable data across countries and regions with harmonized methodologies. As a second step, they should focus on prevention and the establishment of national preventive bodies to conduct analysis of cases and recommend prevention strategies for incorporation into laws, policies and practice.

### On the EDVAW Platform

83. States and United Nations bodies (including the Human Rights Council, the Commission on the Status of Women, the Commission on Crime Prevention and Criminal Justice, UN-Women, OHCHR and UNODC) should strongly support and collaborate with the EDVAW Platform mechanisms and provide institutional and financial support for the activities of the Platform in order to allow for its continuation and sustainability. States should include the Platform mechanisms in all United Nations and regional conferences or relevant meetings on women's human rights and the elimination of gender-based violence against women.

84. The Commission on the Status of Women, the Commission on Crime Prevention and Criminal Justice and the Human Rights Council should promote the participation and integration of all EDVAW Platform mechanisms in their respective work, including by holding an annual interactive dialogue with them on the elimination of discrimination and gender-based violence against women.

## Annex III

### Global, regional and national prevalence estimate of physical or sexual, or both intimate partner violence against women in 2018 Sardinha et al. 2022

#### Open-access

[https://www.thelancet.com/journals/lancet/article/PIIS0140-6736\(21\)02664-7/fulltext#:~:text=Globally%2C%2027%25%20\(uncertainty%20interval,year%20before%20they%20were%20surveyed.](https://www.thelancet.com/journals/lancet/article/PIIS0140-6736(21)02664-7/fulltext#:~:text=Globally%2C%2027%25%20(uncertainty%20interval,year%20before%20they%20were%20surveyed.)

[PlumX Metrics](#)





# Symposium Femicide 2012 in Vienna



Princess Bajrakitiyabha Mahidol of Thailand



H.E. Ambassador Lourdes O. Yparraguirre



Dr. Eduardo Vetere



Prof. Diana Russell



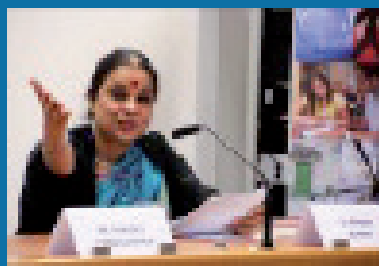
H.E. Ambassador Susan Le Jeune D'Allegeershecque



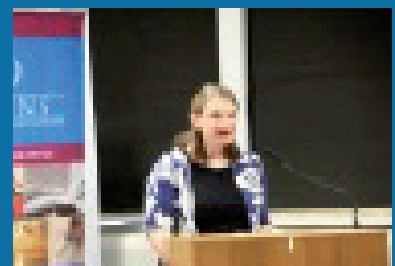
Ms. Barbara Spinelli



Jean-Luc Lehamieu and Michael Platzer



Dr. Ranjana Kumari



Ms. Rita Banerji



Speaker at 2012 Symposium



H.E. Ambassador Lourdes O. Yparraguirre



Dr. Eduardo Vetere