

## **Domestic Violence and Custody Rights: The protection of women and children from violence in light of the new Commission proposal for a Directive**

Statement delivered by the Special Rapporteur on violence against women and girls,  
its causes and consequences to the European Parliament

24 January 2023

Thank you very much Ms. Kountoura for the invitation to speak to you today and to share the stage with such a distinguished panel of speakers on an important topic.

In fact, I would like to commend you, Ms. Kountoura, and the European Parliament more generally, for convening a hearing on this important issue – a topic that is often underdiscussed, and which in the best-case scenario would hardly make it into national or regional discussions –alone legislation.

In October 2022, together with other independent UN experts appointed by the Human Rights Council, I wrote to the European Parliament recommending that the Directive of the European Parliament and of the Council on combating violence against women and domestic violence explicitly acknowledge the centrality of effective measures to prevent domestic violence against children.

This acknowledgment, I should add, is already included in the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention): the only international instrument that specifically addresses violence against women.

Such preventive measures, we argued in our letter, should ensure that in determining custody and visitation rights of children, the history of violence in the family against any of the family members should be considered, and more broadly the safety and security of the child. Such an approach would constitute an effective translation of the “best interest of the child” principle, which lies at the heart of State obligations under the UN Convention on the Rights of the Child (CRC) and other human rights instruments, such as the European Convention on Human Rights.

In fact, so important is the “best interest of the child” principle that even where the CRC recognizes that both parents have common responsibilities for the upbringing of the child, this responsibility should always be in the best interest of the child. Doing so is easier said than done.

Even without bringing children into the mix, we know from available data that most victims of intimate partner violence are women, and that these women generally tend not to report incidents of violence.

Where women victims of violence finally muster the courage to report, they run into another set of challenges that render them unassisted and unprotected, often with catastrophic consequences, in which they end up further harmed or killed. Why, you may ask, do women continue to be sent back to their abusers, and continue to die at their hands?

In many instances, it is down to gender bias towards women, which is combined with many other reasons pertaining to an aspect of their identity, such as their race, disability status, beliefs and legal status.

Discriminatory laws in some countries, many of which are motivated by cultural, religious and social factors feed the oxygen that these gender biases and stereotypes need to persist.

Such laws are in contravention of article 16 of the Convention on the Elimination of All Forms of Discrimination Against Women (which I will refer to as the CEDAW Convention) that calls for the elimination of discrimination in all matters relating to marriage and family relations, including the rights and responsibilities as parents and with regard to guardianship.

What may sound as a simple cliché is one of the most important factors that explains the way we fail women. It colors how judges, police officers, social workers, psychologists and others tend to hear, understand, perceive, and react to women that come into contact with them, including victims of violence. It can also often result in massive miscarriages of justice.

As the Committee monitoring the implementation of the CEDAW Convention, otherwise known as the CEDAW Committee, stated in General Recommendation No. 33 on women's access to justice, gender prejudices in the judicial system impede access to justice and contribute to a culture of impunity.

It is therefore no coincidence that the CEDAW Committee has dedicated a recommendation to States on eradicating gender stereotypes that are based on the idea that either of the sexes is inferior or superior to the other.

This bias is compounded when children are involved. The Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO), the expert body that monitors the implementation of the Istanbul Convention and is represented with us here today, has found clear evidence of gender bias towards women in custody decisions and the lack of sufficient consideration to previous patterns of abuse by courts when making decisions.

As a result, mothers find it harder to convince family courts of allegations of violence by their partners against them or their children. Many are villainized and accused of deliberately trying to alienate their children from their fathers – an offence that may be criminalized in law or in practice or both in different jurisdictions.

Often, women lose custody or visitation rights altogether, usually as a form of punishment for having brought up the allegations of abuse to begin with. So in many jurisdictions, they are advised by their lawyers not to raise these issues, as they may run the risk of losing the custody of their children.

These dynamics often allow parents to be intimidated, coerced, or forced by their abusive ex-partners and pressured by the courts to withdraw their allegations of abuse or to agree to a specific custody arrangement. Some have had to flee far from their homes and their countries, which is never sufficiently a guarantee for their safety.

In all these scenarios, children are often doubly victimized. Not only have they been witnessing regular violence inflicted on their mothers or themselves, but they are then revictimized when courts fail to speak with them in a manner that is suited to children, nor do they take their views into consideration, and often do not believe them and force them into a situation of contact with their abusive parent. I am sure we all agree that this is not what a child-sensitive process that places the child's best interest at the center looks like.

My mandate and other regional and international human rights mechanisms have found the lack of attention to partner and child violence in custody arrangements to be a feature in a number of jurisdictions in the EU, but also worldwide, hence the reason I am dedicating my next report to the Human Rights Council in June 2023 on this very issue. The report will also outline a number of recommendations.

There is no easy fix for this problem. Above all, finding a solution starts with acknowledging that we have a problem and identifying the scale of the problem. Comprehensive and deliberate action need to be established that cannot be left to chance. These approaches must not only be guided by the highest international human rights standards that EU countries are bound by.

At times, it will also require reviewing the implementation of other relevant international human rights legislation that countries are bound by and ensuring that they are applied in a manner that considers the primacy of the safety of parents, family members and children.

For example, the 1980 Hague Convention on the Civil Aspects of International Child Abduction is often activated to return parents that left the country of residence with the children and without the knowledge of the other parent.

A 2015 Study of the Statute of the Hague Conference on Private International Law estimated that over 73% of the parents charged in Hague custody hearings (essentially international kidnapping) are women, and that the overwhelming majority of grave risk cases involve the mother leaving family violence situations as the taking parent.<sup>1</sup>

While courts may use exceptions to return a child if an assessment has been made the child is at grave risk, these exceptions appear not to be sufficiently considered and used.

There is also a need to develop mandatory specialized training for all those coming into contact with women and children victims of violence.

Moreover, we need to collect comparable data on the nature and prevalence of intimate partner and other forms domestic violence that is disaggregated based on sex and gender and strengthen the linkage of data to the management of custody issues.

In addition, the processes for accrediting experts, such as counselors and psychologists brought on board to assist in drawing up custody and visitation rights, must be revamped. Finally, real, and effective mechanisms for dealing with complaints about misconduct and conflicts of interest need to be put in place and adopted to encourage reporting and to enhance safeguarding.

Thank you.

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<sup>1</sup> <https://assets.hcch.net/docs/d0b285f1-5f59-41a6-ad83-8b5cf7a784ce.pdf>