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Organized by the UN Special Rapporteur on Violence against Women,
its causes and consequences,

Ms. Rashida Manjoo

(New York, 12 October 2011)

**FEMICIDE AND FEMINICIDE IN EUROPE.
GENDER-MOTIVATED KILLINGS OF WOMEN
AS A RESULT OF INTIMATE PARTNER VIOLENCE.**

Expert paper

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I.

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I. INTRODUCTION

1. This paper is prepared for the United Nations (UN) Expert Group Meeting on gender-motivated killings, taking place on 12 October 2011, in New York, U.S.A. The Meeting is organized by the UN Special Rapporteur on Violence against Women (VAW), its causes and consequences, Ms. Rashida Manjoo, and is intended to (i) build upon national, regional and international expertise on the manifestations, root causes and consequences of femicide; (ii) discuss policy, legal and institutional challenges at both national and regional levels with a view to address manifestations of femicide; (iii) identify good practices and lessons learnt in different regions.

2. This paper includes:

- (i) information about the use of the concept of femicide/feminicide in the European Union (EU) and its Member States;
- (ii) information on data collection about gender-motivated killing of women and rates of femicide/feminicide in EU countries;
- (iii) information on manifestation of gender-based killing in Europe;
- (iv) an overview of national legislative frameworks;
- (v) exposition of States' responses to gender-based killings of women in terms of their due diligence obligation to prevent, protect, investigate and punish and provide reparations to women victims of such violence;
- (vi) case law on gender-based killings of the European Court of Human Rights and the UN Committee on the Elimination of all forms of Discrimination against Women (CEDAW);
- (vii) conclusion and challenges.

II. USE OF CONCEPTS OF FEMICIDE AND FEMINICIDE IN THE EU AND EU COUNTRIES

3. The use of the terms *femicidio* and *feminicide* with a gender-related meaning has been spreading throughout Europe since the last decade of XXI century, after the international exposure of the events in Ciudad Juárez, Mexico, in particular with the contribution of Spanish women's rights activists.

4. The first reference to femicide in EU official documents was in the course of the hearing on *feminicidio* (killing of women) in Mexico and Guatemala at the European Parliament (EP) in April 2006. Following the hearing, Spanish EP member Raül Romeva i Rueda presented to the EP a Draft Report on the Killings of Women (Feminicides) in Central America and Mexico, and the Role of the European Union in the Fight to this Phenomenon,² calling out for a EU monitoring on the effective exercise of women's human rights in the involved countries, as well as an active engagement in the eradication of feminicide. The symbolic significance of this project lies in its acknowledgement of feminicide as defined by Marcela Lagarde, with the affirmation that “[the] punishment and eradication [of this crime] must be a commitment and a priority for every rule-of-law State” and that this struggle “concerns all the States, even in Europe” as “part of a global strategy for the implementation of joint efforts by both EU and the concerned Countries, with a view to [the] eradication and prevention [of these crimes], wherever they occur.”³

5. In October 2007 the European Parliament (EP) adopted a resolution on the murder of women (feminicide) in Mexico and Central America and the role of the European Union (EU) in fighting the phenomenon.⁴ The EP renewed its condemnation of femicide in its latest Annual Human Rights Report adopted in December 2010. Femicide is also mentioned in the EU Guidelines on Violence against Women,⁵ adopted by the EU Council in December 2008. In April 2009, the EU Presidency issued a statement welcoming the start of the IACtHR trial,⁶ and in June 2010 the EU High Representative Catherine Ashton issued a declaration on behalf of the EU expressing her concern about femicide in Latin America, condemning “all forms of gender violence and abhorrent crime of femicide,” and welcoming the IACtHR judgment.⁷

² PE 388.414V02-00. PR/666973IT.doc.PROVVISORIO 2007/2025(INI), May 10th, 2006; <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+COMPARL+PE-388.414+02+DOC+PDF+V0//IT&language=IT>

³ SPINELLI, B. (2008), *Femminicidio. Dalla denuncia sociale al riconoscimento giuridico internazionale*, Franco Angeli, Milan, Italy, pp.167-168.

⁴ European Parliament Resolution of 11 October 2007 on the murder of women (feminicide) in Mexico and Central America and the role of the European Union in fighting the phenomenon.

⁵ <http://www.consilium.europa.eu/uedocs/cmsUpload/16173cor.en08.pdf>

⁶ <http://europa.eu/rapid/pressReleasesAction.do?reference=PESC/09/47&type=HTML>

⁷ http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/EN/foraff/115578.pdf

6. The word *femicide* is also currently used with reference to gender-based killings of women in Europe.

A recent study on violence against women (VAW) in Europe carried out by the European Commission⁸ clearly states that “the most serious form of physical violence is femicide, which is the gender-based murder of a woman,” and quotes the UN Secretary General Report to stress how femicide is closely connected to other forms of gender violence affecting women: “Recent studies⁹ on femicide have found that the characteristics of murders of women are very different from those of men and often involve domestic violence (DV), extreme jealousy and possessiveness or passion, dowry disputes or issues of ‘honour’.”

In a Policy Briefing for EP internal use,¹⁰ femicide is also considered in global and local perspective: “As the International Women's Day in March 2011 demonstrated by raising the issue femicide in its various forms around the world, it is possible and probably useful to compare the femicide in Latin America for example to honour killings in the Middle East, impunity regarding murders of women in Africa or dowry killings in South Asia. Even in the cases of Europe and North America, it has been noted in the UN context that official statistics on violence against women in general and on femicide in particular are often not good enough to reliably assess the gravity of the situation.”¹¹

7. Today the notion of femicide is widely used in Europe, with the meaning introduced by Diana Russell, in sociological and criminological analysis and by the mass media. Femicide is conventionally defined as the intentional killing of women for being women. The term is also used by an increasing number of sociologists and criminologists to study suicides under a gender perspective.

8. In Italy the term ‘femicide’ (femicidio or femicidio) is referred only to gender-motivated killings of a woman.

The concept of ‘feminicide’ (femminicidio or feminicidio) is used in political and sociological contexts to conceptualize every form of discrimination or violence (physical, sexual, psychological, economic, structural, cultural, including violence perpetrated or condoned by the State and its officials) affecting a woman for the sole reason that she is a woman.

⁸ EUROPEAN COMMISSION (2010), *Violence against women and the role of gender equality, social inclusion and health strategies*, Luxembourg, Publications Office of the European Union, pp.69-72.

⁹ UNITED NATIONS (2006), *In-depth study on all forms of violence against women* — Report of the Secretary-General, July 6th, 2006 (http://stopvaw.org/sites/3f6d15f4-c12d-4515-8544-26b7a3a5a41e/uploads/Sec_Gen_Study_VAW.pdf).

¹⁰ EUROPEAN PARLIAMENT (2010), Directorate-General For External Policies Of The Union Policy Department, OIKARINEN, J., *Femicide In Mexico And Central America*, Policy Briefing, November 27th, 2010.

¹¹ See for example WHO, PATH, INTERCAMBIOS, MEDICAL RESEARCH COUNCIL OF SOUTH AFRICA, *Strengthening Understanding of Femicide: Using Research to Galvanize Action and Accountability* (http://www.path.org/files/GVR_femicide_rpt.pdf); HEINRICH BÖLL FOUNDATION (2009), *Femicide: A Global Phenomenon?*, December 2009 (http://www.boell.eu/downloads/Publication_Feminicides_English.pdf); HEINRICH BÖLL FOUNDATION, Middle East Office (2011), *Cases of Femicide Before Lebanese Courts* (http://www.boell-meo.org/downloads/Cases_of_femicide_before_Lebanese_courts.pdf); “Strengthening Regional Work on Gender-based Violence”, Meeting of Activists, Practitioners and Researchers from the Horn, East and South Africa, November 2006 (http://www.prb.org/igwg_media/srwgbv.pdf).

The concept of femicide is so referred to the cases of women who are killed just because they are women, as well as to any gender-based violent action against women. According to Marcela Lagarde's definition of femicide,¹² the term enables us to highlight the common root causes of any form of gender-based violence, that annihilates women in their physical, psychological, and social dimensions.

III. RATES OF VICTIMIZATION IN EU COUNTRIES

a. Data availability

9. The collection of data on gender-based VAW is a relatively new field of information which cuts across traditional areas of statistical production: this explains why not all European countries collect such sort of data on a regular basis.¹³

10. Domestic violence is the most difficult field for data collection, as the majority of the cases are not reported to the police. Even when cases are reported to the police, a collection of gender-disaggregated data for crimes that may amount to gender-based violence is seldom carried out.

This happens because many crimes, such as mistreatment within the family, are still perceived as 'neutral' from a gender point of view, in spite of the numerical evidence showed by a series of criminological researches: the perpetrator's identity and his link to the victim, as well as the power relationship leading to murder, that is the gender perspective, are often considered irrelevant elements not only during the investigation but also from a statistical point of view.

11. Data on intimate partner homicide and other types of femicide are provided at national level by police and criminal statistics, but may differ from country to country due to the

¹² "[E]xtreme form of gender based violence and human rights violation, whether occurring in public or private life, through misogynist practices – abuses, physical, sexual, educational, professional, economic, patrimonial violence, violence perpetrated within the family, the community or the state institutions – which lead to impunity and put women in a condition of risk and lack of protection until their murder or attempt, or other kinds of death of women and children, such as suicides, accidents, sufferings or deaths caused by lack of personal security and interest from institutions, and absence of inclusion on development and democracy", in LAGARDE Y DE LOS RIOS, M. (2004 and 2006), *Por la vida y la libertad de las mujeres, fin al femicidio*, in CONCHA, A., LABALLE, L. and G., *Resistencia y Alternativas de las Mujeres Frente al Modelo Globalizador*, Red Nacional de Género y Economía, México, pp.114-126 (also in *Law*, vol.25, pp.195-214); see also: MONARREZ FRAGOSO, J., "Elementos de análisis del femicidio sexual sistémico en Ciudad Juárez para su viabilidad jurídica", in REPÚBLICA DE MÉXICO, COMISIÓN ESPECIAL PARA CONOCER Y DAR SEGUIMIENTO A LAS INVESTIGACIONES RELACIONADAS CON LOS FEMINICIDIOS EN LA REPUBLICA MEXICANA Y A LA PROCURACIÓN DE JUSTICIA VINCULADA, LIX Legislatura (2005), *Femicidio, Justicia y Derecho*, México, November 2005; SHALOUB-KEVORKIAN, N. (2003), "Reexamining femicide: breaking the silence and crossing scientific borders", in *Signs*, Chicago, Winter 2003, vol.28, iss.2, p.581; GIURISTI DEMOCRATICI, Bologna, Italy, and SPINELLI, B. (2006), "Violenza sulle donne: parliamo di femminicidio. Spunti di riflessione per affrontare a livello globale il problema della violenza sulle donne con una prospettiva di genere" (<http://www.giuristidemocratici.it>); SPINELLI, B. (2008), *Femminicidio. Dalla denuncia sociale al riconoscimento giuridico internazionale*, Franco Angeli, Milan, Italy; SPINELLI, B. (2008), "Femicide e femminicidio: nuove prospettive per una lettura gender-oriented dei crimini contro donne e lesbiche" in *Questione criminale*, Carocci, Rome, Italy, November 2008.

¹³ In Italy, for example, the last national survey on VAW was in 2006, and did not take into account homicides and attempted homicides.

differences in reporting and registration procedures. In most European countries, police and court statistics for crimes such as homicide or mistreatment within the family do not provide data which are disaggregated by gender, age or other personal characteristics, both for the victim and the perpetrator. In addition, most European countries do not collect nationwide data on the situation of women who survived an attempted femicide or data on suicide and attempted suicide committed by women who face domestic violence.

12. In Europe, official data on femicide are provided by the database of the UN Economic Commission for Europe (UNECE) Statistical Division, which supplies data on victims of homicide by relationship of the perpetrator to the victim, sex of the victim, country and year.¹⁴ Actually, the majority of the European countries are not able to provide the UNECE with the disaggregated data that are necessary to the database serviceability. This represents the first obstacle to a comparison. Moreover, the presented data are not comparable and are to be interpreted with caution because the definitions of intentional and unintentional homicide and the distinction between the two offences, as well as the definition of attempted murder, differ from country to country.¹⁵

13. The comparison of all available data is also made difficult by the lack of a common Europe-wide definition of VAW and by the great variety of instruments and modalities to quantify data.

A comprehensive set of international indicators on VAW would facilitate the collection of comparable data. Although some international institutions such as the United Nations,¹⁶ the United States Agency for International Development (USAid)¹⁷ and the European Union¹⁸ have developed several indicators, no harmonised system of data collection is yet in place across the EU.

BEST PRACTICE

FINLAND data collection on gender-motivated killings as a result of domestic violence

¹⁴ Gender database on crime and violence statistics (<http://w3.unece.org/pxweb/DATABASE/STAT/30-GE/07-CV/07-CV.asp>).

¹⁵ EUROPEAN COMMISSION (2010), *op.cit.*, p.50.

¹⁶ The proposed qualitative indicators include: physical and sexual violence, intimate partner violence (IPV), harmful practices and some additional items. See also UNITED NATIONS (2007), *Indicators to measure violence against women*, Report of the Expert Group Meeting held on 8 to 10 October 2007, organised by the UN Division for the advancement of Women, UN Economic Commission for Europe, UN Statistical Division, Geneva (http://www.un.org/womenwatch/daw/egm/IndicatorsVAW/IndicatorsVAW_EGM_report.pdf).

¹⁷ BLOOM, S.S. (2007), *Violence against women and girls. A compendium of monitoring and evaluation indicators*, Washington, USA (<http://www.awid.org/Issues-and-Analysis/Library/Violence-against-Womenand-Girls-a-Compendium-of-Monitoring-and-Evaluation-Indicators>).

¹⁸ <http://register.consilium.europa.eu/pdf/en/02/st14/st14578.en02.pdf> ; <http://register.consilium.europa.eu/pdf/en/04/st15/st15202.en04.pdf>

The Finnish police use nationwide data systems called RIKI and Patja to record the reported crimes. The report form contains both compulsory and optional information on the crime. Gender and others personal data such as the age and address of the suspect and the complainant are always recorded. The form contains a field where it is possible to define the crime or case as 'domestic violence'. Information on the relationship of the suspect to the victim is optional.

Statistic Finland use police data combined with data from family statistics to produce statistics on domestic violence and all related crimes.

Statistical tables on causes of death make it also possible to know how many women are killed by domestic violence each year (number of intimate partner feminicides, IPF).

The source for these statistics are the death certificates made by medical authorities combined with data from the Population Register Centre. When the cause of death is not clear but an indicator of violence is present, the death certificate is not written until the preliminary result from police investigation on whether the case is a suicide, accident, or crime are available. Statistics also cover people who at the time of death where domiciled in Finland.

The data collection instrument of the FHMS (Finnish homicide monitoring system) allows in-depth research about femicide/feminicide, for crime prevention and prevention targeting purposes.

The FHMS is based on information compulsory registered in preliminary police investigations on intentional murders, manslaughters, killings, infanticides and negligent homicides.

The database contains information on some main characteristics of the crimes, on their regional and temporal distribution, on the socio-demographic background of both the victim and the main offender and on their crime scene behaviour. The system also contains information related to the investigation of the crimes and on the behaviour of the suspect after the crime and during the investigation. The number of internal variables for each case is about 90, most of them essential when assessing domestic violence. In addition, the National Research Institute of Legal Policy inserts external data on prior crimes of offenders and victims, and also on the punishments received by offenders. This information is retrieved from the

information system of the courts kept by Statistics Finland and the Crime Sanctions Register kept by the Ministry of Justice.

At the moment this is the most complete data collection instrument in use in Europe: it allows to get particular information on domestic VAW which resulted in the death (suicide or murder) of the victim.

For more detailed information please consult the source: COUNCIL OF EUROPE, Directorate General of Human Rights and Legal Affairs, HEUNI, E. Ruuskanen and K. Aromaa, *Administrative data collection on domestic violence in Council of Europe member states*, Strasbourg, 2008, Appendix 17, pp.48-62.

b. Rates of victimizations: domestic violence

4. The family or domestic unit is the most common context of violence for women in Europe.

15. Intimate partner violence (IPV)¹⁹ is the most common form of domestic violence against women.

An analysis of 10 separate domestic violence prevalence studies by the Council of Europe showed consistent findings: 1 European woman in 4 experiences DV at some point in her life, and between 6-10% of women suffer DV in a given year.²⁰

16. In Italy, according to a recent official survey,²¹ an estimated 31.9% of women between 16 and 70 years of age face physical or sexual violence during their lifetime; 14.3% of women face or have faced at least one episode of physical or sexual violence by their current or former partner; considering only women with an ex-partner, the percentage rises to 17.3%. While physical violence is more frequently perpetrated by partners (12% against 9.8% outside partner relations), 69.7% of rapes are perpetrated by partners, 17.4% by an acquaintance. Only in 6.2% of the cases the abuser is an unknown person. The closer the relationship between perpetrator and victim, the higher the risk of rape; 34.5% of women reported having suffered very serious violence: 21.3% of women felt their lives to be in danger when the violence was perpetrated but only 18.2% of them consider the domestic violence suffered a criminal offence.²²

¹⁹ Violence occurring in the family or domestic unit, including, *inter alia*, physical aggression/battering; mental, emotional and psychological aggression/abuse; rape and sexual abuse between spouses, regular or occasional partners and cohabitants.

²⁰ COUNCIL OF EUROPE (2002), Recommendation of the Committee of Ministers to Member States on the protection of women against violence, adopted on 30 April 2002; and Explanatory Memorandum, Strasbourg, France

²¹ ISTAT, ISTITUTO NAZIONALE DI STATISTICA (Italian National Statistic Institute) (2007), *Violenza e maltrattamenti contro le donne dentro e fuori la famiglia*, Rome, Italy (http://www.istat.it/salastampa/comunicati/non_calendario/20070221_00/testointegrale.pdf).

²² For more detailed information about incidences of domestic violence in each European country, see EUROPEAN COMMISSION, *Violence against women...*, *op.cit.*, pp.56-63.

17. According to the 2010 Eurobarometer survey²³ by the European Commission on VAW, across the EU 78% of respondent say that they think domestic VAW is “fairly common” in their country.²⁴

18. One respondent in 4 knows a woman within their circle of friends and family who has been a victim of domestic violence. 21% say they know a woman in their immediate area or neighbourhood who has suffered this sort of violence, while 11% say they know of a case where they work or study.²⁵

The evolution of the EU15 results shows a general rise in the number of people saying that they know of a victim of domestic violence. 25% now say they know of someone in their friend or family circle, up from 19% in the 1999 survey. The number of people saying they are aware of a victim in their immediate area or neighbourhood remains flat at 18% as does the proportion of respondents who know of a victim where they work or study (11% compared to 10% a decade ago). It is unclear whether this demonstrates that levels of domestic violence have risen, or instead that awareness and willingness to talk about these issues have grown.

19. One respondent in 5 knows of someone who commits DV in their circle of friends and family (21%).

Comparing data with the 1999 Eurobarometer, only one EU15 country reports a significant drop in the number of people who know a perpetrator of domestic violence within their circle of friends and family: Finland (36%, down from 40%). By contrast, the majority of countries experienced a rise, notably France (26%, up from 17%), Luxembourg (26%, up from 17%), Belgium (28%, up from 21%), Sweden (30%, up from 24%), Germany (15%, up from 10%), and Austria (18%, up from 13%).

20. As it happens worldwide, official rates offer an underrepresentation of domestic violence because circa only 7% of women report IPV to the police. In Italy for example ISTAT survey²⁶ shows that 96.4% of the women who are victim of current partner and 90.2% of the women who experienced violence by their previous partner did not report to the police.

c. Rates of victimizations: female homicides

21. In all European countries, as in the rest of the world, there are more male homicides than female homicides.

In the last decade there has been a significant decrease of homicides involving male victims and also, though at a lower rate, of homicides involving female victims.

²³ EUROPEAN COMMISSION, WOMEN AGAINST VIOLENCE EUROPE (WAVE) Network (2010), “Domestic violence against women”, Special *Eurobarometer* n.344, September 2010, p.73.2 (http://ec.europa.eu/public_opinion/archives/ebs/ebs_344_en.pdf).

²⁴ 91% of Italian respondents.

²⁵ 16% of Italian respondents.

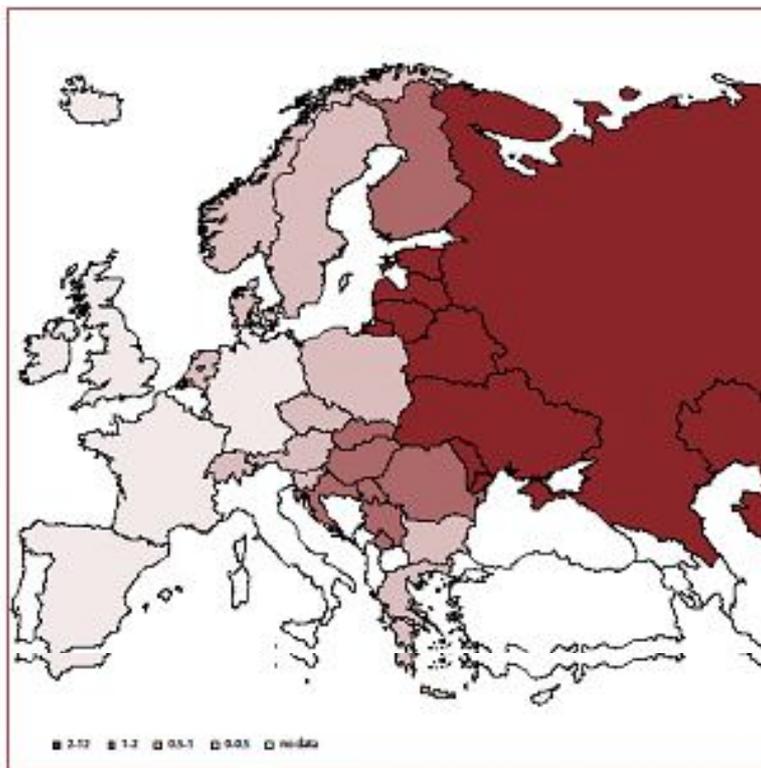
²⁶ ISTAT (2007), *op.cit.*

22. Partner violence accounts for a high proportion of homicides of women all over the world: 40% to 70% of female murder victims (depending on the country) were killed by their partners/former partners, whereas the comparable figure for men is 4%-8%.²⁷

23. Domestic context of intimate femicides seems to be time-invariant. Despite the changes occurring in women's lives over roughly the last 70 years, the proportion of women killed by an intimate partner remained relatively constant.²⁸

24. The lack of gender perspective in collecting data about homicide in most European countries do not even consent to clearly distinguish between gender-based killings and other killings of women.

Females, homicide and assault, per 100.000, 2005, standardised death rate²⁹



EU — 0.65

WHO European region — 3.08

Source: WHO/Europe, *European mortality database (MDB)*, August 2009

(<http://data.euro.who.int/hfamdb/>).

²⁷ WORLD HEALTH ORGANIZATION (WHO), KRUG, E.G., *et al.*, *World report on violence and health*, Geneva 2002.; KRUG, E.G., MERCY, J.A., DAHLBERG, L.L., and ZWI, A.B., “The world report on violence and health”, in *The Lancet*, London, Oct 5th, 2002, Vol. 360, Iss. 9339, p. 1083.

²⁸ See for example GARTNER R. and MCCARTHY B., “The Social Distribution of Femicide in Urban Canada, 1921-1988”, in *Law and Society Review*, 1991, no.25, pp.287-312.

²⁹ Age-standardised death rates (SDR) are calculated using the direct method, i.e. they represent what the crude rate would have been if the population had the same age distribution as the European standard population.

25. The most complete data collection on femicide in Europe is included in the International Report on Partner Violence against Women³⁰ compiled by the Queen Sofia Center Study (Spain).

The available national statistics confirm that in all European countries, the majority of female homicide are gender-based murders (femicide).

Most femicides are committed by partner or other relatives.

The report shows³¹ that the average prevalence is:

	FEMALE HOMICIDE (*)	DOMESTIC FEMICIDE (*)	PARTNER FEMICIDE (*)
NORTH AMERICA	18,67%	5,95%	6,63%
CENTRAL-SOUTH AMERICA	45,39%	10,13%	8,59%
EUROPEAN UNION	11,66%	5,30%	4,91%

(*) Per million women

Internationally, the highest prevalence rates of female homicides are those from Central and South America,³² but at a surprising third place we found Lithuania with 51,32 femicides per million women and at the sixth place we find Estonia with 40,01 femicides per million women³³ (2006). EU countries medium rate is 21,79%.

The WHO data referring to the year 2005 also confirm that the Baltic countries (Latvia, Lithuania, Estonia) present figures three/four times higher than the rest of Europe.³⁴

It seems that the former Soviet Republics have evolved in two opposing directions: while two of them are in the top ten of high-prevalence countries (3rd Lithuania and 6th Estonia), two others are among the countries with the lowest prevalence rates (Slovakia 5,77 and Slovenia 4,89).³⁵

³⁰ ICRS-VIU, ESPLUGUES, J.S., MARMOLEJO, I.I., ESTEVE, Y.G., and SÁNCHEZ, P.M., *3rd International Report on Partner Violence against women*, 2010. Statistics are based on data provided, in each country, by the official organism(s) responsible for data collection about women killed (Ministries and national statistical institutes) and local NGOs. The report contains data from 44 countries: 63,64% from Europe, 31,82% from the American continent, 2,27% from Oceania. The data are referred to the year 2006, and show the evolution of femicides between 2000 and 2006.

³¹ See Graph 9, p.74.

³² El Salvador: 129,43 femicides per million women; Guatemala: 92,74 femicides per million women.

³³ ICRS-VIU, ESPLUGUES, MARMOLEJO, ESTEVE and SÁNCHEZ (2010), *op.cit.*, pp. 67-69, Table 3.

³⁴ The EGGSI experts for these countries describe the phenomenon as significantly decreasing in the last few years, even though it remains seriously problematic. It has been described as a probable side effect of the economic and political transformation and the difficulties of adaptation faced by the people. See also: KURY, H., "The Extent of Family Violence in Europe: A Comparison of National Surveys", in *Violence Against Women*, July 2004, n.10, pp.749-769.

³⁵ ICRS-VIU, ESPLUGUES, MARMOLEJO, ESTEVE and SÁNCHEZ (2010), *op.cit.*, p.70.

d. Evolution of the rates of femicide in Europe (2000-2006)

26. The collected data³⁶ show a decrease or stay in femicides in most European countries. Spain, for example, has been recording a 45,33% decrease, Denmark 66,47%, and Slovakia 51,68%.

Instead, femicides are increasing in Cyprus (303,15%) and in Luxembourg (83,37%).

Considering the most relevant variations:

- in Denmark a decrease in domestic femicides has also been recorded (11,85%);
- Cyprus saw an increase in partner femicides too (277,13%);
- England and Wales, Norway, Hungary, and Iceland saw a decrease of femicides, either in general or perpetrated within the family or by the partner;
- Spain, despite a decrease of femicide (45,33%), has been recording a 6,73% increase of domestic femicides, and a 15,16% increase of partner femicides;
- in Finland both total and domestic femicides have been decreasing, while partner femicides have been increasing.

27. In Italy, official data collected by EURES confirm that, even if the total number of homicides (male & female murders) is decreasing, female homicides are increasing from 15,3% of total homicides during 1992-1994 to 23,8% during 2007-2008. NGO data show that also femicides are increasing.

Female homicides, femicides, domestic femicides, intimate femicides and ex-partner femicides in Italy in the last five years (absolute values) (*) Data collected by Casa delle donne per non subire violenza, Bologna, Italy					
YEAR	FEMALE HOMICIDE (official data)	FEMICIDE (TOTAL) (*)	DOMESTIC FEMICIDE (*)	INTIMATE FEMICIDE (*)	EX-PARTNER FEMICIDE ³⁷ (*)
2006	181	101	91	75	11
2007	148	107	95	73	18
2008	147	112	86	61	18
2009	163	119	99	75	11
2010	151	127	114	68	29

³⁶ ICRS-VIU, ESPLUGUES, MARMOLEJO, ESTEVE and SÁNCHEZ (2010), *op.cit.*, Chapter 2, pp.65-99.

³⁷ Ex-partner femicides are part of intimates femicide, e.g.: domestic femicides in 2010 are 114, of whom 68 are intimate femicides, and of those 68 intimate femicides, 29 were committed by ex-partners.

XIII. MANIFESTATION OF FEMICIDE AND FEMINICIDE IN EU COUNTRIES

a. Age of victims

28. In Europe, the 35-44 age group shows the highest percentage of femicide victims,³⁸ including partner femicides.

In Italy the over 46 age group is predominant (44% of total femicides in 2009,³⁹ 52% of total femicides in 2010).⁴⁰

Exceptionally, in the former Soviet Republics the majority of the victims are over 64 years old: Bulgaria 38,18%, Hungary 28,41%, Lithuania 23,66%, and Slovakia 37,50%.

b. Weapons used

29. Firearms and knives are the most used weapons to commit femicide. Knife is the most used weapon to commit partner femicide.

In the former Soviet republics, however, femicides (included partner femicides) are mainly committed manually (67,74% in Lithuania.)⁴¹

c. Place of the murder

30. The majority of female homicides are perpetrated in the house where the women habitually live.⁴²

In femicide-suicide cases, it is relevant to note that the rate of the crimes that take place in the home is higher,⁴³ and that most femicide-suicides take place in the bedroom, sometimes on the matrimonial bed.

Other studies also found that the home – and especially the bedroom – are the locations in which the murder-suicide is most commonly carried out:⁴⁴ this is of course a ‘practical’ choice, since these are generally family tragedies, but one which also has a clear symbolic value.⁴⁵

³⁸ ICRS-VIU, ESPLUGUES, MARMOLEJO, ESTEVE and SÁNCHEZ (2010), *op.cit.*, Chapter 2, pp. 65-99

³⁹ In 2009, 17% of the victims of femicide was in the 46-60 age group, and 27% in the over 60 age group (source: CASA DELLE DONNE PER NON SUBIRE VIOLENZA, Bologna, Italy, “Femicidi nel 2009: un’indagine sulla stampa italiana”, 2010, <http://www.casadonne.it>).

⁴⁰ In 2010, 27% of the victims of femicide was in the 46-60 age group, and 25% in the over 60 age group (source: CASA DELLE DONNE PER NON SUBIRE VIOLENZA, Bologna, Italy, “Il costo di essere donne: indagine sul femicidio in Italia. I dati del 2010”, 2011, <http://www.casadonne.it>).

⁴¹ ICRS-VIU, ESPLUGUES, MARMOLEJO, ESTEVE and SÁNCHEZ (2010) *op.cit.*

⁴² The rate is: 72% in Spain (source: CENTRO REINA SOFIA, INSTITUTO UNIVERSITARIO PARA EL ESTUDIO DE LA VIOLENCIA – ICRS (2010), *Mujeres asesinadas por su pareja 2000-2009*, Valencia International University, <http://www.centroreinasofia.es/paneldecontrol/est/pdf/EST014-3293.pdf>), 70% in Italy: in 2010 in Italy 36,22% of femicides was committed in the women’s house, 24,4% in the couple’s house, 9,44% in the perpetrator’s or other relatives’ house (source: CASA DELLE DONNE PER NON SUBIRE VIOLENZA, Bologna, Italy (2011), *op.cit.*)

⁴³ The rate is 80% . MERZAGORA, I., TRAVAINI, G., BATTISTINI, A. and PLEUTERI, L., “Murder-suicide in the province of Milan, Italy: criminological analysis of cases 1990-2009”, in *Medicine, Science and the Law*, 2011, Vol.51, pp.87-92.

⁴⁴ LACOMTE, D., FORNES, P., “Homicide followed by suicide: Paris and its suburbs, 1991-1996”, in *Journal of Forensic Science*, 1998, 43: pp.760-4; ALLEN, N.H., *Homicide followed by suicide, Los Angeles, 1970-1979*, in “Suicide Life Threat Behaviour”, 1983, 13: pp.155-63.

⁴⁵ MERZAGORA, TRAVAINI, BATTISTINI and PLEUTERI, *op.cit.*, p.88.

d. Collateral homicides

31. The figures presented in the European Daphne Project⁴⁶ show that in 2006 there have been 186 collateral homicides linked to IPV femicides in Europe.

In most cases, they were children of the murdered women, who had already been witness to other episodes of violence in domestic conflicts.

e. Men's behaviour in consequence of femicide/feminicide

32. The most common behaviours of men after femicide are: (attempted) suicide, confession of their crime, (attempted) escape or concealment.

i. Suicide or attempted suicide

33. All the studies on this phenomenon, from Krakow to the Fiji Islands, report the same pattern: femicide-suicide represents the largest part of murder-suicide.⁴⁷

According to the Daphne Project,⁴⁸ in 2006 Europe recorded 536 suicides of male homicide perpetrators linked to IPV femicide.

For Italy and France the statistics confirm that, in the last five years, the most common behaviour of perpetrators in consequence of the committed femicide is suicide or attempted suicide.⁴⁹

Various researches show that femicide-suicide perpetrators result to be mentally ill just in a third/quarter of cases,⁵⁰ with the remarkable exception of Sweden.⁵¹

As to Italy, it is interesting the frequency of femicides-suicides among the elderly: the nine cases involving couples aged over 70 which occurred in Milan and its province between 1990 and 2009 (most of them in recent years) raise the hypothesis of gaps in the welfare system as well as of a possible future increase in this phenomenon, considering the general ageing of the population in this (and other) areas of Italy and the increasing age of victims and perpetrators of femicide in Italy.⁵²

⁴⁶ PROJECT DAPHNE, *2007 Estimation of mortality linked to intimate partner violence in Europe - IPV EU Mortality*, PsyteL, June 2010, <http://psytel.eu/violences.php>.

⁴⁷ See MERZAGORA, TRAVAINI, BATTISTINI and PLEUTERI, *op.cit.*, p.88; BARRACLOUGH, B., HARRIS, E.C., "Suicide preceded by murder: the epidemiology of homicide-suicide in England and Wales 1988-'92", in *Psychological Medicine*, 2002, n.32, pp.577-584; KUNZ, J., BOLECHALA, F., and KALISZCZAK, P. (2002), "Sądowo-lekarska problematyka zabójstwa z samobójstwem sprawcy ("dyadic death")" (Medicolegal problems of 'dyadic death'), in *Archiwum Medycyny Sadowej i Kryminologii*, T.52, n.3, pp.177-185; KOZIOL-McLAIN, J. *et al.*, "Risk factors for femicide-suicide in abusive relationships: Results from a multisite case control study", in *Violence and victims*, 2006, n.21, pp.3-21; ADINKRAH, M., "Homicide-suicide in Fiji: offense patterns, situational factors, and sociocultural contexts", in *Suicide Life Threat Behaviour*, 2003, n.33, pp.65-73.

⁴⁸ PROJECT DAPHNE (2010), *op.cit.*

⁴⁹ CASA DELLE DONNE PER NON SUBIRE VIOLENZA, Bologna, Italy (2011), *op.cit.*; PROJECT DAPHNE (2010), *op.cit.*, pp.42-43.

⁵⁰ MERZAGORA, TRAVAINI, BATTISTINI and PLEUTERI (2011), *op.cit.*, p.90; MILROY, C.M., "Reasons for homicide and suicide in episodes of dyadic death in Yorkshire and Humberside", in *Medicine, Science and the Law*, 1995, n.35, pp.213-217.

⁵¹ See Chapter IV, para. d, number viii.

⁵² MERZAGORA, TRAVAINI, BATTISTINI and PLEUTERI (2011), *op.cit.*, pp. 87-92.

34. Dawson⁵³ interprets the perpetrator's suicide as an "extended homicide" that the perpetrator commits when he becomes painfully aware of the crime he has committed, yet refusing to accept its consequences (he has killed his partner to punish or totally and finally control and possess her, but he also wants to be in control of his own life, and cannot accept to be punished), or *pietatis causa*.

Criminology highlights the violent and dependent character of many husbands who committed femicide-suicide, classifying them under the 'possessive subtype'.⁵⁴

IV. CAUSES OF GENDER-MOTIVATED KILLINGS OF WOMEN

a. Femicide is the extreme form of gender violence

35. In Italy, like in others European countries, until quite recently domestic violence and uxoricide has been treated, by both society and authority, as private matters and 'neutral' crimes. In the last two decades, thanks to UN and EU declarations and programs,⁵⁵ culture is changing and crimes against women are increasingly seen as a violation of women's rights.

However, gender-based approach still lacks data collection and criminological analysis of female homicide and suicide. The absence of a gender perspective in this fields, as well as the lack of collection of vital information, make more difficult to promote the development of gender-based strategies for prevention of femicide and to protect every single women who survived to IPV.

36. As to Italy, there is still too much confusion, at a national level, on the causes of femicide and other forms of male VAW, as well as on risk factors.

It is unquestionable that femicide is the ultimate expression of a more general inequality between man and women still persisting in contemporary Europe.

37. Still too frequently, instead, some elements that are in fact risk factors relating to gender violence, and in particular to IPV — e.g. 'honour', homicidal *raptus*, jealousy, men's unemployment —, are described as the motives for the crime. This attitude results in the total suppression of the gender dimension, strongly emerging instead from statistics and surveys.

⁵³ DAWSON, M. (2005), "Intimate Femicide Followed by Suicide: Examining the Role of Premeditation", in *Suicide and Life-Threatening Behaviour*, n.35, pp.76-90.

⁵⁴ FELTHOUS, A.R., and HEMPEL, A.G. (1995), "Combined homicides-suicides: a review", in *Journal of Forensic Sciences*, 1995, pp.481-497, quoted by: MERZAGORA, I., PLEUTERI, L., "Il femicidio. Vittime di omicidio di genere femminile a Milano e provincia negli anni 1990/2002", in *Rassegna italiana di criminologia*, Giuffrè, Milan, Italy, year XV, nn.3-4, p.435.

⁵⁵ See for example the most important DAPHNE project on this issue: "Protect: Good practice in preventing serious violence, attempted homicides, including crimes in the name of honour, and in protecting high risk victims of gender based violence" and "Protect II: Capacity Building in Risk Assessment and Safety Management to Protect High-Risk Victims". The two projects are aimed to assisting CEDAW member States in the implementation of their obligation to protect the victims, and include: a research on the availability of the data concerning homicides, attempted homicides and other grave gender-based offences in the involved Countries; the exploration of national standards for the protection of high risk victims; a review of homicide risk assessment instruments; training for social and health workers, with specific training for women educators; and drawing up an handbook for the practical implementation of the acquired competence, strengthening the effectiveness of protection networks.

38. Therefore, it is crucial to develop adequate strategies that reflect the current cultural change by adopting a gender-sensitive approach to collection and interpretation of the data relating to crimes against women.

b. Femicide: the femicide as a result of other forms of gender-based VAW

39. Femicide often is the result of other forms of gender violence that women experienced in her life. So, we can say that the majority of femicides are feminicides.

40. Most feminicides (70%) are the extreme consequence of IPV or other forms of domestic violence: statistics and surveys clearly document that very often the murder of a woman can be considered the consequence of a *continuum* of existing violence inflicted by a partner or ex partner, or other relatives.

41. At a remarkably lower rate, feminicides are a consequence of sexual exploitation of women or follow mobbing or sexual harassment on the workplace.

For example, Italy saw a doubling in the femicides of non-Italian women forced to prostitution perpetrated by their customers and exploiters (from 2% in 2006 to 4% in 2010).⁵⁶

i. Femicide as a result of IPV

42. Researches show that intimate femicides are in most cases intimate feminicides: out of 10 women killed by their (former) partner, 7-8 had already been facing other forms of violence by those men before being killed.⁵⁷ All around the world the most common form of female homicide is intimate partner femicide (IPF).⁵⁸

43. The Daphne Project 2007-2013 included a research on IPV-related mortality in Europe (EU27).⁵⁹ The outcomes are alarming: in Europe there are approximately 3.500 IPV-related deaths every year, making for 9 deaths a day, of whom 7 are women and girls.

⁵⁶ ADOLFI, L., GIUSTI, S., BREVEGLIERI, A., OTTAVIANI, E., KARADOLE, C., VENNERI, V., VERUCCI, C., with PRAMSTRAHLER A. (2011), *Il costo di essere donna. Indagine sul femicidio in Italia. I dati del 2010*, March 2011 (http://www.casadonne.it/cms/images/pdf/pubblicazioni/materiali/femminicidio_2010.pdf)

⁵⁷ CAMPBELL, J.C., WEBSTER, D., KOZIOL-McLAIN, J., BLOCK, C., CAMPBELL, D., CURRY, M.A., GARY, F., GLASS, N., McFARLANE, J., SACHS, C., SHARPS, P., ULRICH, Y., WILT, S.A., MANGANELLO, J., XU, X., SCHOLLENBERGER, J., FRYE, V., and LAUGHTON, K. (2003), "Risk factors for femicide in abusive relationships: Results from a multisite case control study", in *American Journal of Public Health*, n.93, pp.1089-1097.

⁵⁸ CAMPBELL, J.C., WEBSTER, D.W. and GLASS, N. (2009), "The Danger Assessment: Validation of a Lethality Risk Assessment Instrument for Intimate Partner Femicide", in *Journal of Interpersonal Violence*, n.24, 4, pp.653-674; DIXON, L., HAMILTON-GIACHRITSIS, C. and BROWNE, K. (2008), "Classifying Partner Femicide", in *Journal of Interpersonal Violence*, n.23, 1, pp.74-90; DOBASH, E., DOBASH, R. (1998), *Rethinking violence against women*, SAGE Publication, London; GLASS, N., LAUGHON, K., RUTTO, C., BEVACQUA, J. and CAMPBELL, J.C. (2008), "Young Adult Intimate Partner Femicide: An Exploratory Study", in *Homicide Studies*, n.12, 2, pp.177-187; McFARLANE, J. M., CAMPBELL, J.C., WILT, S., SACHS, J., ULRICH, Y. and XIAO, X. (1999), "Stalking and Intimate Partner Femicide", in *Homicide Studies*, n.3, 4, pp.300-316; WILSON, M., DALY, M. (1998), "Sexual rivalry and sexual conflict: recurring themes in fatal conflicts", in *Theoretical Criminology*, n.2, 3, pp.291-310.

⁵⁹ PROJECT DAPHNE, *op.cit.* The research uses official data from national countries and from international sources (Eurostat, WHO, UNODC-HEUNI, Interpol).

According to the research, in 2006 there has been a total of 3.413 IPV-related deaths in the EU27, of whom 2.419 are female deaths: 1.409 direct femicides by a partner, 1.010 suicides of women who were victims of IPV, 272 male homicides by a partner, 186 collateral homicides, 536 suicides of male IPV-related homicide perpetrators.

Direct femicides represent less than half (41%) of the total mortality linked to IPV. Yet it is women who are the most frequent victims of this extreme form of violence (71% of victims: direct femicides + female suicides), as well as children, as they are the most affected by collateral homicides.⁶⁰

44. A recent Italian fatality review study (Anna Baldry, EU Daphne Project) confirms that up to 70% of all cases had a history of violence.

45. It is well known that a history of physical abuse is the primary risk factor for intimate partner femicide (other recognizedly important risk factors for severe or lethal violence are: jealousy, physical or economic limitations, and social isolation), but Campbell's researches proved that a great part of femicide victims who do not have a history of physical abuse may still have experienced other forms of intimate partner abuse such as controlling behaviour.⁶¹ Common controlling behaviours are also present in relationships that are not otherwise abusive, and are an important femicide risk factor, generally underestimated by victims and — which is most grave — by social/health workers and law enforcement officials.

ii. Women's suicide as a result of IPV

46. According to the Daphne research,⁶² some female suicides amount to femicides. According to this research, in 2006 Europe (EU27) recorded 1.010 suicides of women victims of IPV. However, the current dates on female suicide in Europe are insufficient, and are seldom compared with those concerning the family and work situation of the victim.

47. The World Health Organization (WHO)⁶³ highlights that the factors that increase the risk of suicide in women include exposure to childhood sexual abuse and IPV and that gender differences in social roles may also play a part in suicidal behaviour. Many studies acknowledge the fact that women facing spousal violence try to kill themselves 5 to 10 times more frequently than women who do not suffer such violence.

⁶⁰ The research also indicates that there is no significant statistical link between Gross Domestic Product and mortality numbers linked to IPV, but there is a very significant statistical link between the Human Development Index and the mortality numbers linked to IPV (negative correlation).

⁶¹ NICOLAIDIS, C., CURRY, M.A., ULRICH, Y., SHARPS, P., McFARLANE, J., CAMPBELL, D., GARY, F., LAUGHON, K., GLASS, N., and CAMPBELL, J. (2003), "Could We Have Known? A Qualitative Analysis of Data from Women Who Survived an Attempted Homicide by an Intimate Partner", in *Journal of General Internal Medicine*, Vol.18, October 2003, pp.792.

⁶² NICOLAIDIS, CURRY, ULRICH, SHARPS, McFARLANE, CAMPBELL, GARY, LAUGHON, GLASS and CAMPBELL (2003), *op.cit.*

⁶³ WHO, *Women and health : today's evidence tomorrow's agenda*, 2009, pp.53-54 (http://whqlibdoc.who.int/publications/2009/9789241563857_eng.pdf).

48. Suicide has its roots in a variety of factors, but numerous researches show the existence of a clear causal connection between domestic violence and female suicides. For example, the 1995 Stark and Flitcraft research,⁶⁴ highlighting the close proximity of domestic violence and female attempted suicides, concludes that domestic violence could be the single most important cause of women committing suicide. In the UK suicide attempts follow soon after a hospital visit for treatment of injuries caused by domestic violence (within 6 months for 67% and the same day for 37%). It might be reasonable to assume that, for those 37% at least, domestic violence was in fact the primary cause.⁶⁵

According to Sylvia Walby,⁶⁶ each year 188 women's suicides⁶⁷ in UK can be linked to domestic violence. A meta-analysis of 18 studies of the relationship between domestic violence and mental health problems (Golding 1999) found average rate of suicidality amongst battered women of 18%.⁶⁸

49. Data collection on suicide should therefore carefully consider the gender dimension and family relationships, especially through *post-mortem* analysis, such as are becoming customary in Anglo-Saxon countries, that also take into account social and psychological respects.

V. RISK FACTORS FOR INTIMATE PARTNER FEMINICIDE IN EU COUNTRIES⁶⁹

50. In principle, any woman is liable to suffer violence or discrimination merely for being a woman. In addition, any woman is liable to be abused (physically, psychologically, sexually, financially) by her partner or ex partner merely for not being 'his' wife anymore.

Risk factors for intimate femicide are circumstances whose presence increases the probability that a woman abused will be killed or will face a murder attempt by her by her partner or ex partner.

In the paragraph V.a there is a list of risk assessment methods to identify risk factors in IPF most tested in Europe.

In the paragraph V.b there is also the list of primary risk factors as set out in the most important studies on this issue.⁷⁰

⁶⁴ STARK, E., and FLITCRAFT, A. (1995), "Killing the beast within; woman battery and female suicidality", in *International Journal of Health Science*, n.25, 1, S.43-64.

⁶⁵ Quoted in WALBY, S. (2004), *The cost of domestic violence*, Department of Trade and Industry Women and Equality Unit, London, 2004, p.56 (http://www.devon.gov.uk/de/text/cost_of_dv_report_sept04.pdf).

⁶⁶ WALBY (2004), *op.cit.*, p.56.

⁶⁷ There were 5,986 deaths from suicide in 2000 in the UK, of which 25%, that is 1,497, were by women. Among these, an estimated 34%, that is, around 509 suicides were committed by women who have experienced domestic violence. Of these, it is estimated that at least 37% were caused by domestic violence, that is, around 188.

⁶⁸ WALBY (2004), *op.cit.*, p.54.

⁶⁹ For this suggested classification of risk factors, see: WATT, K.A. (2008), "Understanding risk factors for intimate partner femicide: The Role of Domestic Violence Fatality Review Teams", in WINKEL, F.W. (ed.), *Intimate partner violence prevention and intervention: the risk assessment and management approach*, Nova Science Publishers, New York 2008.

⁷⁰ For a more thorough analysis on the relevance of each risk factor, see: WATT (2008), *op.cit.*

For most these factors it is impossible to provide EU-level comparative statistics and surveys, because of the inadequate data collection.

a. IPV and IPF risk assessment instruments⁷¹

METHOD	DESCRIPTION	ADMINISTRATION	PRIMARY INTENDED USE
DANGER ASSESSMENT (DA) (CAMPBELL, 1986, 1995, 2003)	REVIEW OF PAST YEAR WITH A CALENDAR TO DOCUMENT SEVERITY AND FREQUENCY OF BATTERING AND 20 YES/NO QUESTIONS ABOUT RISK FACTORS. SCORING: 3–40 & FOUR RISK CATEGORIES (VARIABLE, INCREASED, SEVERE & EXTREME DANGER)	INTERVIEW WITH THE VICTIM, USUALLY BY VICTIM ADVOCATE. FILLING OUT THE CALENDAR, ALSO WITH A VICTIM ADVOCATE.	ASSESSING THE RISK OF EXTREME DANGEROUSNESS AND LETHAL VIOLENCE FOR VICTIM EDUCATION, AWARENESS, SAFETY PLANNING AND SERVICE PROVISION.
BRIEF RISK ASSESSMENT FOR THE EMERGENCY DEPARTMENT (SNIDER, WEBSTER, O’SULLIVAN & CAMPBELL, 2009)	SHORTENED VERSION OF DA THAT CONSISTS OF 5 QUESTIONS. A POSITIVE ANSWER TO ANY THREE QUESTIONS HAS SENSITIVITY FOR HIGH RISK OF SEVERE ASSAULT OF 83%.	INTERVIEW WITH THE VICTIM BY EMERGENCY DEPARTMENT HEALTH CARE PROVIDER.	INSTRUMENT DEVELOPED FOR EMERGENCY DEPARTMENTS TO IDENTIFY VICTIMS AT HIGHEST RISK FOR SUFFERING SEVERE INJURY OR POTENTIALLY LETHAL

⁷¹ WAVE Network, PROJECT PROTECT (2011), *Identifying and Protecting High Risk Victims of Gender Based Violence - an Overview*, 2nd revised edition, Vienna, 2011, pp.11-13 (<http://www.wave-network.org/start.asp?ID=23494&b=15>).

			ASSAULT.
DV-MOSAIC (GAVIN DE BECKER & ASSOCIATES, 2001)	COMPUTER-ASSISTED METHOD THAT INCLUDES 46 MULTIPLE RESPONSE ITEMS ABOUT RISK AND PROTECTIVE FACTORS. SCORING: PROGRAM COMPUTES RISK SCORE OF 1–10 AND A MISSING DATA (IQ) SCORE	CRIMINAL JUSTICE PROFESSIONAL ENTERS RESPONSES AFTER VICTIM, PERHAPS OFFENDER AND OTHER INTERVIEWS; REVIEWS OF CRIMINAL RECORDS AND POLICE REPORTS	ASSESSING IMMEDIATE, SHORT-TERM THREAT OF SEVERE OR LETHAL DOMESTIC VIOLENCE SITUATIONS FOR VICTIM AWARENESS, SAFETY PLANNING, FURTHER INVESTIGATION, AND CRIMINAL JUSTICE RESPONSES
SPOUSAL ASSAULT RISK ASSESSMENT (SARA) (KROPP, HART, WEBSTER & EAVES, 1994, 1995, 1998)	20 QUESTIONS DIVIDED IN 4 GROUPS, WITH 4 DIFFERENT SCORING APPROACHES INCLUDING A 0–2 ASSESSMENT OF AS WELL AS ABSOLUTE PRESENCE OF EACH OF THE 20 RISK FACTORS + SPACE FOR THE EVALUATOR TO ADD ‘OTHER CONSIDERATION’ WHICH CAN BE ALSO COUNTED.	EVALUATOR SHOULD USE AS MANY SOURCES OF INFORMATION AS POSSIBLE, INCLUDING VICTIM AND PERPETRATOR INTERVIEWS, ADDITIONAL CRIMINAL JUSTICE RECORDS AND AVAILABLE STANDARDISED INSTRUMENTS	DESIGNED TO ASSESS RISK OF REOFFENDING IN THE CRIMINAL JUSTICE SYSTEM, IT IS RECOMMENDED FOR USE AS A PART OF AN INDEPTH ASSESSMENT FOR JUDICIAL AND PROBATIONARY DECISIONS.
BRIEF SPOUSAL ASSAULT	SHORTENED	AFTER	SHORTENED,

<p>FORM FOR THE EVALUATION OF RISK (B-SAFER) (KROPP, 2008, BELFRAGE, 2008)</p>	<p>VERSION OF SARA COMPRISING 10 RISK FACTORS DIVIDED INTO TWO SECTIONS. THE FIRST SECTION, SPOUSAL ASSAULT, CONTAINS 5 FACTORS RELATED TO THE PERPETRATOR'S HISTORY OF SPOUSAL VIOLENCE, THE SECOND SECTION, PSYCHOLOGICAL ADJUSTMENT, CONTAINS 5 FACTORS RELATED TO THE PERPETRATOR'S HISTORY OF PSYCHOLOGICAL AND SOCIAL FUNCTIONING. THE SUMMARY RISK RATING HAS TO BE DONE 3-DIMENSIONALLY (LOW, MODERATE OR HIGH RISK).</p>	<p>CONSIDERING THE 10 RISK FACTORS, THE EVALUATOR SHOULD PROVIDE A JUDGMENT OF RISK LEVEL AND RECOMMENDATION FOR MANAGING THAT RISK. THERE IS A 'DEFINITION OF RISK FACTORS' AS WELL AS SEMI-STRUCTURED INTERVIEW FOR VICTIMS AND RECOMMENDED RISK MANAGEMENT STRATEGIES SECTION.</p>	<p>SIMPLIFIED AND REVISED VERSION OF SARA DESIGNED FOR USE BY POLICE, THEREFORE OMITTS THE ASSESSMENT OF THE MENTAL HEALTH OF THE PERPETRATOR. 3-DIMENSIONAL RISK RATING ALLOWS NOT ONLY ASSESSMENT RISK FOR RECIDIVISM, BUT ALSO FOR SEVERITY OF A POSSIBLE RELAPSE. WINKEL (2008) SUGGESTS THAT IN A VICTIM SUPPORT CONTEXT, B-SAFER MAY ALSO SERVE AS A TOOL TO RAISE REVICTIMISATION AWARENESS AND FACILITATE PREVENTIVE BEHAVIOUR.</p>
<p>DOMESTIC VIOLENCE INVENTORY – RISK AND NEEDS ASSESSMENT (DVI)</p>	<p>QUESTIONNAIRE TAKES 30–35 MINUTES TO</p>	<p>QUESTIONNAIRE IS STRUCTURED TO BE</p>	<p>DESIGNED NOT ONLY TO ASSESS RISK OF</p>

(WWW.RISKANDNEEDS.COM)	COMPLETE. THERE ARE SEVEN SCALES INCLUDING ONE FOR TRUTHFULNESS, ALCOHOL AND DRUG ABUSE SCALES, VIOLENCE POTENTIAL AND TREATMENT NEEDS. THE SCORES ARE DIVIDED INTO CATEGORIES OF LOW, MEDIUM, PROBLEM AND SEVERE RISK.	COMPLETED BY THE PERPETRATOR.	RE-ASSAULT BUT ALSO TO ASSESS TREATMENT NEEDS
KINGSTON SCREENING INSTRUMENT FOR DOMESTIC VIOLENCE (K-SID) (GELLES, 1998)	10 QUESTIONS ABOUT RISK FACTORS, EACH WITH 2 TO 3 RESPONSE CATEGORIES, AND AN OFFENDER'S POVERTY STATUS SCALE. SCORING: RISK SCORES OF 0 TO 10 AND FOUR RISK CATEGORIES (LOW, MODERATE, HIGH, OR VERY HIGH).	OFFENDER AND VICTIM INTERVIEWS AND REVIEW OF POLICE REPORTS BY PROBATION OR OTHER COURT OFFICER.	ASSESSING THE RISK OF RECIDIVISM/RE-ASSAULT FOR OFFENDER CHARGING AND SUPERVISION DECISIONS, SET CONDITIONS FOR RELEASE, PROBATION, AND PROTECTIVE ORDERS.
KINGSTON SCREENING	10 QUESTIONS	OFFENDER AND	ASSESSING THE

<p>INSTRUMENT FOR DOMESTIC VIOLENCE (K-SID) (GELLES, 1998)</p>	<p>ABOUT RISK FACTORS, EACH WITH 2 TO 3 RESPONSE CATEGORIES, AND AN OFFENDER'S POVERTY STATUS SCALE. SCORING: RISK SCORES OF 0 TO 10 AND FOUR RISK CATEGORIES (LOW, MODERATE, HIGH, OR VERY HIGH).</p>	<p>VICTIM INTERVIEWS AND REVIEW OF POLICE REPORTS BY PROBATION OR OTHER COURT OFFICER.</p>	<p>RISK OF RECIDIVISM/RE-ASSAULT FOR OFFENDER CHARGING AND SUPERVISION DECISIONS, SET CONDITIONS FOR RELEASE, PROBATION, AND PROTECTIVE ORDERS.</p>
<p>DOMESTIC VIOLENCE SCREENING INSTRUMENT (DVSI) (WILLIAMS & HOUGHTON, 2004)</p>	<p>12 QUESTIONS TO BE GIVEN 0-3 POINTS, PRIMARILY RELATED TO OFFENDER'S CRIMINAL HISTORY, EMPLOYMENT, & SEVERAL OTHER RISK FACTORS. SCORING: RISK SCORE 0-30, AND TWO RISK CATEGORIES (NOT HIGH RISK & HIGH RISK).</p>	<p>PROBATION OR OTHER COURT OFFICER COMPLETES INSTRUMENT BASED ON OFFENDER'S CRIMINAL RECORD AND INTERVIEW.</p>	<p>ASSESSING THE RISK OF RECIDIVISM/RE-ASSAULT FOR SUPERVISION, PROBATION/PAROLE, AND OTHER OFFENDER RELATED DECISIONS.</p>
<p>ONTARIO DOMESTIC ASSAULT RISK ASSESSMENT (ODARA)</p>	<p>CONTAINS 13 EMPIRICALLY SELECTED ITEMS, SOME</p>	<p>PREDICTS RECIDIVISM USING ONLY VARIABLES READILY</p>	<p>ACTUARIAL RISK ASSESSMENT FOR WIFE ASSAULT</p>

<p>HILTON, HARRIS, RICE, HOUGHTON, EKE (2008)</p>	<p>APPARENTLY SPECIFIC TO DOMESTIC RELATIONSHIPS AND SEVERAL AIMED TO THE RISK OF ANTISOCIAL BEHAVIOUR IN GENERAL.</p>	<p>OBTAINED BY FRONTLINE POLICE OFFICERS.</p>	<p>RECIDIVISM. ORIGINALLY INTENDED FOR USE BY POLICE OFFICERS, THEREFORE ONLY INFORMATION ‘ROUTINELY AVAILABLE IN THE FIELD’ WAS CONSIDERED FOR INCLUSION.</p>
<p>DOMESTIC VIOLENCE RISK APPRAISAL GUIDE (DVRAG) HILTON, HARRIS, RICE, HOUGHTON, EKE (2008)</p>	<p>THE 14-ITEM DVRAG COMPRISES THE ORIGINAL ODARA ITEMS, COMBINED WITH THE HARE PSYCHOPATHY CHECKLIST (PCL-R), WHICH BEST IMPROVED PREDICTION OF RECIDIVISM, OCCURRENCE, FREQUENCY, SEVERITY, INJURY AND CHARGES.</p>	<p>FOR EXAMPLE, A POLICE OFFICER CAN SCORE THE ODARA IN TIME FOR A BAIL DECISION AND A FORENSIC CLINICIAN OR PROBATION OFFICER CAN SUBSEQUENTLY SCORE THE DVRAG TO PROVIDE AN IMPROVED ASSESSMENT TO AID SENTENCING, SUPERVISION, AND TREATMENT DECISIONS.</p>	<p>PREDICTS WIFE ASSAULT RECIDIVISM AND ITS SEVERITY. TOGETHER, THE ODARA AND DVRAG REPRESENT NOT A PROLIFERATION OF INSTRUMENTS BUT A COHERENT SYSTEM OF RISK ASSESSMENT.</p>
<p>SEVERE INTIMATE PARTNER VIOLENCE RISK PREDICTION SCALE (SIVIPA S) (ECHEBURUA, FERNANDEZ-</p>	<p>QUESTIONNAIRE CONSISTS OF 20 QUESTIONS, DIVIDED INTO 5 GROUPS (PERSONAL</p>		<p>PREDICT INTIMATE PARTNER HOMICIDE AND SEVERE VIOLENCE.</p>

<p>MONTALVO, DE CORRAL, LOPEZ-GONI, 2009)</p>	<p>DATA*, COUPLE RELATIONSHIPS STATUS, TYPE OF VIOLENCE, MALE BATTERER'S PROFILE, VICTIM'S VULNERABILITY). SCORING: QUESTIONS ARE GIVEN 0 OR 1 POINT. THERE ARE 3 RISK CATEGORIES FOR SEVERE VIOLENCE – LOW, MODERATE AND HIGH.</p>		
<p>VICTIM ASSESSMENT OF RISK (GOODMAN, DUTTON 2000; HECKERT & GONDOLF, 2004; WEISZ, TOLMAN, SAUNDERS 2000)</p>	<p>2 QUESTIONS ABOUT VICTIM'S PERCEPTION OF THE LIKELIHOOD THAT SHE WILL BE PHYSICALLY ASSAULTED OR SERIOUSLY HURT BY ABUSER IN THE NEXT YEAR. SCORING: VICTIM RATES LIKELIHOOD ON A SCALE OF</p>		
<p>AID TO SAFETY ASSESSMENT PLANNING (ASAP) (MILLAR, 2009)</p>	<p>THE ASAP MANUAL INCORPORATES ITEMS FROM SARA AND B-SAFER</p>	<p>INTERVIEW WITH THE VICTIM, USUALLY BY VICTIM SERVICE WORKERS.</p>	<p>THE OBJECTIVE OF THIS MANUAL IS TO REDUCE THE RISK OF VIOLENCE BY</p>

	<p>AND INCLUDES 11 ABUSER FACTORS IDENTIFYING THE ABUSER'S ACTIONS THAT INCREASE A WOMAN'S RISK OF BEING ABUSED OR DECREASE THE LEVEL OF SAFETY. IT ALSO INCLUDES 12 SAFETY SUPPORT FACTORS THAT OUTLINE WHAT THE VICTIM NEEDS TO ENSURE THE BEST POSSIBLE SAFETY PLAN.</p>		<p>PROVIDING A COMPREHENSIVE AND COORDINATED SAFETY MANAGEMENT STRATEGY, DESIGNED FOR USE BY VICTIM SERVICE WORKERS IN COOPERATION WITH OTHER RELEVANT JUSTICE AGENCIES TO SUPPORT WOMEN IN MAKING SAFETY ASSESSMENT DECISIONS.</p>
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The list of risk assessment instruments presented in the table above is not comprehensive. There is a wide range of different checklists, protocols, projects and other risk assessment instruments, e.g. Navy Risk and Safety Assessment, Domestic Violence Risk Assessment Form, Lethality Checklist and Physical Abuse Scale, Risk Assessment and Lethality Assessment, Domestic Violence Supplementary Report Form (DVSRF), Family Violence Investigation Report (FVIR), Family Violence Risk Factor Checklist etc.

BEST PRACTICE IN IPF RISK ASSESSMENT
UK Multi-Agency Risk Assessment Conferences (MARACs)⁷²

The Multi-Agency Risk Assessment Conferences (MARACs) are voluntary meetings where local authorities dealing with domestic violence cases are present. These meetings provide a forum for sharing information on the highest risk cases and taking actions that will reduce future harm to the most endangered victims and their children (Robinson, 2004).

⁷² WAVE, PROJECT PROTECT (2011), *op.cit.*, pp.17-18.

By bringing all agencies involved in a case together to share information, a coordinated safety plan can be built up more quickly and effectively (CAADA, 2010).

How it works

High risk victims are referred to the MARACs usually by the police, but any participating agency could bring a case to the MARACs meeting. During a MARAC meeting, usually about 20 cases of high risk victims are discussed. High risk cases which will be referred to at the meeting are gathered on a list circulated by police in advance, so all participating agencies can check the list against their own agency's record before attending the MARAC to collate all the evidence available for the victims, perpetrators and the children.

After information sharing, the specific action plan is agreed on and assigned to particular agencies to carry out.

All agencies update their own files to reflect information shared and action taken at the MARAC (Robinson, 2006).

Implementation

There are impressive results indicating that MARACs are successful at improving the safety of victims, since most victims are experiencing less violence after their referral to MARACs (Robinson, 2006). According to the police data, 97 of 146 women experienced no further incidents of violence or abuse. The majority of the victims in the sample of this study had no complaints (62%) or police calls (78%) on record 1 to 6 months after the initial incident. This success of MARACs is supported also by CAADA (2010) data, which confirm that at an average of six months after the MARAC meeting, circa 60% of the victims had not reported a repeat incidence of violence, threats of violence, sexual abuse, stalking or harassment.

b. RELATIONSHIP-RELATED FACTORS

i. Separation

51. Unfortunately, not all countries collect data on women killed while in the process of getting separated.

Where statistics are available, data show that 40,46% of partner femicides on average took place when victims were in process of getting separated from offenders,⁷³

⁷³ WAVE, PROJECT PROTECT (2011), *op.cit.*; ALDRIDGE, M.L., and BROWNE, K.D. (2003), "Perpetrators of spousal homicide: A review", in *Trauma, Violence, and Abuse*, n.4, pp.265-276; DALY, M., WISEMAN, K.A., WILSON, M.I. (1997), "Women with children sired by previous partners incur excess risk of uxoricide", in *Homicide Studies*, n.1, pp.61-71; BELFRAGE, H., and RYING, M. (2004), "Characteristics of spousal homicide perpetrators: A study of all cases of spousal homicide in Sweden 1990-1999", in *Criminal Behaviour and Mental Health*, n.14, pp.121-133; BLOCK, C.R. (2003), "How can practitioners help an abused woman reduce her risk of death?", in

52. Researches⁷⁴ and the experience of lawyers and associations which assist victims indicate that the period during which a woman separates from her partner (when she announces the separation, after the judicial separation, during the post-separation visits) appears to be the most dangerous time. It also appears that the deadly act is not an isolated experience, as it is often preceded by a number of other violent acts which may not be necessarily made known via the justice system (complaints, charges filed or sentencing). Femicide is the outcome of a violent masculine process which one did not know about or did not want to listen to.⁷⁵ According to some theories, the use of violence may escalate when a woman leaves her partner because separation would be a direct challenge to male partners who believe they “own” their female partners.⁷⁶

53. Assessing the risk level of separation is also connected to child contact, which can provide the opportunity for violence to continue or escalate.⁷⁷ Research from the U.K. shows that after separation more than 75% of women from the sample suffered further abuse and harassment from their ex partners and that child contacts was a point of particular vulnerability for both women and children.⁷⁸

ii. Marital status

54. Researches indicate that, with respect to married women, women in common law relationships are at greater risk for violence.⁷⁹

iii. Stalking and controlling behaviour

55. Researches shows that more than 75% of women, have been experiencing stalking by their murderer during 12 months before femicide.⁸⁰

In particular, the types of stalkers who are believed to be the most dangerous⁸¹ include former partners, insistent and obsessive stalkers, and stalkers with sadistic tendencies.

National Institute of Justice, n.250, pp.4-7; DOBASH, R.E., and DOBASH R.P. (1994), “Men, Masculinity and Violence Against Women”, in STANKO, E., (ed.), *Perspectives on Violence*, Quartet Books, London, 1994.

⁷⁴ STOUT, K.D. (1993), “Intimate Femicide: A Study of Men Who Have Killed Their Mates”, in *Journal of Offender Rehabilitation*, vol.19, issues 3-4, pp.81-94 (http://www.tandfonline.com/doi/abs/10.1300/J076v19n03_05); WILSON, M., DALY, M. and WRIGHT, C. (1993), “Uxoricide in Canada: Demographic risk patterns”, in *Canadian Journal of Criminology/Revue canadienne de criminologie*, vol.35, issue 3, pp.263-292.

⁷⁵ PROJECT DAPHNE (2010), *op.cit.*, Synthesis of the scientific report, p.6.

⁷⁶ SERRAN, G., and FIRESTONE, P. (2004), “Intimate partner homicide: a review of the male proprietariness and the self-defense theories”, in *Aggression and Violent Behaviour*, n.9, pp.1-15, quoted by WATT (2008), *op.cit.*, p.48.

⁷⁷ ROMITO, P. (2005), *Un silenzio assordante. La violenza occultata su donne e minori*, Franco Angeli, Milan, Italy; ROMITO, P. (ed.) (2000), *Violenze alle donne e risposte delle istituzioni. Prospettive internazionali*, Franco Angeli, Milan, Italy.

⁷⁸ HUMPHREYS, C., THIARA, R. (2003), “Mental Health and Domestic Violence: ‘I call it symptoms of abuse’”, *British Journal of Social Work*, n.33, pp.209-226, quoted in DAPHNE, PROJECT PROTECT, *cit.* (see footnote 56), p.10.

⁷⁹ WATT (2008), *op.cit.*, p.50.

⁸⁰ McFARLANE, J.M., CAMPBELL, J.C., WILT, S., SACHS, J., ULRICH, Y. and XIAO, X. (1999), “Stalking and Intimate Partner Femicide”, in *Homicide Studies*, vol.3, issue 4, pp.300-316.

⁸¹ BOON, J., and SHERIDAN, L. (eds.) (2002), *Stalking and Sexual Obsession: Psychological Perspectives for Prevention, Policing and Treatment*, John Wiley and Sons, Hoboken, USA.

iv. Children and pregnancy

56. A nation-wide Spanish study shows that in 2008 children were present in at least 11,84% of the IPF.⁸² Studies from Spain and Finland show that in 40% of couples with IPV against the woman, children had been witnesses to that violence. In Ireland the average is higher: 64%. A person who witnessed such kind of violence as a child is very likely to develop psychological distress and behavioural problems, and even to become an abuser, as an adult.

57. IPV during pregnancy is also linked with femicide.⁸³ Researches shows that women victims who experience violence during pregnancy may be more likely to be in a current intimate relationship with an abuser who inflicts repeated and severe IPV, so for them the IPF risk is higher.⁸⁴

c. COMMUNITY-RELATED FACTORS

58. Victims and perpetrators often seek help from community resources prior to IPF. Ensuring adequate response can be crucial in preventing femicide.

i. Problems with response of social support network

59. In most IPF cases, threats to kill the victim had often been communicated to others (family members, friends, co-workers, priests, neighbors) before the homicide. However, in many cases those who were aware that something was wrong either did nothing to intervene or provided assistance that was inadequate to prevent the IPF episode.⁸⁵

ii. Problems with availability of community resources

60. Local services may be inadequate or unavailable because of government cutbacks causing inadequate funding or staffing for services. Some researches associate reductions in welfare payments with an increase of IPF.⁸⁶ This findings suggest that governments cutbacks may limit the opportunities for women to live independent from their abusers.⁸⁷

iii. Problems with accessibility of community resources

61. Many women may face problems accessing shelters because of the scarcity of such facilities and distance from the place where women live.

Vulnerable categories such as disabled women and migrant women may face problems accessing adequate community resources. Poor women may face problems because of the costs of services.

⁸² ESPLUGUES, MARMOLEJO, ESTEVE and SÁNCHEZ (2010), *op.cit.*, p.43.

⁸³ CAMPBELL 2001-2003

⁸⁴ BROWNRIDGE, D.A., TAILLIEU, T., TYLER, K., TIWARI, A., CHAN, K.L., and SANTOS, S.C. (2011), "Pregnancy and Intimate Partner Violence: Risk Factors, Severity, and Health Effects", in *Violence Against Women*, July 2011, n.17, pp.858-881; CAMPBELL, J.C., GARCÍA-MORENO, C., and SHARPS, P. (2004), "Abuse During Pregnancy in Industrialized and Developing Countries", in *Violence Against Women*, July 2004, n.10, pp.770-789.

⁸⁵ ABRAMS, M.L., BELKAP, J., and MELTON, H. (2000), *When domestic violence kills: The formation and findings of the Denver metro domestic violence fatality review team*, Project Safeguard, Denver, Colorado, USA.

⁸⁶ DUGAN,L., NAGIN, D.S., and ROSENFELD, R. (2003), "Do Domestic Violence Services Save Lives?", *National Institute of Justice Journal*, iss.250.

⁸⁷ *Ibidem*.

iv. Problems with appropriateness of community resources

62. A lack of knowledge about IPV shown by the community resources contacted by perpetrators or victims, may unintentionally increase the risk of IPV .

v. Problems with coordination of community resources

63. Even at a simple glance at the news, it appears clearly how one major obstacle in preventing femicide is the lack of communication between the various agencies involved in domestic violence cases.

Research identifies the main reason for this problem in the fact that criminal justice agencies often do not have access to all the much needed pieces of information regarding the criminal records and personal protection order records of abusers.⁸⁸

The same problem was reported by NGOs that in 2011 submitted CEDAW Committee the Shadow report on the implementation of the Convention in Italy. NGOs denounced that the protection of victims of gender violence in Italy is very often inadequate because of the failure to collect information on their level of victimisation.

For example, if a victim moves away and the stalker follows her, the warning act or the claim she got against him in the place where she lived before moving is not reported automatically to the other local police stations. Giuristi Democratici, an Italian lawyers NGO, has been championing some of the predisposition of a database which collects together and combines all the reports by victims of harassments and crimes constituting forms of gender violence or violence based on sexual orientation from all law enforcement agencies. A database structures in such a way, with all the guarantees of privacy for the assumed perpetrators and reporting victims, which has no significance in terms of previous convictions, but which collects together all the crimes committed in a specific time period of five years, would enable the investigating authorities to identify the cases of stalking or even the cases, which are actually widespread, in which the victim has not reported less serious acts to other law enforcement agencies, or simply omits to include other claim of harassments they have been the victims of, the seriousness of which escapes the person in question. The database would also undoubtedly be used as an instrument for protecting the assumed perpetrator, to deal with the ever increasing 'claiming mania' which led many ex-partners to maliciously submit claims upon report for irrelevant episodes not involving materially discriminating or otherwise offensive conduct. In any case, it is believed that the this would be the best method to ensure that the law enforcement agencies monitor situations which, following claim upon claim, risk becoming cases of female homicide. It is favourably noted that the proposal for the creation of a database has been acknowledged in the national violence prevention plan, in point 4), but it is not clear whether the collection of disaggregated data has begun and how this is to be carried out.⁸⁹

⁸⁸ WATT (2008), *op.cit.*, p.52.

⁸⁹ SPINELLI, B., Italian NGO Platform "30 YEARS CEDAW: WORK IN PROGRESS" (2011), *Shadow Report with reference to the 6th periodic report on the implementation of the CEDAW Convention submitted by the Italian Government in 2009*, Italy, July 2011.

vi. Media misrepresentation of femicide

64. The lack of data and the sensationalized media coverage about cases might allow the spreading of misinformation and myths about IPV and femicide.

65. Femicide risk factors are very frequently and improperly depicted as motives — ‘fits of homicidal mania’, ‘honour’ or ‘passion’ killings, in which the perpetrator is represented as a ‘victim’ of his own feelings, of ‘too much love’. If suicide follows the femicide, both assailant and victim are equally victimized.

This distorted media representation of femicide, attempted femicide and IPV cases, as well as the lack of dissemination of relevant statistics, brings about the cultural strengthening of VAW stereotypes and makes the public opinion incapable to fully understand how this kind of violence is ‘normal’ and pervasive.

66. On the opposite, if the media clearly stigmatize the stereotypical visions of gender roles within relationships, which are the root cause of such crimes, and provide women with proper information on how to evaluate the risk factors emerging in an abusive relationship and how to contact local women’s shelters, this attitude would certainly help to expedite the cultural change and raise women’s awareness of the danger of remaining into violent situations.

d. VICTIM-RELATED FACTORS

i. Vulnerability of the victim

67. An Italian research shows that women tend to stay in a violent relationship, on average, about 5 to 6 years, but even as long as 30 years, before seeking help from a specialized service or even contacting the police.⁹⁰

This can be due to:

- lack of social support;
- poor institutional support (difficult access to services / lack of trust in services);
- gender role stereotypes (rooted in strong religious/traditional beliefs or cultural and religious conservative beliefs);
- protection of children;
- economic status / underpaid work or unemployment;
- risk to lose their permit of stay;
- previous IPV episode(s);
- mental health problems;
- addiction to substances.

⁹⁰ BALDRY, A. (2008), “Intimate partner violence and risk assessment: the implementation of S.A.R.A., Screening version in Italy”, in WINKEL (2008), *op.cit.*, Ch.6, pp.88.

68. It is estimated that victim vulnerability factor may increase the victim's risk of IPF in three ways: by increasing the likelihood that she will establish a relationship with a individual who is at risk of perpetrating IPF, by preventing her from perceiving risks while in the relationship, or by decreasing the likelihood that she will take protective action once the risks are apparent.⁹¹

e. PERPETRATOR-RELATED FACTORS

i. **Patriarchal values**, rigid and stereotyped models of masculinity, misogyny – insecurity – impulsivity or lack of self control – **possessiveness** – overcontrol as a result of sexist socialization;

ii. Being part of a family characterized by a vertical structure, authoritarian socializations;

iii. Overprotective socializations;

iv. Child abuse

69. In the UK more than 20% of IPF perpetrators were themselves victims of child abuse.⁹² Numerous studies prove that abused children are at greater risk, when adult, to reproduce the violence they suffered.⁹³

v. Being a perpetrator of IPV against previous partner(s)

70. See para VI.b.

vi. Possession of firearms

71. Many murders are committed using small arms. According to an Italian study, up to 65% of the femicide perpetrators who thereafter commit suicide choose a firearm to kill themselves.⁹⁴

vii. Criminal history

72. Another indicator of chronic ranager is if the man has a criminal history, a history of violence or if he belong to a criminal group.

⁹¹ FITZGERALD, L.F., DRASGOW, F., HULIN, C.L., GELFAND, M.J., and MAGLEY, V.J. (1997), "The antecedents and consequences of sexual harassment in organizations: A test of integrated model", in *Journal of Applied Psychology*, n.82, pp.578-589 (also in KEITA, G.P., and HURRELL, Jr., J.J. (eds.) (2008), *Job stress in a changing workforce*, APA, Washington DC, USA, pp.55-71), quoted by WATT (2008), *op.cit.*, p.49.

⁹² DOBASH, R.E., DOBASH, R.P., CAVANAGH, K., and LEWIS, R. (2004), "Not and Ordinary Killer; Just an Ordinary Guy: When Men Murder an Intimate Woman Partner", in *Violence Against Women*, vol.20, iss.6, pp.577-605.

⁹³ WIDOM, C. (1989a), "The cycle of violence", in *Science*, n.244, pp.160-165; WIDOM, C. (1989b), "Does violence beget violence? A critical examination of the literature", in *Psychological Bulletin*, vol.106, iss.1, pp.3-28.

⁹⁴ MERZAGORA, TRAVAINI, BATTISTINI and PLEUTERI, *op.cit.*

viii. Mental health problems

73. According to Italian surveys, only a small percentage of assailants show mental health problems.⁹⁵

On the opposite, Belfrage and Rying⁹⁶ gathered evidence that, in the IPF cases which took place in Sweden between 1990 and 1999, 95% of assailants showed at least one mental disorder, in particular depression.

No special attention is paid by social operator to prevent this form of femicides.

ix. Drug or alcohol addiction

74. In those of European countries that collect data on this issue, there is evidence that the offenders were under the influence of alcohol when they killed their partners for 44,44% in Estonia, 75% in Finland, 17% in France, 51,85% in Hungary, 24% in UK, 42,85% in Norway, 24,32% in the Czech Republic.⁹⁷

VI. LEGISLATIVE FRAMEWORK

a. Femicide and femicide: relevant regional legal instruments⁹⁸

i. Council of Europe legally binding instruments

- European Convention for the Protection of Human Rights and Fundamental Freedoms, As amended by Protocol No.11,
- Protocol No.1 to the Convention for the Protection of Human Rights and Fundamental Freedoms,
- Protocol No.4 to the Convention for the Protection of Human Rights and Fundamental Freedoms,

⁹⁵ In Italy, instead, in the last five years, less than 10% of the femicides happened because of psychiatric reasons. According to researches on the press in 2006 the 3,9% of the femicides were committed for mental problems; in 2007 they were 5,5%, while 6,3% were motivated on *raptus* or insanity; in 2008, 4,4% of the cases led to mental problems and 3,5% to *raptus* or insanity; in 2009, they were 18% for *raptus*, insanity or other mental problems (here data are collected together). See: KARADOLE, C., with CASA DELLE DONNE PER NON SUBIRE VIOLENZA, Bologna, Italy (2007), *Femminicidi in Italia nel corso del 2006: indagine sulla stampa* (<http://www.casadonne.it/cms/images/pdf/pubblicazioni/materiali/femminicidi-in-italia-nel-2006-karadole.pdf>); GIARI, S., with CASA DELLE DONNE PER NON SUBIRE VIOLENZA, Bologna, Italy (2008), *La mattanza: Femminicidi in Italia nel corso del 2007: indagine sulla stampa*, March 2008 (http://www.casadonne.it/cms/images/pdf/pubblicazioni/materiali/ricerca_femminicidio_2008.pdf); CASA DELLE DONNE PER NON SUBIRE VIOLENZA, Bologna, Italy (2009), *Donne uccise dai loro cari: indagine su femminicidio in Italia nel 2008*, March 2009 (http://www.casadonne.it/cms/images/pdf/pubblicazioni/materiali/ricerca_femminicidio_2009.pdf); GIARI, S., KARADOLE, C., PASINETTI, C., and VERUCCI, C., with PRAMSTRAHLER, A. (2010), *Femicidi nel 2009: un'indagine sulla stampa italiana*, March 2010 (http://www.casadonne.it/cms/images/pdf/pubblicazioni/materiali/femicidi_nel2009.pdf).

⁹⁶ BELFRAGE and RYING (2004), *op.cit.*, pp.121-133.

⁹⁷ ICRS-VIU, Esplugues, Marmolejo, Esteve and SÁNCHEZ (2010), *op.cit.*, Ch.2, pp.65-99.

⁹⁸ COUNCIL OF EUROPE, Directorate General of Human Rights and Legal Affairs, *Ad Hoc* Committee on preventing and combating violence against women and domestic violence (CAHVIO) (2009), *Compilation of International Legal Instruments*.

- Protocol No.7 to the Convention for the Protection of Human Rights and Fundamental Freedoms,
- Protocol No.12 to the Convention for the Protection of Human Rights and Fundamental Freedoms
- Council of Europe Convention on Action against Trafficking in Human Beings
- Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse,
- European Social Charter (revised),
- European Convention on the Compensation of Victims of Violent Crimes,
- Council of Europe Convention on Contact concerning Children,
- **Council of Europe Convention on preventing and combating violence against women and domestic violence, Istanbul May 2011**

75. The Convention is the first legally binding instrument to prevent VAW in Europe. To the end of September 2011, only 16 countries out of the 47 member states of the Council of Europe have signed the Convention: Austria, Finland, France, Germany, Greece, Iceland, Luxembourg, Macedonia, Montenegro, Norway, Portugal, Slovakia, Slovenia, Spain, Sweden and Turkey.

ii. Council of Europe legally non-binding instruments

- European Social Charter
- Recommendation Rec(2006)8 on assistance to crime victims adopted by the Committee of Ministers on 14 June 2006 at the 967th meeting of the Ministers' Deputies
- Recommendation Rec(2002)5 on the protection of women against violence adopted by the Committee of Ministers on 30 April 2002 at the 794th meeting of the Ministers' Deputies
- Recommendation No.R(99)19 concerning mediation in penal matters adopted by the Committee of Ministers on 15 September 1999 at the 679th meeting of the Ministers' Deputies
- Recommendation No.R(93)2 on the health and social aspects of child abuse adopted by the Committee of Ministers on 22 March 1993 at the 490th meeting of the Ministers' Deputies
- Recommendation No.R(91)9 on emergency measures in family matters adopted by the Committee of Ministers on 9 September 1991 at the 461st meeting of the Ministers' Deputies

- Recommendation No.R(90)2 on social measures concerning violence within the family adopted by the Committee of Ministers on 15 January 1990 at the 432nd meeting of the Ministers' Deputies
- Recommendation No.R(85)11 on the position of the victim in the framework of criminal law and procedure adopted by the Committee of Ministers on 28 June 1985 at the 387th meeting of the Ministers' Deputies
- Recommendation No.R(85)4 on violence in the family adopted by the Committee of Ministers on 26 March 1985 at the 382nd meeting of the Ministers' Deputies

iii. Council of Europe Parliamentary Assembly resolutions and recommendations

- Recommendation 1872(2009), on the rights of today's girls – the rights of tomorrow's women Adopted by the Assembly on 29.05.2009
- Resolution 1669(2009), on the rights of today's girls – the rights of tomorrow's women Adopted by the Assembly on 29.05.2009
- Recommendation 1868(2009), on the action to combat gender-based human rights violations, including abduction of women and girls Adopted by the Assembly on 29.04.2009
- Resolution 1662(2009), on the action to combat gender-based human rights violations, including abduction of women and girls Adopted by the Assembly on 28.04.2009
- Resolution 1654(2009) on Femicides Adopted by the Assembly on 30 January 2009
- Recommendation 1861(2009) on Femicides Adopted by the Assembly on 30 January 2009
- Recommendation 1905(2010) on Children who witness domestic violence Adopted by the Assembly on 21 January 2011
- Resolution 1635(2008) on Combating violence against women: towards a Council of Europe convention Adopted by the Assembly on 3 October 2008
- Recommendation 1847 (2008) on Combating violence against women: towards a Council of Europe convention Adopted by the Assembly on 3 October 2008
- Resolution 1582(2007) "Parliaments united in combating domestic violence against women": mid-term assessment of the campaign Adopted by the Assembly on 5 October 2007
- Recommendation 1817(2007) on Parliaments united in combating domestic violence against women: mid-term assessment of the campaign Adopted by the Assembly on 5 October 2007

- Resolution 1512(2006) on Parliaments united in combating domestic violence against women Adopted by the Assembly on 28 June 2006
- Recommendation 1759(2006) on Parliaments united in combating domestic violence against women Adopted by the Assembly on 28 June 2006
- Recommendation 1723(2005) on forced marriages and child marriages Adopted by the Assembly on 5 October 2005
- Recommendation 1681(2004) on the Campaign to combat domestic violence against women in Europe Adopted by the Assembly on 8 October 2004
- Resolution 1327(2003) on so-called “honour crimes” Adopted by the Assembly on 4 April 2003
- Recommendation 1582(2002) on domestic violence against women Adopted by the Assembly on 27 September 2002
- Recommendation 1450(2000) on violence against women in Europe Adopted by the Assembly on 3 April 2000

iv. European Union legal instruments

- Lisbon Treaty
- Charter of Fundamental Rights of the European Union
- Council Framework Decision on the standing of victims in criminal proceedings Adopted on 15 March 2001
- Council Recommendation on the prevention of injury and the promotion of safety Adopted on 31 May 2007
- Directive 2004/80/EC relating to compensation to crime victims
- Directive 2004/81/EC on the residence permit for third-country victims of trafficking who cooperate with the authorities

v. European Union legally non-binding instruments⁹⁹

76. Since the late 1990s, the European Union institutions have renewed their commitment in fighting VAW, which has led to the production of several recommendations and declarations addressing VAW and the promotion of more effective EU-wide and national strategies; a commitment which is largely envisaged by the EU citizens.

77. The European Parliament had an important role in supporting activities against VAW:

- It has adopted various resolutions and called on Member States to “make domestic violence against women, including rape within marriage and sexual mutilation, a

⁹⁹ For more detailed information about national legislation, please consult the sources. Information in this paragraph are quoted from: EUROPEAN COMMISSION (2010), *op.cit.*, from p.103.

criminal offence and to set up services to help women who are victims of this kind of violence;”¹⁰⁰

- It has also been calling upon the European Commission and Member States to consider VAW as a human rights violation and to introduce specific legislation to protect victims in criminal proceedings and within the family and to “include concrete measures to prevent all forms of violence, protect victims and prosecute perpetrators.”¹⁰¹

The European Parliament’s resolutions have been addressing, among other issues, the current situation in combating VAW and any future action (P6_TA(2006)0038), the elimination of VAW (P7_TA(2009)0098), as well as female genital mutilation (2001/2035(INI) and P6_TA(2009)0161).

78. The European Commission’s most relevant policy documents on the matter are the Strategy for Equality between Women and Men 2010-15,¹⁰² which follows the Women’s Charter,¹⁰³ and the Roadmap for Equality between Women and Men 2006-10.¹⁰⁴ The EU Guidelines on violence against women and girls and combating all forms of discrimination against them (2008) are also an important tool for action.¹⁰⁵

Moreover, the European Commission also plays an important role in the promotion and financial support of research and activities for prevention, treatment and social integration measures at national and local level.

vi. European policies

79. A variety of important policies have been started by the European Institutions for the future:

- The Stockholm Programme (2010-2014) adopted under the Swedish Presidency sets out the commitment to achieve greater efficiency in the fight to violence against women and children, including domestic violence and female genital mutilation;¹⁰⁶
- Under the Spanish Presidency (January-June 2010) relevant Council Conclusions were adopted:

¹⁰⁰ According to the resolution on the report from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions on the state of women’s health in the European Community (COM(97) 0224 C4-0333/97) (OJ C 175, 21.6.1999), the European Parliament ([http://www1.umn.edu/humanrts/sviolence against women/domestic/laws/regional.htm](http://www1.umn.edu/humanrts/sviolence%20against%20women/domestic/laws/regional.htm)).

¹⁰¹ European Parliament resolution of 26 November 2009 on the elimination of violence against women (P7_TA(2009)0098) (<http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+TA+P7-TA-2009-0098+0+DOC+PDF+V0//EN>).

¹⁰² EUROPEAN COMMISSION (2010), *Strategy for equality between women and men 2010- ‘15*, COM(2010)078, Brussels, Belgium (<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52010DC0078:EN:NOT>).

¹⁰³ European Commission (Women’s Charter), COM(2010) 078, Brussels (<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52010DC0078:EN:NOT>).

¹⁰⁴ http://europa.eu/legislation_summaries/employment_and_social_policy/equality_between_men_and_women/c10404_en.htm and <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52006DC0092:EN:NOT>

¹⁰⁵ <http://www.consilium.europa.eu/uedocs/cmsUpload/16173cor.en08.pdf>

¹⁰⁶ http://www.se2009.eu/en/the_presidency/about_the_eu/justice_and_home_affairs/1.1965

1) the March 2010 Council Conclusions on the “Eradication of violence against women in the European Union”¹⁰⁷ has set the road for further measures to effectively combat VAW, calling for the exchange of best practices and the establishment of a network of national contact points to improve cooperation, as well as the establishment of a European Observatory for better data collection and exchange, and the implementation of an EU-wide telephone number for victims of such violence (116);

2) the April 2010 Council Conclusions addressed the issue of “Improving prevention to tackle violence against women and care to its victims within the scope of law enforcement”.¹⁰⁸

b. National legislation¹⁰⁹

i. Preliminary consideration

80. In analysing national legislation, we have to consider that the meaning of “penalisation” is not always the same in all European countries. This is not just a question of how well the laws are implemented, but may also reflect deeper differences in understandings of the role and purposes of criminal justice.

Similar issues are present when surveying the existence of different types of protection orders. Such orders may be imposed by the police, the mayor’s office, the prosecutor or by judges at one of several different types of court, they may be issued at the request of the victim or on another’s judgement, they may be established as measures of civil law, family law, policing, or as measures anchored in criminal procedural law.

Behind the many technical issues of who, when and how there are differences in the underlying legal philosophy: Is protection from the threat of private violence a concern of the State in its obligation to secure social welfare and security, is it an obligation of the police ensuring order and law enforcement, or is it a service that the State should offer, but not impose unless requested?

Measures that sound similar in cross-national surveys may actually have different functions in the legal system. These points should be kept in mind when comparing legal frameworks across Europe.¹¹⁰

¹⁰⁷ Council conclusions on the eradication of violence against women in the European Union (http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/lisa/113226.pdf).

¹⁰⁸ Council conclusions on improving prevention to tackle violence against women and care to its victims within the scope of law enforcements, April 2010 (http://www.consilium.europa.eu/uedocs/cms_Data/docs/pressdata/en/jha/114015.pdf).

¹⁰⁹ For a detailed exploration of the legislative framework on gender violence of each member State of the Council of Europe, see: COUNCIL OF EUROPE, Directorate General of Human Rights and Legal Affairs, *Legislation in the member states of the Council Of Europe in the field of violence against women*, Strasbourg, December 2009, Vol.I (A-L) ([http://www.coe.int/t/dghl/standardsetting/equality/03themes/violence-against-women/EG\(2009\)3-vol1_en.pdf](http://www.coe.int/t/dghl/standardsetting/equality/03themes/violence-against-women/EG(2009)3-vol1_en.pdf)); Vol.II (M-U) ([http://www.coe.int/t/dghl/standardsetting/equality/03themes/violence-against-women/EG\(2009\)3-vol1_en.pdf](http://www.coe.int/t/dghl/standardsetting/equality/03themes/violence-against-women/EG(2009)3-vol1_en.pdf)); Vol.III ([http://www.coe.int/t/dghl/standardsetting/equality/03themes/violence-against-women/EG\(2009\)3_fr.pdf](http://www.coe.int/t/dghl/standardsetting/equality/03themes/violence-against-women/EG(2009)3_fr.pdf)).

¹¹⁰ CAHVIO, Council of Europe, HAGEMANN, C. (2009), *Typology of domestic violence laws in Council of Europe member states - A preliminary overview*, p.7.

ii. The lack of gender dimension in criminal legislation on DV and femicide¹¹¹

81. In the field of substantive criminal law, although the competence of the EU has been recently extended through the Lisbon Treaty, there is still a limited basis for harmonisation.

The exhaustive list of crimes that fall within the EU competence to propose approximation of laws does not include IPV and femicide (TFEU Article 83).

82. What lacks in each national criminal law of European countries (including the progressive Spain) is the acknowledgement of gender dimension as an aggravation for all the offences, which are deemed to be ‘neutral’, affecting the physical, mental and sexual integrity and the dignity of the person.

83. The lack of an aggravated penalty for all the crimes against women just because they are women amounts in itself to discrimination, compared with the protection ensured from other forms of discrimination.

In Italy, for example, Act 205/1993 (known as Mancino law) in fact considers a series of behaviours carried out for racial, ethnic, national or religious reasons as crimes. The same behaviours¹¹² are not prosecutable (nor otherwise subject to protection) if due to discrimination based on gender or sexual orientation. This protection gap appears even more blameworthy when considering that the Mancino law explicitly recalls the CERD/CEDAW’s “twin” Conventions – implementing it. Right because of the same protection established by Article 2 of both Conventions with regard to gender-based discrimination and discrimination for racial, ethnic or national reasons, a protection equivalence is desirable at national level as well¹¹³.

84. Of course, in all EU Countries homicide is a criminal offence.

Nevertheless, no European country included the offence of ‘femicide’ in its criminal legislation.

However, all the national legislations provide for aggravated penalties in case of homicides (of men and women) perpetrated by a family member.

85. According to an analytical study on the implementation of Recommendation 5 (2002) on the protection of women against violence in the Member States of the Council of Europe, all countries except 8 penalise physical violence to partners, spouses and cohabitants, and most of them confirm penalisation of psychological violence as well.

86. Some countries introduced a specific offence in their Penal Codes to criminalise domestic violence.

¹¹¹ For more detailed information about national legislation please consult the source. Information in this paragraph are quoted by: CAHVIO-HAGEMANN (2009), *op.cit.*, pp.7-11; EUROPEAN COMMISSION (2010), *op.cit.*, from p.105.

¹¹² The propaganda of ideas based on racial or ethnic superiority or hatred; the instigation to commit or the perpetration of discrimination acts for such reasons; the establishment, the promotion and the participation in organizations, associations, movements or groups having among their aims the incitement to discrimination or violence for such reasons.

¹¹³ kFurther information in: SPINELLI and Italian NGO Platform “30 YEARS CEDAW: WORK IN PROGRESS” (2011), Shadow Report, *cit.*

In Italy for example “Maltreatment within the Family” (Italian Criminal Code, Article 572) carries a penalty of imprisonment from 1 to 5 years. The Article specifies that in order to proceed for a crime of “maltreatment”, the violence committed should include a set of violent acts (psychological as well as physical or sexual) repeatedly committed over an extended period of time, even if no violence takes places between one event and the next. Maltreatment can apply both to married couples and de-facto relationships. In Norway the offence of “Domestic Violence” punish: “Any person who by threats, duress, deprivation of liberty, violence or any other wrong grossly or repeatedly maltreats a) his or her former or present spouse, b) his or her former or present spouse’s kin in direct line of descent, c) his or her kin in direct line of ascent, d) any person in his or her household, or e) any person in his or her care — shall be liable to imprisonment for a term not exceeding three years. If the maltreatment is gross or the aggrieved person dies or sustains considerable harm to body or health as a result of the treatment, the penalty shall be imprisonment for a term not exceeding six years. In deciding whether the maltreatment is gross, particular importance shall be attached to whether it has endured for a long time and whether such circumstances as are referred to in section 232 are present. Any person who aids and abets such an offence shall be liable to the same penalty.”

87. A number of Member States declare that domestic violence is covered by existing criminal law, and that their legal systems do not differentiate crimes against the person by sex or relationship.

88. Other Member States use existing criminal law with the addition of a provision that violence (and homicide) is an aggravated offence when used against a family member, a spouse or ex-partner, or a close person, and should thus receive a higher sentence.

89. The UK has taken a third path between the general and the specific definition of aggravated cases. With explicit reference to the area of domestic violence, elaborated sentencing guidelines have been issued listing circumstances that should be considered to define the offence as more serious.

In these guidelines, the fact of acts being committed within a relationship is not itself an aggravating circumstance. Instead, the guidelines try to make clear what it is about domestic violence that can make this form of VAW particularly harmful. Abusing of trust, exploiting vulnerability, or forcing the victim to leave the home, for example, can be aggravating circumstances.

This approach avoids treating any and all hurtful or aggressive actions as equal, and therefore seems adapted to a human rights framework. The guidelines do not have the status of legislation and do not change the definition of punishment accruing to offences.

90. Only Spain, Finland and Sweden introduced gender-based definitions of domestic violence into their criminal codes.

In Finland “(...) A punishment more severe than the normal punishment can be imposed in cases (...) where the person has otherwise limited capacity to defend herself or himself, i.e. at a woman or a child and/or in which the assault is repeated”.

In 1998 Sweden introduced the offence of ‘gross violation of woman’s integrity’¹¹⁴, which also addresses such acts as undermine psychological integrity. It deals with repeated punishable acts directed by men against women who have or have had a close relationship with the perpetrator. “Gross violation of a woman’s integrity” means that if a man commits certain criminal acts (assault, unlawful threat or coercion, sexual or other molestation, sexual exploitation etc.) against a woman to whom he is or has been married or with whom he is or has been cohabiting, he shall be charged with gross violation of the woman's integrity, instead of with each single offence he has committed. Since the acts concerned should in themselves be criminal, this offence can also be seen as a variation on the approach of defining aggravated cases. It combines the two approaches.

In Spain, ‘gender violence’ was both criminalised as a specific offence and addressed in the comprehensive Organic Law 1/2004 of 28 December on Comprehensive Protective Measures against Gender Violence. It defines the offence as “violence inflicted on women by their present or former spouses or men with whom they maintain or have maintained an emotional relationship, whether or not in a common dwelling”. The law is interpreted to call for a more severe penalty when men exercise VAW in close relationships, since gender violence is located in the context of structural gender inequality. A woman who commits an analogous act against her male partner would be penalised under the general criminal code and thus receive a lower penalty.

iii. Protection measures¹¹⁵

91. By far the largest proportion of specific legislation addressing domestic violence is focussed on measures for the protection of victims from further abuse after violence has been committed.

92. Judicial protection orders are not uniformly defined by national legislations. The range include: i) eviction orders (removing the perpetrator from the residence for a specified period, or permanently); ii) restraining orders (placing other limits on the actions of a perpetrator such as requiring him to stay away from specific areas, or forbidding use of violence); iii) non-molestation orders (specifically ordering the man not to contact or harass the woman).

¹¹⁴ The law on ‘gross violation of integrity’ in Sweden takes a dual approach, designed in accordance with the general principle of retaining the genderneutral language of the Penal Code. It thus criminalises ‘gross violation of personal integrity’ in general and, in a second paragraph, gross violation of a woman’s integrity by a man. The offence comprises repeated transgressions within a present or former intimate relationship. Thanks to the dual construction, offences committed in same-sex relationships are also covered, as well as cases where children are victims of ongoing abuse. It is a rare example of a course of conduct offence which can take account of this common element in interpersonal violence. See EUROPEAN COMMISSION (2010), *Feasibility study to assess the possibilities, opportunities and needs to standardise national legislation on violence against women, violence against children and sexual orientation violence*, Publications Office of the European Union, Luxembourg, p.98.

¹¹⁵ For more detailed information about national legislation please consult the source. Information in this paragraph are quoted from: CAHVIO-HAGEMANN (2009), *op.cit.*, pp.11-13; EUROPEAN COMMISSION (2010), *op.cit.*, p.63.

93. Although many of the specific laws relating to domestic violence focus solely on civil and family law and social protection measures, some of these laws introduced court injunctions and restraining orders in the context of criminal law only, or in both civil and criminal law. Some of these laws are procedural and may take effect to the exclusion of civil injunctions, but may be intended to deal with the most severe cases.

94. Member States that follow an aggressive prosecution policy, giving the victim no right to withdraw consent, such as Portugal, Spain and the UK, link the protection measures to the criminal procedure and may impose them not only on request of the victim, but also when they are deemed to be in the public interest, and then possibly even against the explicit wish of the victim.

95. More positively, in Belgium, Bulgaria, Spain, Italy and the United Kingdom, urgent court decisions to exclude the perpetrators or ban them from the family residence can be issued by an *ex-parte* judge on probable cause within a day, in Italy within a few hours — at least, this is the *de jure* provision: *de facto*, just in few Italian cities Court this really happens!). These measures can also be considered immediate protection, especially when accompanied by the police power to arrest or detain.

96. During the police or temporary ban, the victim can apply for additional protective follow-up measures if necessary.

In several Member States there is no provision to ensure that a civil protection order can be obtained before the emergency protection order runs out, thus leaving a significant safety gap; this was noted by experts from four Member States (BG, HU, SI, SK) and may extend further.

BEST PRACTICE

EU - European Protection Order

Measures to protect crime victims already exist at national level in all the EU Member States but at present they cease to apply if the victim moves to another country.

The European Commission is currently discussing a draft directive on European Protection Order (EPO)¹¹⁶ that would enable anyone protected under criminal law in one EU State to apply for the same protection if they move to another EU country.

The Directive provides for measures aimed at: 1) ensuring protection against such criminal acts as may endanger life or

¹¹⁶ <http://www.europarl.europa.eu/oeil/file.jsp?id=5840492>

physical, psychological and sexual integrity, e.g. by preventing any form of harassment, as well as dignity or personal liberty, e.g. by preventing abductions, stalking and other forms of indirect coercion; and 2) avoiding new crimes or mitigating the consequences of previous ones. These personal rights of the protected person correspond to fundamental values recognised and upheld in all Member States.

The protection measures set out in the Directive aim at protecting the victims of all forms of violence, not only gender violence, taking into account the specificities of each offence.

This Directive is intended to apply to protection measures issued in favour of victims, or possible victims, of crimes; it should not apply to measures issued with a view to protect witnesses. If a protection measure is issued for the protection of a relative of the main protected person, an EPO may also be requested and issued with regard to the relative, subject to the conditions laid out in this Directive.

EU Women's Rights Committee rapporteur Teresa Jiménez-Becerril Barrio commented the adoption of the draft agreement saying that, with the adoption of the directive, “[a] woman who is victim of gender violence and has been granted protection measures against the offender in one Member State, will now have the chance to get the same protection in another EU country. This directive, which has come a long way, will soon be ready to do what it is supposed to do, namely to help victims feel safe across the EU”.¹¹⁷

iv. Specific laws on protection of women against violence

97. In the last decade, most European country adopted laws entitled ‘Law on Domestic Violence’ or ‘Family Violence Act’ or ‘Protection against Violence Act’, which do not address (only) criminalisation or punishment, but introduce tools and procedures aimed at the safety of victims.

98. One of the main problems is the fact that EU Member States differ in the concepts used in law and policy.

Domestic or family violence are umbrella concepts which are not always explicitly defined and may overlap with wider concepts such as ‘violence against women’ or ‘gender-based violence’. Nevertheless, Member States often have a (working) definition of IPV (or the linguistic equivalent of ‘domestic violence’) in national policy documents.

¹¹⁷ <http://www.europarl.europa.eu/en/pressroom/content/20110921IPR27108/html/EPCouncil-deal-on-EU-wide-protection-for-crime-victims>

99. These definitions rarely refer to international law or international human rights law.

An equality perspective is rarely evident in national legislation, with the possible exceptions of Spain and Sweden, although on a policy level the connection between IPV and gender inequality is more often recognised.

THE CHALLENGE:

From a family based to a gender based approach?

There is a widespread tendency among Member States to take the protection of family life as the defining perspective and frame provisions on that basis rather than placing women's or children's human rights at the heart of legislation and policy, making little or no reference to gender-based discrimination.

This illustrates the persisting tendency to dichotomise the traditional and highly ideologically charged public/private divide, also in international law, which *de facto* locates victimisation of women and children as 'private concerns', where it is argued that State responsibility is not necessarily imperative from an international legal perspective.¹¹⁸ As a consequence, forms of violence that do not fit into the 'family' framing tend to be marginalised.

This move towards centralising the family-basis of VAW and violence against children (VAC), notably with respect to IPV, has been noted with growing concern¹¹⁹ by the CEDAW Commission among others, since it ignores the discriminatory basis of violence against women.¹²⁰

It runs counter to recent jurisprudence from the ECtHR acknowledging that domestic violence against women is a form of discrimination against women which requires states to respond with due diligence.¹²¹

Some Member States, however, still lack sufficiently adequate protective measures, or only make them available under restricted conditions, either exclusively for IPV or only in cases where criminal proceedings have been initiated and/or if the victim of IPV has filed for divorce or the couple has separated. In several Member States (emergency) protection orders are provided

¹¹⁸ CHINKIN, C. (1999), "A critique of the public/private dimensions", in *European Journal of International Law*, Vol.10, n.2, pp.387-395.

¹¹⁹ REED, E., RAJ, A., MILLER, E., and SILVERMAN, J.G. (2010), "Losing the 'gender' in gender-based violence: the missteps of research on dating and intimate partner violence", in *Violence against women*, n.16, pp. 348-354. In a similar vein: HEARN, J. and McKIE, L. (2008), "Gendered policy and policy on gender: the case of domestic violence", in *Policy and Politics*, vol.36, iss.1, pp. 75-91; RÖMKENS, R. (2008), "Rightly concerned?", inaugural address, Tilburg University Law School (<http://www.tilburguniversity.nl/intervict/events/academicssessions/>).

¹²⁰ For example, CEDAW's response to the Dutch country report with respect to domestic violence/IP V in 2007: The Committee is also concerned that the policy on violence against women is couched in gender-neutral language, which undermines the notion that such violence is a form of discrimination against women; see: CEDAW, 2007, Concluding comments of the Committee on the Elimination of Discrimination against Women, the Netherlands, CEDAW/C/NLD/CO/4, 15 January–2 February 2007.

¹²¹ ECtHR, *Opuz v. Turkey*. Application No 33401/02, 9 June 2009.

exclusively for victims of IPV (sometimes narrowly defined), which means they are not necessarily available for victims of rape, stalking or violence based on sexual orientation (SOV).

100. The framing of legal reform tends not to specify the intimate partner relationship or gender equality, but focuses on the family as a protected sphere of life.

A minority of Member States have developed legal and policy provisions addressing IPV in a gender-neutral way (e.g. AT, DE, IE, UK).

Spanish Organic Law represents without doubt the integrated approach, in that it provides not only for prosecution, including the creation of special courts, but also for preventive and supportive measures (welfare, child support, housing, employment), and it is unique in its specification of gender-based violence.

The new IPV law in Portugal takes up a number of these elements, while the United Kingdom has an integrated approach to VAW, rooted in human rights and gender equality, by way of policy.¹²²

BEST PRACTICE in LEGISLATION and IMPLEMENTATION

SPAIN – Organic Law 1/2004

The Spanish Organic Law 1/2004 on comprehensive protection measures against gender-based violence is widely considered a promising practice.

With the adoption of Organic Law 1/2004 of 28 December regarding integral protection measures against gender-based violence, Spain became the first country in Europe to have a law of such characteristics, i.e., a law on gender-based violence (not on domestic/family violence) that joins educational, preventive, civil, penal and social aspects in an integral and multidisciplinary way.

Spanish Organic Law abides by all the due diligence obligations standards on VAW that the State has to respect.

This law spans all legal domains (criminal, civil, administrative, labour, family). Not only are a wide range of offences penalised at a higher level than in general criminal law, but all court cases are referred to specialised courts as soon as it becomes evident that some element of gender violence is involved.

¹²² EUROPEAN COMMISSION(2010), *op.cit.*, p.63.

Spanish Organic Law abides by all due diligence obligations standards for VAW that State have to respect.

The law came into effect on January 28th, 2005, although the courts dealing with VAW started applying it only on June 29th of the same year.

Article 1, paragraph 1 sets out:

“The present Law aims to act against such violence as is perpetrated against women by those who are or have been their spouses or are or have been tied to them through similar affective relations, even without living together.”

Paragraph 3 also establishes that the law:

“Comprises all acts of physical and psychological violence, including crimes against sexual freedom, threats, coercion or arbitrary deprivation of liberty”.

This wording clearly assumes that the author of the punishable acts constituting gender-based violence can only be a man and the victim can only be a woman.

Furthermore, the scope of the Law is restricted to partner relations (current or past), regardless to whether or not the partners were living together.

Among the Law’s foundations and its legislative antecedents, there is Article 9.2 of the Spanish Constitution, which binds public authorities to promote the conditions to ensure real and effective freedom and equality of individuals, and remove the obstacles which prevent or hinder their full enjoyment.

The Law is sustained by five pillars, five Sections covering different aspects:

- Section I (Awareness-raising, prevention and detection measures):
 - Teaching, within the Spanish educational system, respect for the right to gender equality, as well as peaceful conflict resolution in all areas of personal, family and social life (Article 4);
 - Awareness-raising and constant training of health workers through programs to improve and promote early detection, assistance and

rehabilitation of women going through the situations of gender-based violence covered by the Law (Article 15).

- Section II (Rights of women facing gender-based violence):

- Free legal representation in the processes and proceedings for all the women and girls facing gender-based violence who can prove they have insufficient means to afford legal expenses (article 20);
- Social assistance to victims earning less than 75% of the official minimum wage, on the condition that they have special difficulty obtaining a job due to their age, lack of preparation or personal circumstances (Article 27);
- Reduction or reorganization of victims' work schedule, the right to geographical mobility and to changing place of work (Article 21, paragraph 1);
- Priority assignment of social housing and public residences for older women who suffered gender-based violence (Article 28).

- Section III (Institutional protection):

- Creation of the State Observatory on VAW, committed to analyzing the situation and following cases of gender-based violence (Article 30);
- Development of joint plans with health, justice, law enforcement, social and equality sectors in order to establish common action protocols ensuring comprehensive and co-ordinated action by the different administrations and services involved (Article 32).

- Section IV (Penal protection):

- Considering assault, threats and light coercion aggravated when committed against especially vulnerable persons living together with offenders as well as offenders' (ex-)wives or (ex-)living-in partners, punishable with imprisonment between 6 months and 1 year, or community service (Article 37);
- Tougher sentencing in general, with acts that were previously considered misdemeanors now being considered felonies, punishable with imprisonment between 3 months and 1 year, or community service (Article 37).

- Section V (Legal protection):

- The most important legal innovation is, without a doubt, the creation of special courts dealing with VAW. These courts can handle both civil and penal cases, so that both are dealt with in the same venue (Articles 43 and 44);

– The creation of the Prosecutor on violence against women, charged with supervising and co-ordinating public prosecutors’ offices in matters of violence, and writing follow-up reports (Article 70).

IMPLEMENTATION

The effectiveness of these measures is monitored through an observatory in the form of annual reports supported by a comprehensive set of indicators and by regularly collected data (Gobierno de España/Ministerio de Igualdad 2007, 2009b).

Observatory reports are regularly published on the website of the Spanish Ministry for Equality, which contains an extra site on VAW. Several of the reports are also available in English. Statistics on femicide (women killed by partners or ex-partners) are published monthly.

The Spanish model of monitoring and evaluation measures to prevent gender- based violence and to generate and publish data serves as a good practice model in the EU. The initiative of the Spanish EU presidency to establish a European observatory on gender-based VAW is to be supported and such observatory should be based on the experience of the Spanish observatory¹²³.

VII. COUNCIL OF EUROPE AND EUROPEAN UNION RESPONSES TO IPV AND GENDER-MOTIVATED KILLING

a. The Council of Europe

101. The Council of Europe held a crucial role in stimulating action at national level to achieve effective equality between man and woman and to consider it as a fundamental human right.

The Steering Committee for Gender Equality (CDEG)¹²⁴ has been promoting through various initiatives the accountability of Member States about their duty to take all reasonable measures to prevent, investigate and punish all form of VAW.

102. In 2006 the Council of Europe created a task-force to “evaluate national level in combating VAW and to establish instruments for quantifying developments at pan-European level with a view to drawing up proposals for action”¹²⁵ (Ad Hoc Committee on preventing and

¹²³ PROTECT Expert Group and Partner Meeting, *REPORT of the 1st PROTECT Expert Group Meeting*, Wien, 22-24 March 2010.

¹²⁴ <http://coe.int/equality>

¹²⁵ Established in the Action Plan adopted at the 3rd Summit of Heads of State and Government of Council of Europe Member States wich took place in warsaw on 16 and 17 may 2005.

combating VAW and domestic violence CAHVIO.) Since its establishment this agency has been monitoring the measures enacted by Member States to fulfil their international obligations, and has been promoting initiatives aimed at harmonising and implementing the law on gender-based violence of the different countries. This work led to the adoption, in 2011, of the Convention.

➤ EU comparative researches have been an important instrument for exploring which methods of standardisation in EU law-making or policy development would be appropriate and necessary in order to implement a set of minimum standards to realise the highest attainable compliance with the existing human rights obligations.

i. Council of Europe position on criminalization of femicide

103. Mrs. Err, during the Council of Europe Assembly debate on January 30th, 2009¹²⁶, explained the difficulties in introducing a special offence of ‘femicide’ into criminal law or in the addition of ‘femicide’ as an aggravating circumstance to existing offences in criminal law, such as murder or assassination.

She suggested that a group of Council of Europe experts should carry out a detailed legal study on the Member States’ existing legislation on VAW and on the ways to make femicide and violence perpetrated against women simply because of the victim’s gender a separate criminal offence.

She also endorsed the principle set out by the Council of Europe Task Force to Combat Violence Against Women, including Domestic Violence, whose final activity report suggests to gather specific data on cases of VAW and femicides with a view to analysing any shortcomings in the protection of women, in order to improve the existing preventive measures and develop new ones. This dual task of data gathering and legal analysis could be assigned to a multidisciplinary working group or an observatory made up of VAW specialists.

In addition to this sensitive issue, for Mrs. Err is essential to make professionals who work in contact with the victims — especially health and social workers, police officers and judges — more aware of VAW. They can help to establish whether the victim was killed because she was a woman.

b. The European Union

104. According to the last Eurobarometer survey on domestic violence against women (2010), 87% of the EU-27 citizens support the EU’s commitment in eradicating domestic violence against women, feeling that the EU should be probably or definitely involved.¹²⁷

However, very few (14%) are familiar with the specific EU measures to tackle the problem.¹²⁸

¹²⁶ Assembly debate on 30 January 2009 (9th Sitting) Doc. 11781, report of the Committee on Equal Opportunities for Women and Men, rapporteur, Mrs Err (<http://assembly.coe.int/Main.asp?link=/Documents/AdoptedText/ta09/ERES1654.htm>).

¹²⁷ EUROPEAN COMMISSION, WAVE (2010), “Domestic violence against women”, Special *Eurobarometer* 344, p.73.2 (http://ec.europa.eu/public_opinion/archives/ebs/ebs_344_en.pdf).

¹²⁸ *Ibidem*.

i. A new role for EU after the ratification of the Treaty of Lisbon

10. The Guidelines on Human Rights approved by the Council in 2009, and in particular the Guidelines on Gender-based Violence and Discrimination,¹²⁹ adopt, even quoting it, the definition of VAW set out in the UN Declaration on the Elimination of Violence Against Women (DEVAW), and within the ambit of External Relations and Foreign Affairs and Security Policy bind the EU to take steps for the effective implementation of the CEDAW, and in particular to “(3.2.1.f) encourage the ratification of the UN Convention on the Elimination of any form of Discrimination Against Women and of the relevant Optional Protocol, of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, and of the Interamerican Convention on Prevention, Punishment and Eradication of VAW; (3.2.1.g) encourage the disclosure of the reservations to the Convention, in particular of those that are in contrast with the objectives and aims of the Convention, in particular taking into account the CEDAW Committee’s interpretation on such reservations; (3.2.1.h) encourage, through technical support when needed, the presentation of their submissions to the CEDAW in due time, and the implementation of the Committee’s reports and recommendations.”

106. The multilevel protection of women’s rights promoted by the EU becomes even more important after the adoption of the Lisbon Treaty.

107. The Treaty represents the institutionalization of the ‘gender paradigm,’ including gender equality among the fundamental principles (Treaty of the European Union, TEU, Article 2) as well as among the goals of the EU (TEU, Article 3).

108. The ‘gender paradigm’ is not only promoted at a substantial level, but also adopted as an epistemological model, since the Charter of Nice, which under TEU Article 6 assumes the same legal value as the Treaties,¹³⁰ includes gender mainstreaming among the fundamental principles to be respected in all EU policies (Treaty on the Functioning of the European Union, TFEU, Article 8).

The Treaty of Lisbon directly engages the EU in the struggle against all forms of gender inequality, also introducing a commitment to eradicate VAW.

In particular, an explicit reference to domestic violence by men against women is also enshrined in **Declaration 19** concerning TFEU Article 8,

¹²⁹ <http://www.consilium.europa.eu/uedocs/cmsUpload/16173.it08.pdf>

¹³⁰ With the exception of the UK, the Czech Republic and Poland, which obtained a clause of exclusion from the implementation of the Charter.

which engages the EU to take practical steps to fight domestic violence in all EU policies and encourages Member States to adopt all the necessary measures to prevent and punish such crimes and provide support and protection for the victims.

TFEU also sets out the possibility for the EU to intervene through ordinary legislative procedure, in order to develop common policies, on the subject of traffic of human being (Article 79.2.d) and sexual exploitation (Article 83.1).

The same possibility of intervention is established with a view to achieve the goal of equality between man and woman on the issues of access to employment and work treatment (TFEU Article 153.1.i) as well as wage equality (TFEU Article 157 and Charter Article 23), also through special measures.

109. The institutional and substantial changes introduced by the Lisbon Treaty contribute to strengthen a multilevel human rights protection system, by reasserting as prescriptive the internationally recognised principles of protection of the fundamental rights.

110. The Council of Europe Parliamentary Assembly, in the Recommendation 1982 (2011) on the impact of the Lisbon Treaty on the Council of Europe, referring to its Resolution 1836 (2011) on the same matter, notes that the entry into force of the Treaty opened up new opportunities for a reinforced partnership between the Council of Europe and the EU, also for the purpose of pursuing the building of a common space for human rights protection at pan-European level and ensuring coherence of standards and of monitoring of their implementation throughout the continent

111. The EU therefore assumed a role of promoter in the adoption of a gender perspective in community policies, as well as of specific actions for the elimination of all forms of gender-based discrimination. This certainly entails for Member States the necessity to carefully consider how to adapt their policies and legislation within the ‘gender paradigm’.

112. The new wording of TEU Article 6 allows the inclusion into the EU legal system, as fundamental principles, of the rights enshrined in the CEDAW: this Convention has been ratified by all the Member States, and its principles can consequently be considered as “common constitutional tradition” (TEU Article 6 para. 3).

113. After Lisbon, therefore, in order to ensure the accountability of Member States on the matter of gender-based rights, it is possible to realise a mechanism which is much more thorough and sophisticated and that determines a positive impact on EU acts and policies. Now it is possible to monitor in a more efficient way the implementation of international human rights law, which still needs to be adequately transposed at both EU and national level.

114. To this effect, it is commendable the activity of comparative study carried out by the European Commission with a view to support Member States in implementing the basic requirements to fulfil their human rights obligations and to prevent VAW, assessing the possibilities to harmonize the different national laws and the relevant EU policies.¹³¹

ii. Eu legal basis to fulfil the minimum standard of due diligence in preventing, persecuting and protecting women from gender-motivated killing¹³²

o Obligation to prevent

115. It is difficult to identify a legal basis for EU-wide prevention actions.

116. It could be argued that activities in education and provision of information fall within general health education. Possible EU measures may therefore be based on TFEU Article 168(1), but even here there is a complementary competence between the EU and its Member States.

117. Combating discrimination is a basic preventive measure which relates to recognising the discriminatory roots of violence, especially VAW and SOV. TFEU Article 8, in combination with TFEU Article 19, could provide a basis to adopt acts to eliminate inequalities and to promote equality between women and men taking into consideration, though, the prohibition of harmonisation as set out in TFEU Article 19(2).

118. In general there is no legal basis in the EU law to harmonise legislative measures in the area of capacity building and training. Article 14 of the Council Framework decision on the standing of victims provides that each Member State shall encourage initiatives enabling personnel involved in criminal proceedings or otherwise in contact with victims to receive suitable training with particular reference to the needs of the most vulnerable groups, and particularly applying to police officers and legal practitioners.

Beyond this, TFEU Article 82(1)(c) might be relevant, but only to the extent that training is required in the context of judicial co-operation in criminal matters; the scope of training and capacity building that the proposed minimum standard calls for extends beyond that.

¹³¹ See in particular: EUROPEAN COMMISSION (2010), *op.cit.*

¹³² For more detailed information about national legislation please consult the source. Information in this paragraph are quoted from: EUROPEAN COMMISSION (2010), *op.cit.*, pp. 18-20 and Chapter 4 “Identifying minimum standard”, pp.127-151.

119. There is no legal basis in the EU law to standardise the efforts to develop research or for the collection of administrative data, although EU institutions such as Eurostat can require the Member States to collect statistics.

Member States differ widely in the quality and consistency with which they collect reliable prevalence data in the three fields of violence; this is an obstacle to developing a comparable knowledge base.

120. There is a growing need among Member States to exchange and compare data. Support on an EU level to develop a stronger research culture in these fields seems crucial.¹³³

➤ Facilitation by the EU is needed to expand the exchange of information on good practices.¹³⁴

Member States can then benefit from each others' innovations and experience in developing co-ordinated interagency structures and have access to state-of-the-art research findings.

EU support programmes can encourage the wider use of such approaches for all forms of VAW and gender motivated killings, and enhance and ensure effectiveness and efficiency.

➤ Training professionals is essential to ensure implementation of legal frameworks. With regard to qualification for specialist roles, certification can be used to good effect. In view of the key decisions made in the court system, Member States can set standards and bindingly provide specific qualification for judges and for prosecutors regarding VAW, and provide the necessary training to obtain these qualifications.

➤ There is a growing, but uneven, European knowledge base, especially on VAW. In developing the European research area, the EU can recognise combating VAW as a key societal and economic challenge for Europe, and in consequence set a priority within its funding framework on building a policy relevant knowledge base.

➤ Primary and long term prevention remains underdeveloped in Member States and in EU approaches. It must be a strong pillar in national action plans, linked to equality and human rights programmes. Prohibiting corporal punishment, building awareness about the rights of young women and girls, teaching respectful relationships, and support during transition to parenthood can be key elements of prevention.

➤ By defining VAW as violations of universally recognised fundamental rights in all policy documents, the EU will set a basic standard, providing Member States with a common platform on which to move forward.

- Obligation to protect and assist

121. The rights of crime victims are explicitly listed as one of the areas where measures may be proposed.

¹³³ For more detailed information about EU recommendations, see: EUROPEAN COMMISSION (2010), *op.cit.*, pp.20-22 and Chapter 6.3 "Overarching conclusion and recommendation", pp.190-210.

¹³⁴ *Ibidem.*

122. With respect to protection, the proposed minimum standards regarding the content of protection orders, invoked through either criminal or civil law, find no legal basis in EU law that would allow prescribing the content of a protection order across Member States.

The proposed European Protection Order (January 2010) finds its legal basis in Article 82(1)(d) and is based on the principle of mutual recognition of judicial decisions taken in one of the Member States.

123. The minimum standards containing protective measures embedded in migration law find their basis in Article 79(1) and (2). Owing to the crossborder dimension often involved in most trafficking in human beings (THB), a directive providing for a temporary residence permit for victims of THB who co-operate with the authorities was issued.

124. Although the competence is based in migration, this temporary residence permit should include medical assistance and a reflection period.

Extension of these rights to other forms of crime also seems legally feasible, but only in relation to third-country nationals, and should not be tied to co-operation with authorities but to the breaching of fundamental rights.

125. In the field of VAW several international instruments call upon States to establish a range of support services for victims.

126. Within the EU, the 2001 framework decision on the standing of victims in criminal proceedings regulates the uniform treatment of victims in the Member States. Also the CoE recommendations contain paragraphs on victims' rights with respect to criminal proceedings as well as provisions for victim support in general¹³⁵ and guidelines for women victims of violence in particular.¹³⁶

127. In light of the high risk of serious injury and of lethality, adequate emergency support services are crucial to effectively protecting the right to life and health.

Currently, services are not sufficient in capacity, geographical distribution, and quality.

The area of support services for victims in general, regardless of whether or not they are engaged in criminal proceedings, is a primary competence of the Member States (TFEU Article 168(7)) and has no legal basis for harmonising legislation across the Member States.

However, Article 13 of the EU framework decision on the standing of victims in criminal proceedings urges the Member States to promote the involvement of victim support systems both for the initial reception of victims and for support and assistance thereafter.

When revising this framework decision, the relevant proposed standards should be taken into account.

¹³⁵ EUROPEAN COMMISSION (2010), *op.cit.*, pp.26-27.

¹³⁶ COUNCIL OF EUROPE, CAHVIO, CHINKIN, C. (2009), *Typology of protection for women victims of violence*.

➤ Member States need to provide stable funding and establish quality standards for sufficiently specialised services that can reach all victims of VAW. Fit for purpose services should include independently run shelters, helplines, outreach, counselling, therapy, advocacy, rape crisis centres and sexual assault referral centres, and both shelter and shortterm fostering for children.

➤ The EU can reinforce convergence across the Member States in immediate protection measures by promoting exchange of experience and good practices among Member States in this area, particularly with regard to avoiding gaps in protection.

➤ When regulating the mutual recognition of both judicial and non-judicial protection orders, the EU can make specific mention of measures to prevent crimes and discriminatory violence from occurring or being repeated. Alongside measures imposed by authorities, civil protection orders issued ex parte have proven a critically important tool in stopping violence, to ensure the safety of a victim until it is possible to hold a full hearing.

- Obligation to prosecute

- Punishment

128. In the field of substantive criminal law, although the competence of the EU has been recently extended through the Lisbon Treaty, there is still a limited basis for harmonisation. The exhaustive list of crimes that fall within the EU competence to propose approximation of laws does not include femicide (TFEU Article 83).

➤ Criminal laws address violence in principle, but a variety of barriers hamper effective and consistent implementation, resulting in lack of access to equal redress and protection. There are a number of possibilities for more effective implementation of existing international standards in the Member States.

➤ There there is a legal basis for EU action, the EU can encourage inclusion and implementation of such standards. Where there is no legal basis a possible EU approach can be to encourage more unified action by Member States.

- Investigation.

129. Harmonisation of legal measures in the area of criminal procedural law find legal basis in TFEU Article 82

130. The right to information, and various procedural rights that ensure adequate participation of the victim in criminal proceedings and the right to compensation have already been accepted as standards in EU as well as in Council of Europe instruments.

131. Various measures — applying to violence against women, LGBT persons and victims of child maltreatment — have been developed and proposed as standards to ensure the safety and dignity of the victim during investigation or when giving testimony.

These measures:

- do not require victims to confront the perpetrator, nor require victim and perpetrator to attend mediation or conciliation procedures as an alternative to prosecution; the right of the accused to question the victim directly in court shall be suspended and limited to questioning through a legal representative;
- ensure that criminal investigations do not degrade women or LGBT persons who have been subjected to violence and minimise intrusion, while maintaining standards for the collection of best evidence;
- minimise possible harm to a child victim or witness by ensuring that interviews be carried out by professionals trained for this purpose;
- make examination by a female forensic officer available to every victim of physical or sexual violence free of charge irrespective of criminal proceedings, the results not to be released without consent of the victim;
- establish and implement rules on admissibility of evidence to protect the dignity and privacy of victims in cases of rape or sexual violence;
- ensure the possibility to use videotaped interviews as evidence in criminal court proceedings if the victim/witness is in a situation of vulnerability;
- ensure separate, fit for purpose waiting rooms so that victims and defendants can enter and leave courts through different routes;
- ensure that a child victim is provided with a special representative, exclusive to the child and duty-bound to represent and act only in accordance with the interests of the child victim, from the outset of an investigation.

➤ In the process of revising the framework decision on the standing of victims in criminal proceedings into a directive the EU may further elaborate Article 2.2, which notes that “[e]ach Member State shall ensure that victims who are particularly vulnerable can benefit from specific treatment best suited to their circumstances.” This will build a stronger framework for special measures for women, children and LGBT persons.

VIII. EU COUNTRIES RESPONSES TO IPV AND GENDER MOTIVATED KILLINGS

132. All European countries, *de jure*, protect women’s human rights as they :

- ratified the most important international human rights instruments on women’s rights;
- enshrined in the Constitution the principle of equality for women;
- have in place national legislation and National Action Plans (NAPs) on VAW

However, *de facto*, in most European countries, an effective and adequate compliance with the due diligence obligation is hindered,¹³⁷ on one hand, by the above mentioned ‘regional’ factors (lack of common legal definitions of the notions of gender violence, domestic violence and IPV; scarce compliance with international standards in data collection and development/implementation of the NAPs, inadequate and insufficient collection of data and statistics on VAW, IPV and femicide; lack of structural and long-time measures to properly address VAW and structural discrimination and stereotypes); on the other hand, at local level, by:

- lack of gender sensitivity of the criminal justice system and police;
- inaccessibility and unavailability of support services for most women, especially those belonging to vulnerable groups or living in rural areas;
- lack of a holistic gender approach.

Furthermore, the next paragraph highlights some promising practices in the implementation, at both EU and local level, of international obligations to prevent and punish IPV and gender motivated killings and to protect the survivor.

a. OBLIGATION TO PREVENT GENDER-BASED KILLINGS

133. While a minimal reading of ‘prevention’ could be limited to interventions that interrupt repeated victimisation, i.e. further incidents of violence and/or rights violation within the legal process, it is clear from both the CEDAW and the CRC that this should be read in a more fundamental way: that is, States should address the underlying causes of discriminatory violence.¹³⁸

This is not clear to most EU Member States: only Spain adopted an holistic legislation to eradicate the *machista* culture.

i. Data collection

134. Eu level:

➤ The necessity of comparable data across the EU and at national level to benchmark and monitor progress and assess the effectiveness of interventions is widely recognised.

The conclusions of a DAPHNE Project on IPV EU Mortality affirm that “it is imperative to have sex (biological) and gender-based (sociological) statistical data (analyses in function of gender relations). We have again seen that, for example the data from Eurostat Justice (homicides per year) are not gender-based. A European directive could make this obligatory”

135. National level

Specific studies and officially available data are too rare in European countries.

¹³⁷ For a more detailed analysis on the implementation of national laws, on the set of minimum standards and recommendations addressed to Member States, see: EUROPEAN COMMISSION (2010), *op.cit.*.

¹³⁸ EUROPEAN COMMISSION (2010), *op.cit.*, pp.26-27.

Crime at the level of the couple is studied very little and not thought of as a result of a relationship based on the violence and control a man has on his partner resulting in deadly consequences to one or the other, depending on the case.

The conclusions of a DAPHNE Project on IPV EU Mortality recommend:

- the implementation of a systematic and centralised press review on IPV mortality, for three reasons:
 - the review assists the counting of homicide cases;
 - it serves as a case-based data collection tool which allows for a first partial analysis of the main circumstances and causes mentioned;
 - it is also a sociological marker to observe the terms used by journalists based on police or justice sources, often revealing how society considers femicides. The press review opens up a playing field to interact and debate with the media. Only a detailed analysis of the prehistory, the circumstances and the type of relationship allows for a better understanding of the characteristics of this phenomenon;
- the creation of national observatories on mortality due to gender violence. The role of this observatories would be:
 - to collect and synthesize the information obtained from the different sources — police, justice, health, associations, media, research;
 - to develop and propose those protection and prevention measures that are most appropriate for each Member State: short-term emergency measures to diminish violent acts, prevention measures for the mid and long term;
 - to keep the press review and perform specific research in this domain;
 - to produce a ‘minimum data set’ for each death which would be collected in a European harmonised IPV Mortality Database.Only such an observatory could manage and lead such a dynamic and varied ‘workflow’;
- the collection of data at the police level and from legal medicine, with assistance from specialists in gender violence. A real political will is needed for this on behalf of the authorities to dare to identify this type of homicide. These specific data collections, starting with a qualitative information search, require a specialisation by the professionals involved and a gendered qualitative approach. It is essential to take into account the manner of relationships involved as well as the previous cycle of violence in order to use a quantitative approach and to support the numbers, including their evolution in the short and long term.

ii. Awareness raising

136. The European Daphne programme¹³⁹

Since 1997 the Daphne initiative (Daphne, Daphne II and Daphne III programmes) has been supporting NGOs and local governments in the implementation of measures to prevent and combat violence against children, young people and women.¹⁴⁰ In the last decade, with funds provided by the Daphne programmes, several European and national awareness-raising campaigns were launched on these issues, with particular focus on domestic violence and IPV.¹⁴¹

137. (No adequate) sensitization of women about IPV and risk of re-assault or femicide

One of the most significant problems in preventing IPV femicide is getting the victims of domestic violence themselves to acknowledge that they are victims of IPV and to find a way to leave the abusive partner and seek assistance.

Campbell's study suggests that all victims of intimate partner violence, not just those who fit a classic picture of severe abuse or those who seek out domestic violence resources, should be educated about the risk of femicide. Women with physically abusive or highly controlling partners need to know that the risk is heightened around the time of relationship change, even if the main issues prompting the break-up are not related to domestic violence. Efforts that are targeted only toward those women who are seeking help for violence-related problems may miss an important proportion of potential victim¹⁴².

iii. Training of professional

138. Very often, the life of a woman depends upon the ability of first aid and legal operators and agents to evaluate the risk of re-victimisation of woman who have asked them for support, or by their ability to promptly direct her towards the antiviolence shelters present in their area and to inform her of the juridical instruments available to them to try and resolve their situation. Judiciary and public safety forces professional training on VAW is currently not systematic and rarely involves the associations and experts in the sector of gender violence¹⁴³.

Many national experts (BG, CY, CZ, EE, EL, ES, FR, IT, NL, PT, RO, SI) commented on the lack of expertise and knowledge among professionals, due to limited or no training of the relevant actors in civil and criminal legal systems.

Although training provisions are reported by a vast majority of Member States (AT, BE, CY, CZ, DE, DK, EE, EL, ES, FI, HU, IE, IT, LT, LU, NL, PL, PT, SE, SI, SK, UK), in only a minority (AT, CZ, DE, EL, ES, HU, IE, NL, SI) is training for police mandatory¹⁴⁴

¹³⁹ EUROPEAN COMMISSION (2010), *op.cit.*, p.104.

¹⁴⁰ See, for instance, KANE, J. (2008), "Family violence", DAPHNE booklets "Issues and experiences in combating violence against children, young people and women" (http://ec.europa.eu/justice_home/daphnetoolkit/files/others/booklets/05_daphne_booklet_5_en.pdf) and the Daphne database (http://ec.europa.eu/justice_home/daphnetoolkit/).

¹⁴¹ See also campaign messages and materials from Daphne programme projects: 'Campaigns on domestic violence' and 'Campaigns against sexual abuse and exploitation of children and women' (http://ec.europa.eu/justice_home/daphnetoolkit/html/europe_violence/dpt_europe_violence_en.html).

¹⁴² NICOLAIDIS, CURRY, ULRICH, SHARPS, McFARLANE, CAMPBELL, GARY, LAUGHON, GLASS and CAMPBELL (2003), *op.cit.*, p.793.

¹⁴³ SPINELLI and Italian NGO Platform "30 YEARS CEDAW: WORK IN PROGRESS" (2011), *cit.*, para.19.5.2, p.112.

¹⁴⁴ Government reports to the Council of Europe monitoring suggest that mandatory training of the police may be more widespread: see HAGEMANN-WHITE (2010).

For prosecutors and judges the numbers are considerably lower.

iv. NAPs¹⁴⁵

139. Primary and long term prevention remains underdeveloped in Member States and in EU approaches. It must be a strong pillar in National Action Plans.

140. Nearly all European countries have in recent years adopted comprehensive policy strategies to fight violence against women either through multi-year comprehensive national action plans (NAPs) addressing all forms of violence against women or separate action plans for specific forms of violence (23 EU Countries have a NAP on domestic violence, 27 on trafficking, no country has a NAP on femicide), or have included targeted measures in other strategic action plans (such as in gender equality plans, social inclusion action plans, or national security plans).

141. Nonetheless, only a few plans provide an adequate framework for effectively combating violence against women, as they often do not clearly specify the national agencies responsible and the role of the different organisations involved in the strategy, the concrete actions to be implemented, the budget allocated, the benchmarks to be achieved and the time frame.

The amount of resources earmarked for combating gender-related violence is often very limited and fragmented.

142. It is clear that most part of NAP are no more than planning guidelines, without operating effectiveness. There is also little knowledge of the outcome of interventions, as only a few countries have monitored and evaluated the activities implemented.

¹⁴⁵ EUROPEAN COMMISSION (2010), *op.cit.*, pp.11-12.

WHY ITALIAN NAP ON VAW DOES NOT WORK

Italian State did not fulfil the due diligence obligation to prevent VAW because of the inadequacy of NAP in the light of the international standards for drawing up national plans¹

- NAP is destined to be ineffective due to:
 - generic nature
 - lack of clear objectives to be realised within the deadlines provided
 - lack of specific funds allocated for the implementation of each action required, the national plans drawn up
 - generic objectives.No indication of timely actions for the achievement of these objectives.
- No distinction between medium and long-term objectives.
- Those responsible for the implementation of each action and monitoring the achievement of single objectives are not identified.
- NAP outline strategies independently of a real and effective knowledge of the phenomena they are aimed at preventing. The lack of statistics providing a current and detailed overview at a national, regional and local level makes it difficult to understand how specific strategies and intervention models have been defined.
- NAP plan does not include a critical analysis of the existing situation and does not identify the weak aspects in the prevention, protection and persecution of gender violence.
- NAP are drawn up without adequate consultation with members of civil society and do not include the good practice and recommendations from civil society and the NGOs operating in these fields.
- The Government in the NAP acknowledged that antiviolence centers need to be improved, but has not made funds permanently available to the Institutional bodies financing them.
- There is still no Committee for monitoring the performance of the activities, also if provided in point 5 of the plan.
- It would have been appropriate if representatives from antiviolence shelters and independent female experts on gender violence were also members of the Committee, but this is not provided in the plan.
- There is no longer any reference to the setting up of an Observatory against gender violence, established by the 2007 Financiarly Bill and not yet realised.
- No specific action is provided for vulnerable groups of women.
- The NAP does not provide any specific action for the investigation, prevention and protection from violence perpetrated against disabled women and those who are deprived of their personal freedom.
- No specific action is provided for migrant, Roma and sinti women.
- The minimum standards of protection and the timeframe within which they should be accessible by all victims of violence are not determined.
- The Government is not even aware of the number of safe houses throughout the country. Government in the NAP does not even explain how will achieve the minimum standard laid down by the Council of Europe is for at least one shelter for every ten thousand women and at least one violence prevention centre in each provincial capital.
- No action in schools is provided The NAP does not consider schools and educator as people who need necessarily to be the beneficiaries and promoters of training, prevention and information activities.
- The allocation of one week every year for increasing the awareness of students as regards male violence against women is nowhere near enough in this sense.

WHAT NGOS RECOMMEND TO PREVENT VAW AND FEMICIDE

- Systematically review NAP according to the international standards, involving independent female experts on gender violence and female and feminist associations and NGOs in this review.
- The adoption of a National Plan to prevent and fight specific forms of VAW, after consultation with independent female experts on gender violence and immigration, female and feminist associations and the antiviolence shelters that have already dealt with the victims of arranged marriages.
- Reviewing the civil and criminal law applicable in terms of the prevention of gender violence, implementing a system of coordination between the various regulations, not without consulting associations of women and female jurists expert in gender violence.
- Allocating a specific fund to finance prevention actions proposed by non Government organizations and female associations which work with the victims of gender violence.
- Allocating a specific fund to finance Women's shelters.
- Assuring adequate social protection for the victims of gender violence, including foreign women, through the provision of a specific and autonomous permit of stay.
- Planning a training programme from a gender viewpoint for all judicial operators and the police force and for operators in the psycho-socio-sanitary sector, involving all associations and female experts on gender violence.
- Providing for specific training, also through the distribution of guidelines, for law enforcement agencies and magistrates on the assessment of the dangerousness of sex offenders and the perpetrators of domestic violence, so that the victims of these crimes are protected, with an adequate use of all the cautionary measures provided by our legal system.
- Promoting compulsory periodical awareness and training programmes for personnel in the health sector, also through compulsory integration in the study programmes for university courses and the courses for specialisation in social and health related professions, with contents concerning the prevention and advance diagnosis of gender violence, and interventions and support for the victims of family and gender violence and violence on the basis of their sexual orientation, also determined by cultural and inter-generational conflict.

Extract from: SPINELLI B. – Italian NGO Platform 30 YEARS CEDAW: WORK IN PROGRESS, Shadow Report with reference to the 6th periodic report on the implementation of the CEDAW Convention submitted by the Italian Government in 2009, Italy, July, 2011. Para 19.5.1, pp. 109-113

WHAT CEDAW COMMITTEE RECOMMENDS TO ITALY TO PREVENT VAW AND FEMICIDE

(CEDAW/C/ITA/CO/6, 26 JULY 2011)

(Rec. 26/2011)

The Committee welcomes the adoption of the National Action Plan to Combat Violence against Women and Stalking.

(Rec. 27/11)

In accordance with its general recommendation No. 19 on violence against women and the views adopted by the Committee under the Optional Protocol procedures, the Committee urges the State party to:

(a) put emphasis on **comprehensive measures** to address violence against women in the family and in society, including through addressing the **specific needs of women made vulnerable** by particular circumstances, such as Roma and Sinti, migrant and older women and women with disabilities;

(c) **ensure that public officials, especially law enforcement officials and professionals in the judiciary, health-care, social work and education are systematically and fully sensitized** to all forms of violence against women and girls;

(d) **enhance the system of appropriate data collection** on all forms of violence against women, including domestic violence, protection measures, prosecutions and sentences imposed on perpetrators and conduct appropriate surveys to assess the prevalence of violence experienced by women belonging to disadvantaged groups, such as Roma and Sinti, migrant and older women and women with disabilities;

(e) **further pursue, in collaboration with a broad range of stakeholders, including women's and other civil society organizations, awareness-raising campaigns through the media and public education programmes to make violence against women socially unacceptable and disseminate information on available measures to prevent acts of violence** against women among the general public;

(f) **ratify the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence, in a timely manner.**

b. OBLIGATION TO PROTECT AND ASSIST WOMEN SURVIVED

144. ‘Protecting and assisting’ requires to explore the connections between human rights and victims’ rights.

Survivors of gender-based violence require different forms of protection at different times: they should be informed of available facilities and services and access be made readily available.

Delivery of economic and social rights is an obligation which must be respected by those who assume position of authority to facilitate the exercise of agency by survivors of gender-based violence.

CEDAW Committee in the Concluding Observations to Italian Government¹⁴⁶ on July 2011 express its concern “about the high number of women murdered by their partner or ex-partner (femicide)” and clearly states that “...which may indicate a failure of the State party’s authorities to adequately protect the women victims from their partners or ex-partners”. In order to fulfil its obligation to protect and assist women survived, CEDAW Committee ask Italian Government to “ensure that female victims of violence have immediate protection, including expulsion of perpetrator from the home, guarantee that they can stay in secure and well funded shelters, in all parts of the country, and that they have access to free legal aid, psycho-social counselling and adequate redress, including compensation”¹⁴⁷

In Europe the most important challenges for the future are:

- Ensure that in the immediate aftermath of violence survivors can be assisted by properly trained professionals, advised on legal options of protection, and obtain immediate assistance, regardless of legal/immigrant status;
- Guarantee of support services and long-term physical and psychological rehabilitation, periodical risk–assessment, with the adoption of multy-agency approach.
- Guarantee harmonization of civil and criminal procedures in order to make possible an adequate evaluation of all risk factors and a better protection of the survivors.

i. Services¹⁴⁸

145. Telephone hotlines

A majority of Member States (except DE, EL, MT and LT (52)) have a national VAW telephone helpline to provide support and information to victims, run by NGOs either fully or partially funded by the state.

¹⁴⁶ CEDAW/C/ITA/CO/6. Committee on the Elimination of Discrimination against Women, Forty-ninth session, Concluding observations of the Committee on the Elimination of Discrimination against Women on the sixth periodic report of Italy, 26.07.2011, n.26.

¹⁴⁷ *Ibidem*, n. 27, lett. c.

¹⁴⁸ Most part of this paragraph is quoted from EUROPEAN COMMISSION (2010), *op.cit.*, pp.65-66.

WAVE Statistic 1: Women's Shelters¹ in Europe – Overview
(30 June 2011)

	Population Data	Number of women's shelters	Number of places (beds) in these women's shelters ²	Women's shelter places needed	Women's shelter places missing	Women's shelter places per 10,000 inhabitants	Inhabitants per one women's shelter place
Europe (44 countries)	801,193,865	1,992 (100%)	27,036 (32.5%)	80,144 (100%)	54,834 (67.5%)	0.34	29,630
Europe without EU (17)	325,198,416	202 (10%)	3,552 (10%)	32,544 (100%)	29,338 (90%)	0.1	91,600
EU (27)	475,995,449	1,790 (90%)	23,484 (47.8%)	47,600 (100%)	25,496 (52.2%)	0.49	47,590
EU new countries (12)	103,775,611	63 (3.5% of EU)	805 (7.7%)	10,377 (100%)	9,581 (92.3%)	0.07	128,900
EU old countries (15)	372,219,838	1,727 (96.5% of EU)	22,679 (59%)	37,223 (100%)	15,915 (41%)	0.61	16,410

146. Lack of shelters

Virtually all Member States provide some form of shelter facilities, with the majority dedicated for IPV victims (AT, BE, BG, CY, CZ, DE, DK, EL, FI, HU, IT, IE, LT, LU, MT, NL, PL, PT, RO, SI, SK, UK).

147. The provision of women's shelters has increased in all countries, but still does not cover the needs in most of them. Overall, only 37.5 % of the places needed are available according to the Council of Europe's standards¹⁴⁹, with only four countries (Luxembourg, Malta, the Netherlands and Norway) fulfilling the recommendations of at least one family place¹⁵⁰ in a women's shelter per 10 000 inhabitants.

Six other countries — Austria, Slovenia, the Czech Republic, Germany, Liechtenstein and Croatia — are close to doing so¹⁵¹.

148. Sustainable funding remains a very big problem in most, and is not legally based.

The situation is especially acute in the newer Member States, where much provision is dependent on international donors.

149. Capacity problems — not having enough space to meet need — were noted in many Member States, including those with more extensive and long-standing shelter networks.

High-risk victims, such as IPV survivors or women and girls escaping from forced marriage, need special, more protected shelters. There is a total lack of statistics to assess the number of the available facilities that guarantee this kind of safety.

¹⁴⁹ COUNCIL OF EUROPE (2002), Recommendation Rec(2002)5 of the Committee of Ministers to member Countries on the protection of women against violence, adopted on 30 April 2002.

¹⁵⁰ A 'family place' requires a bed space for the mother and the average number of children in the country: COUNCIL OF EUROPE (2008), *Combating violence against women: minimum standards for support services*, Directorate-General of Human Rights and Legal Affairs, Strasbourg (<http://www.coe.int/t/dg2/equality/domesticviolencecampaign/Source/EG-VAW-CONF%282007%29Study%20rev.en.pdf>).

¹⁵¹ EUROPEAN COMMISSION (2010), *op.cit.*, pp.149-158.

150. Multiagency approach is needed for effective protection of high – risk victims

Sharps et al. (2001) found that 74% of 239 murdered women and 88% of victims of attempted femicide had been seen in emergency departments for some ailment during the year before the incident.

From all these facts we can assume the predictability of this crime, and in this sense it is important to have instruments that allow one to assess the impending danger to the victim. All of the systems that interact with battered women (health care, criminal justice, social service) need to keep in mind the 'duty to protect' as well as duties to warn (Campbell, 1994, Roehl et al., 2005).

All actors in these systems have responsibility to decide what actions will be taken against the perpetrator and also what measures will help to protect the victim. Risk assessment can help in this decision-making process.

151. Provision of specific services for vulnerable victims

BEST PRACTICE

Austria: shelters for migrant women¹⁵²

In Austria, over recent years, the share of migrant women living in women's shelters has risen to almost 60%. Therefore, many of the women's shelters provide counselling for women affected by violence in their own mother tongue.¹⁵³ In one of the women's shelters in Vienna, basic computer courses with a duration of 12 months were organised to make access to the labour market easier, especially for the immigrant residents of the shelters. This pilot project turned out to be highly successful, but due to financial reasons the project was not continued.

The Centre FEM South is in particular specialised in providing general health treatment for women facing barriers to accessing service provisions such as single mothers, women with low educational achievement or low income and migrant women¹⁵⁴. The centre is located in an area particularly inhabited by persons with migrant background; counselling is also provided in Bosnian/Croatian/Serbian and Turkish. The team is characterised by its multicultural and multi-professional orientation and consists of psychologists, pharmacists, physicians, nurses and social workers. To reduce thresholds, 'the doors are always open', and the work is characterised by un-bureaucratic procedures and flexibility to reach women not consulting conventional health institutions. In 2003, the percentage of clients with a migrant background was 40%.¹⁵⁵ In 2007, the Vienna women's health programme

¹⁵² EUROPEAN COMMISSION, (2010), *op.cit.*, p.126.

¹⁵³ Bundesministerin für Frauen und öffentlichen Dienst (Federal Minister for Women and Civil Service) (2008), *Ten years of Austrian anti-violence legislation*, Wien.

¹⁵⁴ Frauengesundheitszentrum FEM Süd (Women's Health Centre FEM South) (http://www.fem.at/FEM_Sued/femsued.htm).

¹⁵⁵ Women's Health Centre FEM South (Frauengesundheitszentrum FEM Süd) (http://www.fem.at/FEM_Sued/femsued.htm).

supported the establishment of a counselling centre for women's health and genital mutilation, also provided by FEM South offering low-threshold mother-tongue support.

ii. Harmonization of civil and criminal procedures. Multiagency approach

152. Comparative research in EU Country¹⁵⁶ shows that separation of different aspects of the law and policy into different “planets” with contradictory values, attitudes and practices is profoundly unhelpful.

Examples lie in the way in which child protection authorities may expect a woman living with a violent partner to separate as a means of protecting herself and her children. She is then required by the family courts and other authorities to provide joint custody and unsupervised contact to the same violent man. Equally problematic can be the overriding of injunctions and non-molestation orders made in one court by contact orders made in another court. The charging of men with offences related to violence and abuse within the criminal courts and then ignoring such charges and convictions when child contact is being negotiated. Further problems occur when it is not recognized that one of the most effective forms of child protection where there is domestic violence is the criminal prosecution of the offender. Progress in the future lies in bringing the different planets (violence against women planet, child protection planet, visitation and contact planet) into alignment so that attitudes, legislation and support for violence against women and children are harmonised rather than contradictory.

To prevent IPF during/because of separation, the best protection measures for women and their children, notably the unique jurisdiction as in Spain, where an excellent relationship exists between the civil justice and the penal justice so that the « civil judges » take into account the antecedents of violence in the partnership which were formally denounced and eventually abruptly dropped or not.

153. Several national experts emphasise the importance of having multi-agency intervention programmes available in which criminal justice and other professionals collaborate in a systematic way (inter alia LU, UK, NL, DE, IT). Some national experts mention that these multi-agency programmes have been legally based in a national domestic violence law (MT, CY, PL).

iii. Protection of VAW/DV/IPV survivors from re-victimization and femicide

BEST EU PRACTICE

PROTECT Daphne Project

The project PROTECT is titled Good Practice in Preventing Serious Violence, Attempted Homicides, including Crimes in the “Name of Honour” and in

¹⁵⁶ CAHRV (Co-ordination action on human rights violation), HUMPREYS C. – CARTER R., “The justice system as an arena for the protection of human rights for women and children experiencing violence and abuse”, February 2006, p.39.

Protecting High Risk Victims of Gender Based Violence. The project duration was from December 2009 to December 2010. The project is financed by the European Commission within the Daphne-Programme and is co-financed by Consejería de Deportes Comunidad de Madrid, Instituto de la Mujer de la Region de Murcia, Bundesministerium für Wirtschaft, Familie und Jugend (Austria) and Frauen Stadt

Wien. The project involves 12 partner organisations from nine countries (Austria, Bulgaria, Croatia, Czech Republic, Germany, Italy, Slovakia, Spain and UK).

The goals of the project are to contribute to the prevention and reduction of the most serious forms of gender based violence and protecting high risk victims, focusing on intimate partner violence. The high risk victims include victims at risk of homicide and attempted homicide, violence with the use of weapons and other dangerous objects, violence that causes severe injuries that may require emergency medical treatment, violence that causes repeated injuries and includes death threats and stalking, and deprivation of liberty for a prolonged period of time.

The activities of the project include analysis on the availability of gender sensitive statistics on homicides/femicides and attempted homicides/femicides at national and European level and research on the existing Risk Assessment Models. The analysis is done for the purpose of uncovering violence against women and to raise awareness of femicides, and to collect relevant data to help increase the protection of women and their children who are at high risk of severe forms of violence. The research is done for the purpose of identifying, protecting and supporting women and their children who are at high risk of life-threatening forms of violence.¹⁵⁷

153. Identification of high-risk victims

Various researches identify many characteristics associated with the perpetrator, the victim, their relationship, or the community: this allows an early identification of IPF risk factors (see para V).

For the most efficient protection of women, this information should be systematically collected and shared among community resources (see MARACs as a best practice).

Moreover, strategies need to be developed to determine, in each individual case, how risk factors may interact with each others increasing the risk of femicide.

People and professional should be informed about IPF risk factors.

In many cases, intimate partner femicides are preventable occurrences, especially when family members, friends, co-workers, neighbors, or agencies are aware of or suspect serious problems with the victim-perpetrator relationship prior to the killing.

¹⁵⁷ RÖSEMANN, U. (2010), "The WAVE Project", in DAPHNE, PROJECT "PROTECT: Good Practice in Preventing Serious Violence, Attempted homicides, Including Crimes in the Name of honour, and in Protecting High Risk Victims of Gender Based Violence", REPORT 3rd PARTNER AND EXPERT GROUP MEETING1, Bristol, UK, October 27th-29th 2010 p.4-5.

- Agencies should be trained on evaluation of IPF risk factors.
- EU should adopt a common system of risk assessment.

154. Model of risk assessment to predict IPV re-assault and IPF

Intimate partner violence (IPV) re-assault is easier to predict accurately because IPV re-assault has a higher occurrence (approximately 25% to 30% of IPV cases) than does intimate partner homicide (approximately 0,04 % of IPV cases) (Campbell et al., 2009; Dutton, 2008).

Some of the instruments were designed explicitly to predict a risk of homicide or lethal violence in intimate partner violence situations (e.g., Danger Assessment, MOSAIC-20).

Others were created to predict re-assault (e.g., SARA, ODARA, DVI, K-SID). There are also some instruments trying to predict both (Navy Risk Assessment or most recently SIVIPAS) (Roehl et al., 2005, Hilton et al., 2008, Echeburúa et al., 2009)¹⁵⁸.

Researches consent to identify a lot of characteristic associated with the perpetrator, the victim, their relationship, the community, that consent to better identify risk factor of IPF.

To better protect women, this informations have to be systematically collected and shared by community resources.

In many cases, IPF are preventable occurrences, since family members, friends, co-workers, neighbours, or agencies were aware of or suspected serious problems with the victim-perpetrator relationship prior to the killings.

- It occur to elaborate interagency strategies to individuate how risk factors may interact each others increasing the risk of femicide for the single woman.
- EU must have to adopt common system of risk assessment
- Agencies and professionals must be trained on evaluation of IPF risk factors
- People must be informed about IPF risk factor

155. Immediacy of protective provisions¹⁵⁹

Across the fields of violence a growing convergence is visible with regard to implementing protective provisions in emergency situations. The emergency removal order which is available (under various legal regimes) in almost half of the Member States, is considered a promising practice. It is most intended for cohabiting victims of IPV, although in some Member States emergency removal can also be applied in cases of child abuse where the abusive parent can be removed from the home for a set period of time, and in other Member States removal can be applied to any person living in the same residence.

156. Work with perpetrator of violence

With regard to IPV, there is a growing focus on providing programmes for perpetrators of domestic and other forms of interpersonal violence which make the perpetrators take responsibility for their actions and sensitise them to alternative forms of behaviour.

¹⁵⁸ WAVE Network, PROJECT PROTECT (2011), *cit.*

¹⁵⁹ EUROPEAN COMMISSION (2010), *op.cit.*, p.114.

The Spanish Organic Law requires that any man convicted of gender violence must, along with the (usually suspended) sentence, be mandated to attend a perpetrator programme.

In Luxembourg, a centre that offers psychological counselling and treatment for perpetrators of violence gives priority to domestic violence. The Riicht Eraus Centre provides psychological counselling and treatment for perpetrators of violence, gives priority to domestic violence perpetrators and has a Luxembourg Violence Perpetrator Group. Perpetrators may come voluntarily but are most mandated by a court.

A network of voluntary entry programmes, with required associated women's support workers, has been established in the United Kingdom under the name Respect. They are also developing promising practice through closer links with child protection agencies and in working with men from minority communities.

157. In Italy, the MUVI project 'Developing strategies to work with men using violence in intimate relationship', was financed by the Daphne II 2004-'8 programme and involved the municipalities of Bologna (Italy), Barcelona (Spain) and Athens (Greece).

The aim of the project was to raise awareness among the public and among social workers on men's violent behaviour against women in intimate relationships, organising training sessions carried out by Norwegian experts in the treatment of violent men.¹⁶⁰

➤ Recognition in the Member States of the importance of intervening with perpetrators is growing. Still, intervention programmes need to be more widely available and also integrated into criminal justice or community responses.

Unfortunately, there are some member states, notably Greece and Monaco, which have introduced a mediation procedure in the criminal law on domestic violence. There is no mention in the databases of measures to ensure the safety of women in case of mediation proceedings.

iv. Protection of women from vulnerable categories¹⁶¹

158. The fact that many victims are confronted with simultaneous and intersecting forms of victimisation is often insufficiently recognised when devising protective provisions that focus on the classic, single issue form of victimisation. Many victims of VAW, VAC and SOV are confronted with a concurrence of violent victimisation, abuse and/or neglect. If perpetrators and victims live in a relationship of close proximity, or one that is often characterised by past or current intimacy and/or ongoing dependencies, the personal context enhances the risk of multiple victimisation.

159. As a direct consequence, women and children often experience a continuum of violent, abusive and controlling behaviour. In this respect, IPV and various instances of child maltreatment are essentially different from most violent personal crime committed outside the family, which usually consists of one or more discrete incidents within a limited time span.

¹⁶⁰ A publication is available which presents the results of the project and of the interventions of the Norwegian training experts, including an evaluation on the project development and a reflection on the interventions (<http://www.muviproject.eu/>).

¹⁶¹ EUROPEAN COMMISSION (2010), *op.cit.*, p.113.

Protective measures against IPV need to address the reality that the violations reflect an ongoing course of conduct¹⁶².

160. Another limitation in protective measures emerged as a consequence of a limited recognition of intersecting forms of discrimination and inequality affecting non-EU- nationals across the board. In many Member States there are limited options for victims of IPV, HBV or FGM, as well as FM, to secure their legal status solely on the basis of being victim of these forms of violence.

PROMISING PRACTICES¹⁶³

In protecting and empowering victims of IPV from re-assault and femicide.

Spain and the **Netherlands** have introduced **GPSbased alarm systems to protect high risk victims in cases of IPV/stalking.**

Victims of IPV with a protection order receive an electronic monitoring device which allows them to identify when perpetrator is approaching, enabling them to call the police in time for protection.

It is innovative in the sense that, in contrast to general tendencies, it aims to keep the offenders outside the criminal justice system, while ensuring protection of victims.

There are positive reports of its effectiveness.

In secure funding of the services by the State

To provide support services and assistance available to all victims throughout the country, the secure funding of the services by the State, as is guaranteed in Austria, Denmark and the Netherlands should be considered a promising practice.

c. OBLIGATION TO INVESTIGATE AND PUNISH¹⁶⁴

161. Due diligence necessitates both adequate investigation and prosecution processes and effective protection of women by the police (see Opuz¹⁶⁵ ruling from the European Court of Human Rights (ECHR) which elaborates on ‘due diligence’ obligations).

Proposals to improve investigation and prosecution at EU level through criminal procedural law find their legal basis in Article 82 TFEU. The rights of crime victims are explicitly listed as one of the areas where measures may be proposed.

162. There have been important reforms in criminal procedural law in some Member States which facilitate the investigation and prosecution of cases.

The most significant are:

¹⁶² JOHNSON, M. (2008), *A typology of domestic violence. Intimate terrorism, violent resistance and situational couple violence*, Northeastern University Press, Boston, USA.

¹⁶³ This paragraph is quoted from EUROPEAN COMMISSION (2010), *op.cit.*, pp.105-106.

¹⁶⁴ Most part of information in this paragraph is quoted from EUROPEAN COMMISSION (2010), *op.cit.*, p.65.

¹⁶⁵ Opuz v. Turkey, Application No 33401/02, Council of Europe, European Court of Human Rights, 9 June 2009.

- policy measures to improve prosecution by designating IPV as a priority for the police and the public prosecution service (BE, NL, UK) and special guidelines for the criminal justice actors (AT, BE, BG, CY, CZ, DE, FR, EL, IT, LV, LU, PL, SI, HU, IE, DK, NL, UK, EE, LT, MT, SK, ES, UK);
- additional or special procedures for investigating (BE, CY, DK, EL, ES, HU, IE, MT, NL, PT, SE, UK) and/or prosecution of IPV ((BE, CY, DK, ES, FR, IE, NL, PL, SE, UK); or additional/special procedures in court for IPV cases (CY, DK, EL, ES, IE, IT, LU, UK);
 - in two Member States national networks of special domestic violence (UK) or gender-based violence (ES) courts have been created¹⁶⁶.

163. In addition to the measures described above, protection has been enhanced through the following measures:

- preventive protection programmes which address repeat victimisation and/or increase protection and support such that women feel it is safe to pursue criminal cases (e.g. electronic monitoring devices or GPS-based track systems to identify the location of high risk victims);
- when the victim of IPV is a non-EU national without an independent residence permit, 17 Member States allow the victim to apply for a residence permit after they no longer share residence with a violent partner (AT, BE, BG, DE, DK, EL, ES, FI, FR, IT, LU, LV, NL, PL, PT, SE, SK);
- legal provisions to offer perpetrator programmes exist in 15 Member States (AT, BE, BG, CY, DK, EL, ES, FR, IE, LU, NL, PL, RO, SE, UK), although capacity is generally limited. In most Member States it is a sentencing option, while a few try to insert the programmes into the procedure at an earlier stage. Only four Member States (DK, ES, NL, SE) have such programmes available in every region of the country.

164. Despite the move to more positive (active) prosecution policies, which aim to be more mindful about victims' needs, a number of national experts commented that, in practice, in most European countries are still persisting barriers, that actually represent a failures in implementation of IPV legislation, which included:

IN GENERAL

- Police prejudice and victim-blaming attitudes;
- stereotyping and under-enforcement in minority communities;
- lack of rapid process
- reluctance of victims to cooperate with investigations or testify in court (BE, CY, DE, EE, IT, RO, SE), which may seriously hamper the prosecution of IPV cases.

IN INVESTIGATION

¹⁶⁶ In England and Wales, there are 141 special IPV courts and in Spain there are 92 exclusive courts to address gender-based violence and 366 shared courts.

- widespread attitude of treating IPV as a ‘family’ or ‘private’ matter (AT, CZ, EL, LT, MT, PL);
- widespread attitude of minimising the violence (IT);
- ‘well-established routines of nonintervention’ (RO), non-response to calls (EL), reluctance to intervene (PL)

IN PERSECUTION

- lack of sufficient expertise in CJS actors, including judges, is seen by national experts as the main barrier to implementation of laws (BG, CY, MT, PT, RO, SI).
- reluctance to prosecute (BG, LT)
- reluctance to impose appropriate sentences/sanctions (CY, LV).

PROMISING PRACTICE¹⁶⁷

Sweden: manual on VAW for patrol officer and detectives and guidelines for prosecutors

Sweden has a manual for patrol officers and detectives on how to prevent, detect and investigate men’s violence against women, as well as guidelines for prosecutors to improve preliminary investigations and also to ensure professional and efficient support to victims from the first point of contact with law enforcement and throughout the entire legal proceedings.

These guidelines include special information about dealing with honour-based crimes.

Specialization

A number of Member States now entrust intervention to specialised units in the police and/or prosecution service.

This practice is probably more widespread than the national reports indicate, since our questions focused on the national level and such procedures are often regulated regionally, especially in larger countries such as

France, Germany, and Spain where there are different levels of government involved.

Specialised courts to handle cases of domestic violence or gender-based violence have been established

throughout the United Kingdom and Spain and represent a major effort to ensure effective intervention. Germany has taken its cue from the success of these courts to move responsibility for protection orders to the family courts, thus addressing the intersection between child protection and protection of women from IPV.

Cooperation

¹⁶⁷ Informations in this paragraph quoted from EUROPEAN COMMISSION (2010), *op.cit.*, Chapter 2.

Prescribing and empowering multi-agency cooperation is another important field of promising practice. In recent years it has become a mainstay of addressing IPV in some Member States, such as Germany, the Netherlands and the United Kingdom.

In the Netherlands, Veiligheidshuizen ('Safe Houses') create a structure that facilitates multiagency cooperation (police, prosecutors, municipality, support workers and child protection). The idea is that much violent crime, including IPV or child abuse, is complex and multifaceted, needing to be combated in a multidisciplinary fashion. All the actors meet, sometimes on a daily basis, and discuss cases that have been reported during the past 24 hours, each party bringing in his/her own expertise. During these meetings they try to come up with a bespoke approach for each case.

i. Victim's rights in criminal procedure

165. Even though victims of crime have not been granted explicit victims' rights in the leading international human rights instruments, these can be inferred through general human rights, in particular the right to privacy, the right to be heard or to complain and the right to an effective remedy,¹⁶⁸ accompanied for children by the right to a (safe) family life.

In this regard, regional human rights courts have underlined that impunity for serious crimes may violate human rights and that victims can be considered to have a right to effective investigations.¹⁶⁹

The longer-term right to assistance beyond the legal process was recently elaborated by the UN Special Rapporteur on VAW in her report to the Human Rights Council on reparation¹⁷⁰ and there are strong arguments that this should encompass economic and social assistance.

In addition, there are specific victims' rights instruments: the first one was adopted in 1985 with the UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power.¹⁷¹

166. Within the EU the 2001 framework decision (FD) on victims' rights in criminal proceedings¹⁷² was a milestone which codified at the supranational level, the legal position of victims which is binding for Member States. This directive sets out the right to respect and

¹⁶⁸ On human rights law in relation to victims, see for example: ALDANA-PINDELL, R. (2009), "An emerging universality of justiciable victims' rights in the criminal process to curtail impunity for state-sponsored crimes", in *Human Rights Quarterly*, vol.26, n.3, pp.605 ff.; SEIBERT-FOHR, A. (2009), *Prosecuting serious human rights violations*, Oxford University Press, pp. 62-64, 122-123 and 138-139.

¹⁶⁹ Inter-American Court of Human Rights, *Blake v. Guatemala*, Judgment of 24 January 1998, para.97.

¹⁷⁰ See, for example, MANJOO, R., UN Special Rapporteur on VAW (2010), *Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development*, A/HRC/14/22, 19 April 2010: "The obligation to provide adequate reparations involves ensuring the rights of women to access both criminal and civil remedies and the establishment of effective protection, support and rehabilitation services for survivors of violence. The notion of reparation may also include elements of restorative justice and the need to address the pre-existing inequalities, injustices, prejudices and biases or other societal perceptions and practices that enabled violations to occur, including discrimination against women and girls."

¹⁷¹ UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, GA Resolution 40/34, 1985, quoted in EUROPEAN COMMISSION (2010), *op.cit.*, pp.26-27.

¹⁷² EU FD VRCP - Framework decision on the standing of victims in criminal proceedings of 15 March 2001 (2001/220/JHA).

recognition at all stages of the criminal proceedings (Article 2); the right to receive information about the progress of the case (Article 4); the right to protection, of both victims' privacy and their physical safety (Article 8); the right to compensation, from the offender and the state (Article 9); and the duty of governments to promote mediation in criminal cases for offences for which it considers it appropriate (Article 10); the right to receive victim support (Article 13)¹⁷³. However, for many of the norms, it is not only legal transposition that matters, but implementation in practice¹⁷⁴.

Table 2.10: Aspects of victims' rights

Right to	Number of Member States with the provision	Member States where right does NOT apply
Be treated with respect and dignity (as an explicit legal or quasi-legal provision)	16	BG, CY, CZ, FI, FR, LT, LV, MT, RO, UK (missing DK)
Receive Information	22	EL, IE, MT (missing DK, SI)
Be involved as an affected party (i.e. to be heard)	25	CY (missing DK)
Protection in proceedings (both of the physical safety and their privacy)	27*	
Legal aid and other forms of assistance	—	Provision and availability differs between the fields of violence
Compensation	—	Not possible to generalise as provisions so varied

* The content and extent of measures differs considerably between Member States and for different crimes and groups of victims.

167. Implementation of EU FD on victims' rights in criminal proceedings, with reference to victims of VAW.

168. Art. 2: right to respect and recognition at all stages of the criminal proceedings

Respectful treatment which recognises the specific circumstances of the victim's ordeal is a cornerstone of victims' rights, with particular significance when they participate in a trial as a witness.

Particularly vulnerable victims should benefit from 'specific treatment best suited to their circumstances' (FD Article 2.2).

Definitions of vulnerable victims invariably include child victims and increasingly (female) victims of sexual and domestic violence.

This must be extended to all forms of VAW. There is a strong correlation between the lack of acknowledgement of the right to respect and dignity and the failure of some Member States to establish protocols for police and prosecutors on how to investigate discriminatory violence cases.

There is also increasing research evidence that victims who are treated with care and respect not only give 'best evidence' but are also more likely to continue to support prosecutions.

¹⁷³ Quoted from EUROPEAN COMMISSION (2010), *op.cit.*, p.90.

¹⁷⁴ Table quoted from EUROPEAN COMMISSION (2010), *op.cit.*, p.91.

169. Art. 4: the right to receive information about the progress of the case

Nearly all Member States have a general provision on the right to receive information. This is most often fulfilled by EU countries in the early stages of the criminal procedure.

However, information at later stages, in particular on the release of the offender, is often not made available.

Our findings concur: only 13 national experts report that their state notifies victims of the release of the offender (AT, BE, BG, CY, CZ, DE, LT, NL, PL, PT, SE, SK, UK). This oversight may be particularly problematic for victims of VAW, notably IPV, rape, HBV and stalking, who run a high risk of repeat offences.

The systems for information dissemination may be on paper in the directive, but it is so far to be realized in practice.

170. Art. 8: the right to protection, of both victims' privacy and their physical safety

Involvement as affected party For victims of crimes which breach their bodily integrity and dignity and thus have profound impacts, as is the case across all three fields of violence, it is crucial to be involved in criminal proceedings, including having the rights, for example, to ask questions, to be heard, to make applications or to appeal decisions made by police/prosecutors/the court.

One of the most important rights in criminal (or other court and administrative) proceedings is the right to be heard.

Provision of special waiting areas for victims in court premises, to prevent confrontation with the accused, is only assured in a third of Member States (VAW: AT, BE, ES, FI, IE, LV, NL, PL, SE, UK; VAC: AT, DK, ES, FI, FR, LT; PT, SE, UK).

This is a particularly crucial provision to ensure the safety of victims of violence, especially where there is a high risk of retaliation by the perpetrator, which is arguably most likely where they are known to each other.

A further serious limitation is that, whilst these provisions appear to be rights in law, many national experts noted that in practice they often remain at the discretion of the prosecutor and/or court and the technology was not always available in all courts/regions.

Despite increased attention in law and policy, therefore, the FD is still to be fully implemented.

171. Art.10: the duty of governments to promote mediation in criminal cases for offences for which it considers it appropriate

Mediation in cases of interpersonal violence Victim-offender mediation has received increased attention within the EU over the last decade.

Mediation is most commonly used in less severe cases, especially with juvenile offenders. In some EU study, however, it was found that several Member States still permit also in more severe cases — even IPV — to be referred to victim-offender mediation.

This approach ignores the now extensive knowledge base on the inappropriateness of this response where the safety of the victim needs to be the first consideration.

It is not appropriate in cases of IPV or sexual violence, if not explicitly requested by the victim¹⁷⁵ and even here care needs to be taken to ensure that the victim's rights to bodily integrity are not compromised in the process¹⁷⁶.

d. OBLIGATION TO PROVIDE REPARATION

172. No compensation for victims of IPV

Victims of violence are eligible for compensation either from the state or from the perpetrator in all 27 Member States.

173. ART.9 of EU FD VRCP recognize to the victims the right to compensation, from the offender and the state. Also EU Directive 2004/80/EC provide that crime victims in EU should be entitled to fair and appropriate compensation for the injuries they have suffered, regardless of where in the European Community the crime was committed.

174. All Member States but one (IT; information missing from CY, DK, NL, SI) have implemented some form of compensation by the state. In Cyprus and Luxembourg the state only compensates in cases where the offender cannot pay; in Malta, either the state or the offender pays.

175. These positive results *de jure*, however, conceal a more troubling and disparate reality *de facto*. A European study on the implementation of the directive revealed that in many Member States only a minute proportion of victims access compensation and it is questionable whether the amounts awarded are sufficient to acknowledge the harm done to victims¹⁷⁷

176. As in other part of the world, also in Europe the conceptual framework and its practical implications of the due diligence obligation to provide reparation - as specifically recognised by the Convention on the Elimination of all Forms of Discrimination against Women and the Declaration on the Elimination of Violence against Women - remains grossly underdeveloped. The structural inequalities which impact on the right to compensation for victims of gender-based violence have been emphasized by The UN Special Rapporteur on VAW, who recently addressed this extensively in her first report to the UN Human Rights Council, highlighting state obligations under international law to provide the right to remedy and access to effective remedies for the harm that victims of VAW have suffered. She concluded: Reparations should aspire, to the extent possible, to subvert instead of reinforce pre-existing patterns of cross-cutting structural subordination, gender hierarchies, systematic marginalisation and structural inequalities that may be at the root cause of the violence¹⁷⁸.

¹⁷⁵ And even this is controversial: see PEMBERTON, A., KUIJPERS, K.F., BALDRY, A.C., and WINKEL, F.W., "A nuanced position. Intimate partner violence and restorative justice", in WINKEL, F.W. *et al.* (eds.) (2009), *Proceedings of the Symposium of the World Society of Victimology*, Wolf Legal Publishers, Nijmegen, The Netherlands.

¹⁷⁶ UN Handbook for legislation on violence against women, 2008, refer Council of Europe Convention which is currently in preparation, mediation in cases of IPV is discouraged.

¹⁷⁷ MIERS, D. (2007), "Looking beyond Great Britain: the development of criminal injuries compensation", in WALKLATE, S. (2007), *Handbook of victims and victimology*, Willan Publishing, Cullumpton, Devon, UK.

¹⁷⁸ MANJOO, R. (2010), *Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development*, Report of the Special Rapporteur on violence against women, its causes and consequences, A/HRC/14/22, 19 April 2010, para.85.

IX. FEMICIDE/FEMINICIDIO AND STATE'S VIOLATION OF WOMEN'S HUMAN RIGHTS.

177. It is remarkable how the interpretation of positive obligation of states to protect (potential) victim of VAW is evolving, especially about victims of IPF.

Treaties's provision on due diligence obligation have been applied by ECHR and CEDAW Committee to change interpretation on VAW laws in European countries.

The court cases proposed here show that States are being held accountable for failure to protect women from violations of their rights. They demonstrate that the due diligence requirements are not just theoretical but are usable, practical, reasonable and standard¹⁷⁹ to prevent femicide.

a. The role of ECHR

178. Since 1979, ECHR has established that the protection of human rights must not be theoretical or illusory, but practical and effective.

ECHR ruled that the obligation to secure the Convention rights does not merely compel the state to abstain from interference in private or family life (article 8) but may also require the state to take positive action¹⁸⁰ (1979, case Airey vs. Ireland).

179. Case of Opuz v. Turkey, 2009¹⁸¹

The case:

The applicant alleged that her with her mother both suffered years of brutal domestic violence at the hands of her mother's husband. The domestic violence was repeatedly reported to the authorities, though many of these complaints were subsequently withdrawn upon the threat of further violence. Despite their complaints the police and prosecuting authorities did not adequately protect the women, and ultimately Ms. Opuz's mother was killed by him. The applicants argue violations of Articles 2 (right to life), 3 (prohibition of torture or inhuman or degrading treatment), 13 (right to an effective remedy) and 14 (freedom from discrimination).

Decision:

ECHR has made some significant decisions in relation to gender-based violence, but never, before OPUZ judgment, VAW was taken in consideration as an inequality issue.

¹⁷⁹ IWRAW, *Report on regional thematic meeting on violence against women*, 12-15 december 2005, Dhaka (Bangladesh).

¹⁸⁰ Ms. Airey was seeking judicial separation from her husband. She alleged that he was violent towards her and he had a conviction for assaulting her. In Ireland judicial separation was only available through High Court proceedings and legal aid was not available for such proceedings. including provide legal aid to enable the woman to seek a judicial separation.

¹⁸¹

<http://cmiskp.echr.coe.int/tkp197/view.asp?action=html&documentId=851046&portal=hbkm&source=externalbydocnumber&table=F69A27FD8FB86142BF01C1166DEA398649>

This judgement is important because, in doing so, ECHR refer to most relevant international Treaty bodies and also to the jurisprudence of the Interamerican Court, quoting also “Campo Algodonero” judgement.

Under the article 2 ECHR considered a failure of the obligation to protect women’s life if the State is aware of the existence of a risk for the women, and do not adopt adequate protective measures.

It is really important to underline that under the Article 2 decision the Court stated that: “[T]he issue of domestic violence, which can take various forms ranging from physical to psychological violence or verbal abuse, cannot be confined to the circumstances of the present case. It is a general problem which concerns all Member States and which does not always surface since it often takes place within personal relationships or closed circuits and it is not only women who are affected. The Court acknowledges that many men may also be the victims of domestic violence and, indeed, that children, too, are often casualties of the phenomenon, whether directly or indirectly”¹⁸², recognizing IPV against women as a serious and widespread violation of human rights in Europe.

Under article 3, the ECHR reiterated the state’s primary duty to secure the right to life by adopting adequate measures. This is the first time that a female partner affected by IPV obtain a successful application under article 2 and 3 (in the past happened for violence against children): the Court, described the applicant as ‘vulnerable’, and doing so appears to accept that the social circumstances of women has an effect on the ‘minimum level of severity’ needed to ground an Article 3 claim, thus modifying the threshold in domestic violence cases¹⁸³. With regard to the right to equal treatment, ECHR refer to CEDAW and explicitly underline the authoritative status of the this international instruments, ruling that CEDAW shows, under the international law, “a state’s failure to protect women from domestic violence breaches their right to equal protection of the law and this failure does not need to be intentional”.

The Court affirm state must ensure non-discrimination *de facto*. In this case, constituted evidences of discrimination “the general attitude of the local authorities, such as the manner in which the women were treated at police stations when they reported domestic violence and judicial passivity in providing effective protection to victims”.

Court stated that in the light of the State's positive obligation to take preventive operational measures to protect an individual whose life is at risk, authorities are expected to take special measures consonant with the gravity of the situation with a view to protecting the women’s right to life.

Ms. Maed de Boer – Buquicchio, deputy secretary general of the council of Europe, defined the decision an “historic judgement”¹⁸⁴. She also commented that the quota ECHR granted to Opuz

¹⁸² para. 132.

¹⁸³ See Londono P.,

¹⁸⁴ 29th Council of Europe Conference of Ministers of Justice, “Breaking the silence – united against domestic violence”, 17-19 June 2009, Tromsø, Norway, Opening speech.

http://www.coe.int/t/secretarygeneral/sga/speeches/2009/T_18062009_Tromso_29th_CoE_Ministers_of_Justice_EN.asp

for non-pecuniary damages and legal costs (35.000 €) “will not compensate for the suffering she has endured”. The only form of transformative justice for Ms. Buquicchio can be “to use this judgment to change laws, administrative procedures and attitudes to help and to protect Nahide and all other women suffering from violence”, because “This is not only a problem in Turkey but in every single country in Europe and in the world. The work is cut out for national authorities in all these countries, but also for the Council of Europe which has been working for years to help its member states in their fight against violence against women, including domestic violence”. For ms. Buquicchio the pinnacle of this effort is the Convention which will introduce legally binding standards in this regard.

180. **Case of Branko Tomašić and others v. Croatia, 2009**¹⁸⁵

The case:

The applicant alleged that her husband (unwedded) had made repeated threats against her and their one year old daughter, including that he had a bomb that he would throw at her. Following complaints made by her, he was detained and criminal proceedings instigated against him. A psychiatric opinion was obtained that stated that he was suffering from a profound personality disorder. He served his sentence but shortly after his release he murdered his wife and daughter and then took his own life.

Decision

The ECtHR reiterated the state’s primary duty to secure the right to life by putting in place effective criminal-law provisions to deter the commission of offences against the person, backed up by law-enforcement machinery for the prevention, suppression and punishment of breaches of such provisions.

State authorities also have a positive obligation to take preventive operational measures to protect an individual whose life is at risk from the criminal acts of another individual. This must not amount to an impossible or disproportionate burden on authorities and not every claimed risk to life entails a Convention requirement to take operational measures to prevent that risk from materialising.

The positive obligation arises where the ‘authorities knew or ought to have known at the time of the existence of a real and immediate risk to the life of an identified individual from the criminal acts of a third party and that they failed to take measures within the scope of their powers which, judged reasonably, might have been expected to avoid that risk’ (Para. 51).

The ECtHR indicated the ways in which the Croatian authorities had failed to take adequate measures in the circumstances of the case. Although the husband had stated that he had a bomb, no search of his premises and vehicle was ordered during the initial criminal proceedings against him. Although a psychiatric report was made for the purposes of the criminal proceedings which stressed the need for continued psychiatric treatment, the psychiatric

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<http://cmiskp.echr.coe.int/tkp197/view.asp?action=html&documentId=845465&portal=hbkm&source=externalbydocnumber&table=F69A27FD8FB86142BF01C1166DEA398649>

treatment that was ordered was too short and the Government failed to show that it had been actually and properly administered.

The failure to provide adequate psychiatric treatment while he was in prison meant that his condition was not assessed immediately prior to his release to determine the risk to his wife and daughter. The ECtHR found this last to be particularly striking since the local courts had taken his threats seriously and the psychiatric report had stated that there was a strong likelihood that he might repeat the same or similar offences.

The ECtHR reiterated the procedural obligation under article 2 for an effective official investigation when individuals have been killed (whether by state officials or private individuals) in order ‘to secure the effective implementation of the domestic laws which protect the right to life’.

This requires taking reasonable steps to secure the evidence concerning the incident and the authorities must act of their own motion once the matter has come to their attention. (Para. 62).

181. **Case of Bevacqua and S. v. Bulgaria, 2008**¹⁸⁶

The case:

The applicants were a mother and her son. The mother suffered domestic abuse from her husband, left the family home and sought divorce and custody of her child. There were a series of incidents around access to the child, involving aggressive behaviour on the part of the husband. Under the Bulgarian Penal Code, criminal proceedings in respect of wilfully inflicted “light bodily injury” may generally only be instituted by the victim. Bulgarian courts have held facial bruises, a broken nose and head contusions without loss of consciousness to be examples of light bodily injuries.

The mother claimed that Bulgaria was in violation of the ECHR because it had failed to assist her in prosecuting her husband for domestic violence. Placing the burden of prosecution for light bodily injury on the victim was incompatible with the state’s duty to provide protection against domestic violence and was discriminatory in that the law’s shortcomings impacted disproportionately on women.

It treated domestic violence as a trivial family matter that did not warrant public prosecution. The authorities failed to assist her in prosecuting her husband and charged her with abduction of her son when she sought refuge with him in a shelter for abused women.

There were also claims relating to interim custody of the child.

Decision

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<http://cmiskp.echr.coe.int/tkp197/view.asp?action=html&documentId=836635&portal=hbkm&source=externalbydocnumber&table=F69A27FD8FB86142BF01C1166DEA398649> . The summary of the fact and of the decision is integrally quoted by: CAHVIO, *Case Law of the European Court of Human Rights on violence against women*, document prepared by Christine Chinkin, London School of Economics and Political Science, 2009.

The ECtHR reiterated the state's positive obligations under article 8 that may involve the adoption of measures in the sphere of the relations of individuals between themselves, especially for the effective protection of vulnerable people.

State obligations may include a duty to maintain and apply in practice an adequate legal framework affording protection against acts of violence by private individuals.

The ECtHR noted 'that the particular vulnerability of the victims of domestic violence and the need for active state involvement in their protection has been emphasised in a number of international instruments.'

The applicant had sought assistance in relation to her husband's aggressive behaviour and the ECtHR noted that the police and prosecutors had taken some measures – they issued a police warning against the husband and attempted to assist the parties reach agreement. The ECtHR did not accept that the Convention requires state-assisted prosecution (as opposed to private prosecution by the victim) in all cases of domestic violence. However on the facts 'certain administrative and policing measures' including those mentioned in Recommendation Rec(2002)5 of the Committee of Ministers of the Council of Europe (Para 33) were called for. Bulgarian law was inadequate as it did not provide for specific administrative and policing measures and the measures taken by the police and prosecuting authorities on the basis of their general powers were not effective.

The availability of private prosecution and an action for damages were insufficient because of the time involved and the inadequacy of such measures to prevent repeated incidents.

The authorities' failure to impose sanctions or otherwise enforce the husband's obligation to refrain from unlawful acts 'amounted to a refusal to provide the immediate assistance the applicants needed' and their view that the situation was a 'private matter' was in violation of the state's positive obligations under article 8.

182. **Case of Kontrova v. Slovakia, 2007**¹⁸⁷

The case:

The applicant filed a criminal complaint against her husband accusing him of assaulting and beating her with an electric cable. She also stated that there was a long history of physical and psychological abuse by her husband. Some days later she went with her husband to the District Police Station seeking to withdraw the complaint. The authorities decided to take no further action. There was a further incident some weeks later and then the husband shot and killed her two children and himself.

Decision:

The ECtHR reiterated the positive obligation on states 'take appropriate steps to safeguard the lives of those within its jurisdiction' and the primary duty to secure the right to life by putting in

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<http://cmiskp.echr.coe.int/tkp197/view.asp?action=html&documentId=818048&portal=hbkm&source=externalbydocnumber&table=F69A27FD8FB86142BF01C1166DEA398649> . The summary of the fact and of the decision is integrally quoted by: CAHVIO, *Case Law of the European Court of Human Rights on violence against women*, document prepared by Christine Chinkin, London School of Economics and Political Science, 2009.

place effective criminal-law provisions to deter the commission of offences against the person, backed up by law enforcement machinery for the prevention, suppression and punishment of breaches of such provisions.

The positive obligation extends in appropriate circumstances to requiring the authorities to take preventive operational measures to protect an individual whose life is at risk from the criminal acts of another individual. The scope of the positive obligation must be interpreted in a way which does not impose an impossible or disproportionate burden on the authorities and does not apply to every claimed risk to life. 'For a positive obligation to arise, it must be established that the authorities knew or ought to have known at the time of the existence of a real and immediate risk to the life of an identified individual from the criminal acts of a third party and that they failed to take measures within the scope of their powers which, judged reasonably, might have been expected to avoid that risk.'

On the facts of the present case, the ECtHR affirmed that it is one of the main tasks of the police to protect fundamental rights and freedoms, life and health.

The local police department were aware of the situation through communications and emergency phone calls which detailed serious allegations of long-lasting physical and psychological abuse, severe beating with an electric cable and threats with a shotgun.

The police had specific obligations: accepting and registering the applicant's criminal complaint; launching a criminal investigation; commencing criminal proceedings against the applicant's husband; keeping a proper record of the emergency calls; advising the next shift of the situation; and taking action in respect of the allegation that the applicant's husband had a shotgun and had made violent threats with it.

The police failed to comply with these obligations and indeed one of the officers involved assisted the applicant and her husband in modifying the first criminal complaint so that it was treated as a minor offence, resulting in the deaths of the children. This failure constitutes a violation of ECHR Article 2.

b. The role of CEDAW Committee

183. The decisions of the United Nations Committee on the Elimination of Discrimination against Women (CEDAW) on the cases against Austria and Hungary made it clear that states party to the Convention are obliged to provide women effective protection against violence in every individual case. While the lack of adequate police response was a main aspect of these cases, provision of services such as places of safety, competent information and advice can be understood in the context as part of the human rights obligations of the state.

Femicide in Austria

- Yildirim v. Austria, 2007¹⁸⁸
- Goekce v. Austria, 2007¹⁸⁹

¹⁸⁸ <http://www.coe.int/t/dghl/standardsetting/convention-violence/CEDAW%20case%20Yildirim%20v.%20Austria.pdf>

The cases

Sahide Goekce and Fatma Yildirim were both victims of IPF, murdered by their husbands following years of IPV.

Despite reporting the violence to the police and obtaining protection orders, lack of coordination among law enforcement and judicial officials resulted in repeated failure to detain the offenders and ensure the women's safety.

Two NGOs took the cases to the CEDAW Committee under the O.P.

The Committee's decisions made it clear that the State's obligation to protect women from domestic violence extends beyond passing laws. The Committee found that Austria had failed to act with "due diligence", by not ensuring that the law was implemented properly.

National impact of the Committee's recommendations

In response to the Committee's recommendations and the media attention that surrounded the case, the Austrian Government introduced and accelerated legal reforms to protect women from violence, including an amendment to the Code of Criminal Procedure, new protection measures and the creation of specialized domestic violence prosecutors.

In order to support this reform, the Government increased funding for implementation of the law by 60% in 2007.

Source: UN WOMEN, *2011-2012 Progress of the world's women in pursuit of justice*, p.18.

183. **Ms V.K. v. Bulgaria**, 2011¹⁹⁰

The case:

V.K. is a victim of severe domestic violence: when she decides to divorce, his husband started to be more aggressive, denied her any contact with their child and attempt to kill her. The author claims that the State party neglected its "positive" obligations under the Convention and supported the continuation of a situation of domestic violence against her contrary to its obligations under the Convention. She argues that women in Bulgaria are far more affected than men by the failure of the courts to take domestic violence seriously as a threat to their life and health and that in her case the Plovdiv courts neglected the long-lasting emotional, psychological, economic and physical violence suffered by her and falsely concluded that both parties were equally responsible for their conflicts. The Court also underestimated the negative effects of the violence perpetrated by her husband on the development of the children, as well as their emotional trauma.

¹⁸⁹ <http://www.coe.int/t/dghl/standardsetting/convention-violence/CEDAW%20case%20Goekce%20v.%20Austria.pdf>

¹⁹⁰ <http://www.coe.int/t/dghl/standardsetting/convention-violence/Case%20v%20Bulgaria%20E.pdf>

The Committee requested State party to take interim measures for the protection of the woman and their children and to avoid irreparable damage to them, but the State did not respond. After five months was applied an order of protection.

The Committee' decision:

The Committee noted that in order for a single woman to enjoy the practical realization of the principle of equality between women and men and of her human rights and fundamental freedom the political will that is expressed in such specific legislation must be supported by all State actors, including the courts, who are bound by the obligations of the State party. In this case, decisions by the Bulgarian courts, “reflects a stereotyped and overly narrow concept of what constitutes domestic violence”. The Committee notes also that the absence of shelters constitute a violation of the State party's obligation under article 2 (c) and (e) of the Convention to provide for the immediate protection of women from violence, including domestic violence.

The Committee recommended to the State to provide adequate financial compensation to the woman, and, in general, to:

- (i) Amend article 10 (1) of the Law on Protection against Domestic Violence so as to remove the one-month time limit and to ensure that Protection orders are available without placing undue administrative and Legal burdens on applicants;
- (ii) Ensure that the provisions in the Law on Protection against Domestic Violence ease the burden of proof in favour of the victim by Amending the Law accordingly;
- (iii) Ensure that a sufficient number of state-funded shelters are available to victims of domestic violence and their children and provide support to NGOs offering shelter and other form of support to victims of domestic violence;
- (iv) Provide mandatory training for judges, lawyers and law enforcement personnel on the application of the Law on Protection against Domestic Violence, including on the definition of domestic violence and on gender stereotypes, as well as appropriate training on the Convention, Optional Protocol and the Committee's general recommendations.

185. **Ms. A.T. v. Hungary**, 2005¹⁹¹

The case:

A.T. is a victim of domestic violence: she had suffered severe and regular domestic violence and serious threats to her life by her common law husband. There had been civil proceedings regarding the husband's access to the family residence and he was authorized by the judge to return to the property, which the author and the husband owned jointly. The woman claimed that as there was no shelter in the country she had not another place where she could accommodate her and both her children. In addition, in Hungary there was no possibility of obtaining a protection/restraining order, as no such orders were available under Hungarian law.

¹⁹¹ http://www2.ohchr.org/english/law/docs/Case2_2003.pdf

The overarching issue was the positive obligation of the State to take action to eliminate domestic violence, with a focus on the failure of the State party to ensure protection of the human rights of the author from violations by a non-state actor.

The Committee' decision:

In its resolution of the case, the Committee drew attention to domestic violence as a wider, societal problem, providing recommendation:

- to take immediate and effective measures to guarantee the physical and mental integrity of the author and her family;
- to ensure that she be given a safe home in which to live with her children, receive appropriate child support and legal assistance
- to ensure she receive reparation proportionate to the physical and mental harm undergone and to the gravity of the violation of her rights.

The recommendations of a general character called upon the State party, *inter alia*, to:

- (c) Take all necessary measures to ensure that the national strategy for the prevention and effective treatment of violence within the family is promptly implemented and evaluated;
- (d) Take all necessary measures to provide regular training on the CEDAW and the Optional Protocol thereto to judges, lawyers and law enforcement officials;
- (e) Implement expeditiously and without delay the Committee's Concluding Comments of August 2002 on the combined fourth and fifth periodic report of Hungary in respect of violence against women and girls, in particular the Committee's recommendation that a specific law be introduced prohibiting domestic violence against women, which would provide for protection and exclusion orders as well as support services, including shelters;
- (f) Investigate promptly, thoroughly, impartially and seriously all allegations of domestic violence and bring the offenders to justice in accordance with international standards;
- (g) Provide victims of domestic violence with safe and prompt access to justice, including free legal aid where necessary, in order to ensure them available, effective and sufficient remedies and rehabilitation;
- (h) Provide offenders with rehabilitation programmes and programmes on non-violent conflict resolution methods.

The State party was also requested to publish the Committee's views and recommendations and to have them translated into the Hungarian language and widely distributed in order to reach all relevant sectors of society.

The most important aspect of this decision is the fact that the Committee reinforced the idea that domestic violence is based on the unequal power relations between women and men and insisted that there is a dire need to change those customs and traditions that reinforce the notion that women are inferior to men. This means that the best strategies to end violence against women for good are those that are centered not just around criminal justice but on the

elimination of all forms of discrimination in any sphere ¹⁹² .

¹⁹² IWRAW Asia Pacific – FACIO A., *Occasional Paper n. 12, The OP-CEDAW as a mechanism for implementing women's human rights: an analysis of the first five cases under the communications procedure of the OP-CEDAW*, p. 13-20.

National impact of the Committee's recommendations:

Hungary amended the criminal code to introduce a restraining order as a rule of conduct under the supervision of the probation officer and adopted guidelines for managing the phenomenon in professional way by the police. Actually, the number of shelter for women in Hungary is 0.

X. CHALLENGES

186. Many of the challenges identified in this paper are interrelated and have to be developed at both national and regional level. The most important issues that have to be addressed to eradicate femicide and feminicide in Europe are:

187. Data collection

➤ EU countries have to collect and provide to UNECE all the disaggregated data on VAW and femicide necessary to database serviceability, using a comprehensive set of international indicators of VAW.

188. Lack of understanding VAW issues.

As noted by CEDAW Committee in *V.K. vs. Bulgaria*, police forces and judicial approach to VAW-related crimes too often “reflects a stereotyped and overly narrow concept of what constitutes domestic violence”.

The lack of understanding VAW issues by professional, law enforcement personnel and all State actors, increase exponentially the risk for the woman to be re-victimized or to be killed as a result of previous DV.

Strategies to prevent IPV, femicide and feminicidio must include:

- inclusion in the legislation of a common definition of gender discrimination and VAW;
- mandatory training of all the professionals on how to identify risk factors and how to manage with survivors
- guidelines for police forces, mandatory use of risk assessment instrument.

189. Implementation and effectiveness of laws

To protect women and to prevent feminicide, laws that address this issues must be fully and equally applied in all the territories of the States.

Most part of laws on VAW are not fully implemented because of the lack of sensitisation of all State actors or because of the lack of funds.

Most part of laws on VAW are not effective because all actors involved in the protection of the woman are not able to share information (for example about the existence of previous restraining order or claims) that are important to correctly apply the law.

- State must have to collect data to verify the implementation of the laws and NAP at national and local level.
- State have to take all necessary measures to ensure that national strategies and laws for the prevention and effective treatment of IPV are promptly implemented by all State actors. In doing so, have to encourage multi-agency approach and the creation of shared database.

190. Information of the survivors

Most part of women victims of IPV are not aware of the risk they run. Evaluate the danger, and tip off women about danger deriving from her relation, facilitates awareness of the problem and searching for solutions both in the victim and in the people who are in charge in the police force or in the judicial or social institutions.

Strategies to prevent femicide and feminicidio must include:

- information of the IPV/IPF survivors about risk of re-victimization;
- information of the IPV/IPF survivors about possibility to obtain protection, and about their rights
- generally, promote public education and empowerment that targets young girls and boys on how to identify abusive boyfriends, potentially abusive relationships and how to get out of such relationships.
- it is considered a good practice a proactive intervention which allows women to be contacted by services following a violent incident and thus recognises the disempowering effect of abuse (UK, Austria).

191. Access to services

In most part of European countries shelters are numerically insufficient and not well funded.

In Hungary, Latvia and Lithuania there are no shelters. In Cyprus there is 1 shelter, in Finland 2, in Poland 1, in Czech republic 3, in Malta 4.

Most part of civil society is not aware about the existence of shelters in their district and about services offered locally to abused women.

- As stated by CEDAW Committee, State have to ensure that a sufficient number of state-funded shelters are available to victims of DV and their children and provide support to NGOs offering shelter and other form of support to victims of DV.

192. Access to justice

The lack of “cross-over” between criminal, civil and police law means that protective action is too often a replacement for criminal justice and undermines women’s and children’s rights.

The depressing high rate of attrition and law conviction rate in criminal cases of domestic violence create barriers to justice for women.

A continued over-reliance on mediation, dispute resolution and diversionary programmes inappropriately replaces criminal justice and protective action responses.

Children contacts proceedings undermine and minimise the seriousness of acts of VAW.

- Improvement is needed in the cross over between criminal, civil and police law.

- Recognition within legislation that domestic violence (witnessed violence) constitutes a form of child abuse
- Legislation, policy and practice which assert the child and woman's right to safety within child contact proceedings. This will include forms of prohibition of violent man seeking contact, residency and shared parental responsibility within divorce and separation proceedings.

193. *Compensation*

If a State fail to exercise due diligence obligation in protect women's to right to life and non-discrimination, condemn the State to grant to the survivor 35.000 euros for non-pecuniary damages and legal costs (as in Opuz vs. Turkey) cannot be considered an adequate form of reparation.

XI. CONCLUSION

194. European countries underestimate the due diligence obligation to adequately prevent VAW.

195. Comparative studies expose Member States' general lack of awareness of the structural and gender dimension of VAW, and therefore of the necessity to eradicate the historically unbalanced power relations between men and women which make VAW possible, in order to prevent and combat it.

196. This fact has a cascade impact on the appropriate implementation of all the other due diligence obligations by the EU States.

Indeed, some countries have in place excellent laws and protection measures, but these regulations are frequently frustrated by the lack of a gender approach shown by those who should enforce them.

197. Statistics prove that preventive measures (raising public awareness on risk factors for domestic violence, training for all the State actors involved — social/health workers, law enforcement officials, judiciary) and a multi-agency integrated approach to the protection of IPV survivors would have avoided many femicides.

However, in order to encourage women to seek protection and report the violence they have been suffering, there is a need for sheltering facilities at local level, according to the requirements of the minimum standards on the number of local shelters.

The nationwide presence of accessible shelters should respond to the various protection needs of high-risk victims or women belonging to vulnerable categories.

198. At regional level, an important challenge is posed: identifying minimum standards, which should be binding for all the Member States, for the appropriate implementation of the due diligence obligation to combat gender violence.

199. These minimum standards should include the creation of a EU common system for data collection on femicide and the promotion of a conceptual change, from family approach to gender-based approach, also through compulsory professional training on risk factors related to IPV and IPF.

200. Mainstreaming the concept of femicide in science, in particular criminology, could help interpreting in a gender perspective the figures of domestic violence, which otherwise would remain in the grey zone of a neutral classification.

201. However, researches prove that, all over the world, the killing of women is the lethal direct consequence of gender-based violence and discrimination that women and girls face in every social sphere, especially within the family.

It is vital to mainstream the concept of femicide, as described by Lagarde, Kevorkian *et al.*, in political and social life, in order to strengthen, at both institutional and public opinion level, the idea that gender-based violence entails a heavy social cost, in terms of gross domestic product as well as of democracy and full enjoyment of rights.

The public dimension of the phenomenon of feminicide binds the State to adopt every best measure to protect women's lives, promote their physical and mental health, and human rights.

202. Women's rights activists and civil society play a fundamental role: pressing on national and local authorities to take concrete steps with a view to ensure the minimum protection standards required by the international and regional dimension of human rights promotion. Whenever the authorities exert their powers without taking into account this goal and the inherent principles of international human rights law, they must know (and now they know, thanks to EHRC and CEDAW Committee decisions) they are violating women's fundamental rights.

203. However, we still need to develop appropriate and efficient accountability mechanisms to held States responsible for these violations and provide remedies for the damage they caused to women and to the whole society.

204. We hope that a greater international justiceability of the violations, at both national and regional level, of the due diligence obligation on VAW, can be the premises of a gender-sensitive reformation of law and of the whole society, by concurring to accelerate the eradication of patriarchal stereotypes still deeply rooted in both Italian and European culture, and to ensure a life free of violence for every woman and girl.

205. NGOs like IWRAW Asia Pacific carry out a fundamental empowerment work for civil society, providing support and training to women's rights activists, and enabling them to strongly demand of States the respect of their international obligations.

206. And yet, in the developed countries, the greatest hindrance to the efficacy of this civil society action is the lack of financial resources specifically allocated to activism.

207. This is the case for Italy, where no State funds are granted to women's rights activists to improve their training and allow them full access to international and EU debate.

The same happens for awareness-raising and educational activities: too often, the granting of EU funds to NGOs requires that a strong organizational structure, a massive membership at national level, and complicated bureaucratic procedures.

On the opposite, in Italy at least, very frequently the most active and qualified NGOs have a thin membership and informal networks at national level, and therefore they cannot obtain much needed funds to survive and grow. As a result, their lobbying becomes scarcely 'dangerous' for State's non-compliance.

208. This situation certainly poses a further challenge in the prevention of femicide — an act which, besides its physical effect of annihilation of women, also has the symbolic strength of a political femicide, that is annihilation of, or restriction to, the opportunities for the female gender to be active protagonists in transforming their realities.

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