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## Beyond Boundaries

Utilizing Protection Orders to Cultivate a Holistic Response to Domestic Violence in The Arab Region

Economic and Social Commission for Western Asia

# **Beyond Boundaries**

## **Utilizing Protection Orders to Cultivate a Holistic Response to Domestic Violence in the Arab Region**



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Beirut

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# Executive Summary

The present study documents and analyses legislation on domestic violence protection orders in the Arab region through the lens of international frameworks and good practice with the aim of having Arab States streamline their legislation in line with these standards. The study calls upon Arab States to implement and make greater use of civil protection orders, in addition to ex parte (emergency) orders and criminal protection orders, arguing that such orders provide a necessary level of empowerment and protection to survivors of domestic violence. The Special Rapporteur on violence against women, its causes and consequences (SR-VAW) has recently argued that the availability of shelters and protection orders are required under international human rights law, including the Convention on the Elimination of All Forms of Discrimination against Women<sup>1</sup> (CEDAW) and the Declaration on the Elimination of Violence against Women (DEVAW). In line with the focus of this study, which seeks to challenge the notion that survivors of marital violence should be forced to hide from perpetrators, the SR-VAW has also noted that “there are pervasive cultural assumptions about a woman’s need to ‘leave’ a violent household, as opposed to the need to remove a violent partner who undermines women’s enjoyment of the right to adequate housing”.<sup>2</sup>

Amongst other international frameworks, the Beijing Platform for Action’s response to violence against women (VAW) calls upon States to facilitate access to justice for survivors

through “just and effective remedies for the harm they have suffered and inform women of their rights in seeking redress through such mechanisms” (Strategic objective D.1, 124(h)).<sup>3</sup> Agenda 2030 and the Sustainable Development Goals (SDGs) elaborate several targets for addressing gender-based discrimination and inequality, particularly under SDG 5.<sup>4</sup> The current SR-VAW has singled out target 2 of SDG 5, which calls for the elimination of all forms of VAW in the public and private spheres, as a means for States to develop additional indicators to bridge the protection divide, which includes cultivating a holistic response through shelters and protection orders.<sup>5</sup> United Nations General Assembly resolution 65/228 on Strengthening crime prevention and criminal justice responses to violence against women calls for the implementation of civil and criminal protection orders as part of women’s equal protection under the law and equal access to justice.<sup>6</sup> More broadly, the International Covenant on Civil and Political Rights, under article 26, declares that all persons are equal before law and that “the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any grounds...”<sup>7</sup>

Furthermore, the Committee on Women for the United Nations Economic and Social Commission for Western Asia (ESCWA) adopted the Muscat Declaration in its seventh session: Towards the Achievement of Gender Justice in the Arab Region (2016), which calls for member States to “harmonize national legislation with

international and regional commitments ratified by member States, so as to ensure the repeal of all discriminatory laws.”<sup>8</sup> Arab States’ accession to and engagement with the aforementioned legislation and frameworks creates the obligation to address VAW, particularly through legal reform. One aspect is to develop the provision of civil protection orders as part of a comprehensive and holistic legal response, among other gender justice obligations.

The introduction explains the rationale for the study, including the argument for cultivating greater access to civil protection orders, and highlights the importance of such work for member States in the Arab region. It provides several important definitions and concepts relevant to protection orders. The chapter also addresses the research questions and explains the research methodology adopted for the study.

Chapter 2 discusses historic State responses to VAW, including the prohibitive and enabling factors that have contributed to the response, such as the perceived public-private divide in society and law, in addition to the criminal justice response. It examines VAW in the Arab region, as well as the debates that impact the realization of legislation efforts to address such violence in the region. It then presents the global evolution and impact of the protection order and its impact on the safety and well-being of survivors who have utilized them. Furthermore, the chapter highlights how civil protection orders have been adopted and adapted internationally.

Chapter 3 reviews the normative frameworks that call for civil protection orders as part of a coordinated legal response to VAW, as well as the jurisprudence resulting from such

frameworks. Specifically, this section considers the normative frameworks and standards for civil protection orders regarding the due diligence standard. Building on the due diligence standard, there is now international and regional jurisprudence indicating an evolving norm of civil protection orders under customary international law as designated by the SR-VAW, the Committee on the Elimination of Discrimination against Women and the United Nations Handbook for Legislation on Violence against Women (2012). These engagements highlight how international frameworks that promote the provision of civil protection orders can impact State practice.

Chapter 4 analyses in greater detail the national legal frameworks (constitutions, penal codes, domestic violence laws) and policy frameworks (strategies on combating VAW) that guide Arab States’ responses to VAW. This chapter also examines in detail civil and criminal protection order legislation from the Arab region and compares it to good practice as outlined in the United Nations Handbook for Legislation on Violence against Women.

The final chapter contends that protection orders are part of an integrated prevention and protection approach to services and measures for women exposed to domestic violence. To cultivate this holistic approach, States must provide survivors of domestic violence unfettered access to criminal and civil protection orders, while law enforcement and the justice system must do their due diligence to ensure that protection orders remain an effective and accessible option. A series of recommendations directed at member States’ engagement at the international, regional and national/community levels is provided.

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# Acronyms

<b>CEDAW</b>	Convention on the Elimination of All Forms of Discrimination against Women
<b>CEDAW Committee</b>	Committee on the Elimination of Discrimination against Women
<b>DEVAW</b>	Declaration on the Elimination of Violence against Women
<b>ESCWA</b>	Economic and Social Commission for Western Asia
<b>FGM</b>	Female genital mutilation
<b>OP-CEDAW</b>	Optional Protocol to CEDAW
<b>SDGs</b>	Sustainable Development Goals
<b>SR-VAW</b>	Special Rapporteur on violence against women, its causes and consequences
<b>VAW</b>	Violence against women



# Introduction

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# Introduction

The State's response to violence against women (VAW), particularly domestic violence, must be holistic, with laws and policies that are grounded in and are responsive to a survivor's<sup>9</sup> experiences and needs. The response must also be coordinated, ensuring that responses from all sectors complement and augment each other. The office of the Special Rapporteur on violence against women, its causes and consequences (SR-VAW), necessitates that

services for survivors of violence must be survivor-centred and focused on women's human rights,<sup>10</sup> safety and empowerment (box 1). These services are part of the State's due diligence obligation to prevent, protect, prosecute and punish perpetrators, as well as provide redress and reparations for survivors, which has evolved to become an obligation under customary international law, despite a lack of explicit global legislation.<sup>11</sup>

## Box 1. The empowerment model and domestic violence

The movement to address domestic violence has made it clear that abusive relationships are about power and control, which is exercised by the perpetrator over the survivor.<sup>a</sup> To counter this toxic dynamic, the empowerment model is employed to empower the survivor to make her own decisions, with appropriate support along the way from service providers or advocates. The goal is to cultivate an environment where the survivor makes her own choices and decisions about her life. Under the empowerment model, empowerment is both a process and an outcome.

Empowerment is defined as "an iterative process in which a person who lacks power sets a personally meaningful goal oriented toward increasing power, takes action toward that goal, and observes and reflects on the impact of this action, drawing on his or her evolving self-efficacy, knowledge, and competence related to the goal."<sup>b</sup>

The empowerment model ensures that the survivor is the decision maker. The advocate provides information and options in a setting that is safe and ultimately allows the survivor to decide what to do with her situation. The goal is to not replicate the controlling dynamic of the abusive relationship: "When a State or advocate forces a woman to leave or to take other action, rather than empowering her to make these decisions on her own, the State has simply succeeded in transferring power from one controlling entity to another. This directly undermines the victim's efforts to regain control over her own life by communicating to her that the batterer was right all along - that she is incompetent and incapable of surviving on her own [...] Alternately, when control is held by a survivor, she begins to realize that she is competent [...] A battered woman does not regain her autonomy by having others continue to make decisions for her; she regains her autonomy by making decisions for herself."<sup>c</sup>

While the empowerment model is most often used when working with survivors, critiques of the model do exist. Critics note that the empowerment model must not work in a vacuum and that survivors must be supported through complementary services. Furthermore, the onus should not solely be on the survivor to act; changes in social norms and practice must also occur.<sup>d</sup>

<sup>a</sup> The Power and Control Wheel was developed in conjunction with survivors in 1984 by the Domestic Abuse Intervention Project (DAIP) in Duluth, Minnesota (United States), to highlight the ways perpetrators exercise power and control over survivors and to reveal the various ways that abuse manifests.

<sup>b</sup> Cattaneo and Chapman, 2010, p. 647.

<sup>c</sup> Han, 2003, p. 166.

<sup>d</sup> Aiken and Goldwasser, 2010.

The protection order (defined in box 2) is a protective legal intervention issued by the State that has become a global norm in recent decades, as demonstrated by increased uptake and implementation primarily through stand-alone domestic violence laws. According to a 2015 study by the World Bank, protection orders are available in 124 of 173 States.<sup>12</sup> Protection orders are regarded as one of the most effective legal remedies available to female survivors of violence and serve as part of a comprehensive approach to domestic violence. Notably, survivors who obtained a protection order report a greater sense of well-being and safety.<sup>13</sup> As of mid-2019, six Arab States have implemented stand-alone domestic violence laws<sup>14</sup> and other States have draft legislation underway. Such legislation may outline social, legal and/or medical interventions to be taken by the State (and other actors, such as health-care providers or civil society) to address such violence. The

protection order is an intervention commonly mandated through this type of legislation. While both criminal and civil protection orders are discussed in the present study and serve as important components of a coordinated response to domestic violence, this study will focus on and advocate for civil protection orders in greater detail because they provide the most diverse possibilities of relief for survivors.

As States are exerting considerable efforts to combat VAW, the increasing presence of such legislation in the region means that protection orders will play a substantial role in Arab States' response to combating violence within the family and supporting survivors. For States without such legislation, it is important that protection orders are viewed as an obligatory mechanism within a larger coordinated response to VAW; it is also necessary to understand what such legislation should entail.

## Box 2. Defining protection orders

According to the Special Rapporteur on violence against women, its causes and consequences:

"[A protection order is] ... a 'go' order which requires a perpetrator of domestic violence to leave a shared home and to keep at a certain distance from the victim (barring orders). Protection orders can impose a range of restraints on the person subject to the order. For example, they require a perpetrator to vacate the residence of the victim or to stay away from the shared home, from specific places (e.g., the victim's workplace or her children's school) or to refrain from contacting the victim or person at risk. Some jurisdictions permit additional orders to require, for example, a perpetrator to pay rent for the family home or child support, or to surrender weapons in his possession [...] They may be ordered independently by a civil court or they may be part of civil or criminal legal proceedings protecting the safety of the victim while other proceedings go forward."

Source: A/HRC/35/30, 2017, p. 11.

<sup>a</sup> All legal contexts vary; thus, these definitions are general.

A court, a prosecutor or the police commonly issue protection orders to protect a survivor from violence or the threat of violence. Depending on the jurisdiction, protection orders may alternatively be known as restraining orders, stay away orders, non-molestation orders, barring orders or no contact orders. In Arabic, they may be referred to as أوامر الحماية or قرار الحماية. This study will discuss three basic types of protection orders available in the Arab region: *ex parte* orders, criminal protection orders and civil protection orders.

*Ex parte* orders, also known as emergency orders, are usually short-term protection orders

(typically a few days) that are issued by a judge or the police without notice to the perpetrator when the survivor and her children are in immediate danger. In some contexts, an *ex parte* order is primarily obtained when court is not in session (such as after hours or on weekends) due to the gravity of the situation and the need to protect the survivor. In other contexts, these may be referred to temporary restraining orders and seek to address specific concerns in a short period of time (see box 3 on utilizing temporary restraining orders in the Netherlands). It is then expected that the survivor or the court will pursue a long-term order.

### Box 3. Using temporary restraining orders to defuse violence

In 2009, the Netherlands introduced a 10-day temporary restraining order (TRO). The rationale behind the TRO was to defuse potentially dangerous domestic violence situations and to reduce perpetrator recidivism through pairing social services with the TRO. According to the study, most survivors who chose the TRO option welcomed the intervention of social services and “reported an increase in their well-being, new insights, and no or less serious re-assaults by the perpetrator.” Overall, the TRO option appeared to have a positive impact on both survivors and perpetrators.

Source: van Rooij, ten Haaf, and Verhoeff, 2013.

### Box 4. Occupation orders

In the United Kingdom, occupation orders, which may complement a protection order, allow survivors of domestic violence to continue to live in the family home and regulate who can and cannot enter the surrounding area. Survivors are eligible if:

- They own or rent the home and it is, was, or was intended to be shared with a husband or wife, civil partner, cohabitant, family member, person they’re engaged to or parent of their child;
- They do not own or rent the home, but they’re married or in a civil partnership with the owner and they’re living in the home (known as “matrimonial home rights”);
- Their former husband, wife or civil partner is the owner or tenant, and the home is, was, or was intended to be their shared matrimonial home;
- The person they cohabit or cohabited with is the owner or tenant, and the home is, was, or was intended to be their shared home.

Source: Government of the United Kingdom.



Criminal protection orders may be issued during a criminal proceeding or as a condition of pretrial release when there has been an arrest involving domestic violence. The order, its conditions and validity are at the discretion of the judge and may include stipulations related to contact, visitation or mandated counselling. The party to a criminal protection order is the State rather than the survivor, which may make the order more restrictive. Additionally, because the order is attached to an active court case, there may be a higher standard of proof to maintain the order. Criminal protection orders are commonly in place only for the duration of the case.

In contrast, civil protection orders – while issued by a judicial body – are initiated by survivors (or their proxies) rather than judges. They are meant to provide immediate relief to the survivor and are not necessarily meant to criminally punish the perpetrator, initiate a divorce or end a relationship. It is this framework that is most attractive to survivors who pursue civil protection orders – the ability to act on one's own terms and ask for redress without directly engaging with the criminal justice system. Civil protection orders are also more accessible because the burden of proof is usually lower, which means that the orders can protect against abuse that may not be labelled as "criminal" within the criminal justice system. However, in some jurisdictions, the violation of a civil protection order can result in criminal consequences. Lastly, civil protection orders commonly do not require legal representation or involve costly fees. Civil remedies may address specific issues, such as the division of property or housing (see box 4 on occupation

orders in the United Kingdom). In some jurisdictions, a survivor may be able to concurrently have a civil protection order with a criminal proceeding.

The impact and effectiveness of civil and criminal protection orders depend on their comprehensiveness, including the specifics of the order and how well it is enforced by the State. It is also reliant on the State's investment that such mechanisms are part of a larger coordinated response to violence where social, medical and legal services aim to protect, support and empower the survivor, while holding the perpetrator to account.

## Purpose of the study and methodology

As will be discussed in detail, emerging domestic violence legislation in the Arab region contains provisions for protection orders.<sup>15</sup> Much of this legislation complements criminal procedures by providing for the option of civil protection orders, which serve as an important component of a holistic response to domestic violence. However, there has been no clear assessment or analysis of this legislation with regards to the provision of protection orders (civil or criminal), including their link to other VAW services and their alignment with international good practice, as outlined in the United Nations Handbook for Legislation on Violence against Women (2012) and within the due diligence standard. While vitally important, this study does not seek to document the number of protection orders issued within member States, nor does it intend to assess their direct impact on survivors. None of the

States reviewed in this report keep timely statistics on the number and type of protection orders applied for and issued or denied. Nor do they measure the rates at which protection orders have been maintained or dropped by survivors or breached by perpetrators.

This study examines protection order legislation internationally and in the Arab region. Specifically, it examines the extent to which protection orders are codified within national civil or criminal legislative frameworks or policies in the Arab region, and how they might contribute to a greater coordinated response to domestic violence. In doing so, it analyses legislative gaps for policymakers and discusses how best to mainstream international frameworks and good practice into national legislation, noting how Arab States might benefit from such frameworks as they draft or amend protection order legislation.

The research presented in this study is qualitative and relies on information and data from multiple sources to present a more complete picture of member States' adoption of

protection orders in the Arab region. This involved a literature review of academic research and policy documents in English on civil protection orders, including the theory behind their origin, their impact and good practice across the globe; a review of international human rights law and frameworks that promote and govern the provision of civil protection orders which includes the annual reports of the SR-VAW, as well as a review of relevant regional frameworks; a review of Arab States' engagement with the Committee on the Elimination of Discrimination against Women (CEDAW Committee) including a review of key documents related to reporting cycles (States parties reports; list of issues; replies to list of issues; concluding observations; follow-up to concluding observations procedure) and a review of legislation and policy frameworks in the Arab region, particularly stand-alone domestic violence legislation in English and Arabic. Data was also collected from a survey sent by ESCWA to National Women's Machinerys soliciting information on VAW legislation and women's access to protection orders.



## 1. Violence against Women and the State

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# 1. Violence against Women and the State

This chapter examines the arguments and frameworks that have shaped VAW activism in recent decades and how they have informed current legal and policy strategies to address such violence. Early VAW activism avoided engagement with the State and questioned the objectivity of law, as both were viewed as biased against the needs of women. The perception of the public-private divide, which continues to impact a thorough State response to VAW, particularly marital violence, has pervaded legislation and State (in)action. Subsequently, subtle shifts occurred whereby States and activists adopted a more punitive approach, often to the disadvantage of survivors.<sup>16</sup> In recent years, there has been a more comprehensive approach that marries a criminal and civil legal response with the provision of comprehensive services that engage the survivor's needs.

The first section of this chapter discusses the conceptual debates on domestic violence and women's engagement with the criminal justice system, including the so-called public-private divide that permeates national and international legal frameworks. It then discusses VAW in the Arab region and the debates surrounding its criminalization. The chapter then presents the evolution of the State's response to VAW and closes with a discussion of the evolution and impact of protection orders to address VAW.

## A. Domestic violence and the State

Violence against women is a human rights concern. While it can take many forms, the most pervasive (and tolerated) form of VAW occurs within the family. The World Health Organization (WHO) notes that 35 per cent of women in the world have experienced some form of physical and/or sexual violence by their partner or spouse. Alarming, 38 per cent of all murders of women globally are at the hands of their male partners, highlighting the necessity of governments to provide immediate prevention and protection options.<sup>17</sup> Despite the gravity of these numbers, such violence has historically been viewed by States, and subsequently the legal system and society, as a "private matter" beyond State intervention. This perception, known as the public-private divide, has impeded not only State response, but also survivors' faith in the criminal justice system.

The concept of the public-private divide in law originated in Western liberal thought and, in practice, was intended to ensure that individual rights and freedoms were protected from illegitimate uses of State power. In the common and civil law contexts, the divide evolved to become highly gendered. For example, when discussing domestic violence, the public-private divide is characterized by the perception that violence in the private sphere (read as 'the home') does not merit State intervention and should not be criminalized. The assumption that

the family is the foundational unit of society also influences this discussion.

The logic behind the divide has persisted for some time. In the seventeenth century, the English jurist Matthew Hale developed the marital rape exception, arguing that "...the husband cannot be guilty of a rape committed by himself upon his lawful wife, for by their mutual matrimonial consent and contract the wife hath given up herself in this kind unto her husband which she cannot retract."<sup>18</sup> Building upon Hale's pronouncement, the eighteenth century English jurist William Blackstone proffered the doctrine of *coverture*: "By marriage, the husband and wife are one person in law: that is, the very being or legal existence of the woman is suspended during the marriage, or at least is incorporated and consolidated into that of the husband."<sup>19</sup> In both instances, the wife ceased to be a legal entity and became property of her husband. This built upon centuries of practice within Roman and English law that allowed male family members to exercise physical control over females within their households as their right.<sup>20</sup> Through these legal framings, domestic violence became both normalized and invisible. This has also extended to the perception that rape is an "intimate act" or solely about sex, rather than a gendered crime against bodily autonomy.

While the public-private divide was cultivated in common and civil law canons, its presence is felt in the Arab region due to the Ottoman Empire's uptake of European jurisprudence in the late nineteenth century, in addition to the imposition of other European legal frameworks during the subsequent colonial and mandate periods. These measures in turn resulted in the codification of

primarily sharia-based<sup>21</sup> personal status laws in the Arab region where the "languages of privacy" linked to the family, entered legal discourse.<sup>22</sup> With these practices, "...the governments of Islamic countries apparently deployed, whether consciously or unconsciously, the Western liberal distinction between public and private domains."<sup>23</sup> Some scholars note that the region has easily taken up the public-private divide, because, "This view of space is in accordance with the Arab-Muslim patriarchy, which is based on strict gender-based space dichotomy."<sup>24</sup>

The legacies of these reasonings have held fast in contemporary law and society globally. Subsequently, "The public realm of the work place, the law, economics, politics and intellectual and cultural life, where power and authority are exercised, [was] regarded as the natural province of men; while the private world of the home, the hearth and children [was] seen as the appropriate domain of women. The public/private distinction has a normative, as well as a descriptive, dimension. Traditionally, the two spheres are accorded asymmetrical value: greater significance is attached to the public, male world than to the private, female one."<sup>25</sup> This presumed division has come to be regarded as both natural and immutable.

Due to its presumed naturalness, the public-private divide features in debates on the State's response to domestic violence, which, "...has generally been given different legal significance from violence outside it; the injuries recognized as legally compensable are those which occur outside the home. Damages in civil actions are typically assessed in terms of ability to participate in the public sphere... Women have difficulty convincing law enforcement officials

that violent acts within the home are criminal.”<sup>26</sup> However, opening the private sphere to legal surveillance is equally problematic for many women, particularly those on the margins, such as women who are ethnic, religious or linguistic minorities, women with disabilities or women who benefit from social support schemes. For example, during the twentieth century, the US government saw minority women as a demographic threat and forcibly sterilized numerous African-American, Native American and Latina women.<sup>27</sup> In Canada, the State chose to interfere in poor, immigrant or indigenous families in order “to enforce or re-establish ‘correct’ gender relations when families were viewed as ‘deviant.’”<sup>28</sup> These experiences have impacted women’s faith in State policies and legislation on domestic violence.

The principle of State sovereignty has further perpetuated the public-private divide (box 5) based on the assumption that international law should only address violence in the public

sphere.<sup>29</sup> For example, torture historically has not applied to domestic violence, despite activism to broaden the definition.<sup>30</sup> By default, this distinction codes VAW, especially domestic violence, as a national (private) concern and/or a matter of culture and thus exempt from international legal intervention.<sup>31</sup> Notably, while there is a convention condemning torture, there is no global binding legislation that directly addresses VAW, though many scholars agree that there is a developing international norm prohibiting such violence, including domestic violence, as most recently outlined in the CEDAW Committee’s General Recommendation No. 35 (2017). This divide is also apparent in the language of international legislation. All major human rights instruments aside from CEDAW and the Convention on the Rights of the Child<sup>32</sup> imply a male rights holder, which not only alienates women but also implies that VAW is both a private/internal matter and one that can be dealt with in isolation of other normative human rights frameworks.<sup>33</sup>

### **Box 5. The SR-VAW on the public-private divide**

“The rhetoric of public versus private and the consequent primacy afforded to the public realm has fundamentally affected perceptions of women’s rights. In distinguishing certain forms of violence as domestic violence, definitions have arisen out of the original conceptualization of such violence as private acts within the family [...] the development of a comprehensive framework clearly depicting the relation between the nature of the violence perpetrated against women and their private personae is important in an effort to move beyond a private/public distinction in addressing violence.”

**Source:** Report of the Special Rapporteur on violence against women, its causes and consequences, Ms. Radhika Coomaraswamy, submitted in accordance with Commission on Human Rights resolution 1995/85. E/CN.4/1996/53.



## Definitions and attitudes concerning violence against women in Arab States

States with a broader definition of VAW are better able to document its prevalence and are thus better able to provide a greater assortment of services for survivors. Furthermore, the absence of a clear and broad definition of VAW affects the implementation of effective national legislation. Nonetheless, most Arab States, via their legislation, maintain a narrow definition of VAW, primarily focused on selected types of domestic violence or family violence.<sup>34</sup> Considering the types and prevalence of VAW in the Arab region, there are two main critiques of how VAW legislation is framed regionally. The first critique notes that some VAW laws are narrowly defined to solely focus on domestic violence among current household members, excluding violence perpetrated by former partners or spouses or violence in the public sphere (for example, at school or at work). However, there are some exceptions. Algeria's amendment to its penal code in 2015, known as Law no. 15-19, increased penalties for assaults, including verbal, psychological or economic violence, against spouses and family members, whether the perpetrator and the survivor live in the same domicile or not. It also expanded the scope of sexual harassment and criminalized harassment in public spaces. Uniquely, Tunisia's Organic Law no. 2017-58 addresses the broadest forms of VAW to include physical violence, moral violence, sexual violence, political violence and economic violence as well as overall discrimination against women.

Another critique is that some domestic violence laws in the region are not fully focused on

women and girls – that is they do not acknowledge that women and girls are disproportionately impacted by violence and that legal frameworks in the Arab region oftentimes do not respond to their specific needs. This debate featured prominently in the creation of Lebanon's Law no. 293 on the Protection of Women and Other Family Members from Domestic Violence, originally entitled "Bill for the Protection of Women against Family Violence". The law covers "every act of violence, withholding or threat thereof committed by one family member against one or more members as per the definition of family, encompassing one of the crimes stipulated herein, the consequences of which may cause death or physical, psychological, sexual and economical injury" (article 2). The original draft intended to protect women specifically from family violence (including marital rape) because, as women's rights activists argue, the Lebanese legal system (religious and secular) is one that overtly and covertly discriminates against women and amongst women, particularly the personal status law regime. For example, personal status laws impede access to divorce and maternal custody, and lack protective mechanisms, including financial compensation for women seeking to leave abusive marriages.<sup>35</sup>

The United Nations Handbook for Legislation on Violence against Women calls for gender-sensitive, rather than gender-blind, legislation, noting that, "A number of countries have adopted gender-neutral legislation, applicable to both women and men. However, such legislation may be subject to manipulation by violent offenders. For example, in some countries, women survivors of violence

themselves have been prosecuted for the inability to protect their children from violence. Gender-neutral legislation has also tended to prioritize the stability of the family over the rights of the (predominantly female) complainant/survivor because it does not specifically reflect or address women's experience of violence perpetrated against them."<sup>36</sup> The former SR-VAW, Ms. Rashida Manjoo, has also weighed in on this debate, noting that, "The shift to neutrality favours a more pragmatic and politically palatable understanding of gender, that is, as simply a euphemism for 'men and women', rather than as a system of domination of men over women. Violence against women cannot be analysed on a case-by-case basis in isolation of the individual, institutional and structural factors that govern and shape the lives of women. Such factors demand gender-specific approaches to ensure an equality of outcomes for women. Attempts to combine or synthesize all forms of violence into a 'gender neutral' framework, tend to result in a depoliticized or diluted discourse, which abandons the transformative agenda."<sup>37</sup> These debates highlight the need for comprehensive legislation that responds to the needs of women and girls. They also highlight the need to acknowledge the various forms of violence impacting women and girls in the region.

Details and accurate statistics concerning VAW in the Arab region, particularly domestic violence, are not consistently available. What is known is that different forms of violence persist, including, but not limited to: domestic violence; child marriage; female genital mutilation (FGM); and rape and sexual harassment, including in the public sphere. The WHO estimates that 37

per cent of women in the Arab region have experienced some form of physical and/or sexual violence by their partner or spouse; this is the second highest statistic worldwide.<sup>38</sup> Despite this high prevalence, most Arab States do not systematically gather thorough and timely data on VAW. The few States that do surveys tend to measure domestic violence prevalence (Egypt, Jordan, the State of Palestine and Tunisia), while some measure attitudes (Yemen). Other forms of VAW, such as marital rape, are neither acknowledged nor measured by Arab States.

When examining domestic violence against women in the Arab region, it is necessary to include violence perpetrated by a variety of family members, including the extended family, because females (and occasionally males) commonly live with their natal family until they are married. Likewise, survivors may not solely be intimate partners, spouses or minors; they may include adult female family members who have never been married, are widowed or are other blood relatives.<sup>39</sup>

Currently, nearly 1 out of 5 girls in the Arab region are married before the age of 18.<sup>40</sup> Conflicts in the region are accelerating this rate – for example, in Yemen and among Syrian refugees in Iraq, Jordan, Lebanon and Turkey rates of early marriage are increasing.<sup>41</sup> In many States with a minimum age for marriage, parental or judicial exception allows for underage marriage. Another form of violence impacting young women and girls, FGM, persists in a handful of Arab States, including Somalia (98 per cent), Djibouti (93 per cent), Egypt (91 per cent), the Sudan (88 per cent), Mauritania (69 per cent) and Yemen (23 per cent).<sup>42</sup>

Incidence of rape and sexual harassment, including in the labour force, are rarely documented. In Egypt, the harassment and rape of female protesters ignited movement towards greater awareness, services and legal reform in the years following the Arab uprisings in 2011.<sup>43</sup> Similarly, after the 2010 uprising in Tunisia, some female political and civil rights activists were harassed or assaulted during public assemblies and demonstrations.<sup>44</sup> Conflict-related violence has also increased in recent years, including rape as a weapon of war, sexual enslavement and forced and child marriage.

Despite the limitations in data, several studies have captured women's knowledge and attitudes, particularly on domestic violence. In Iraq, a 2009 survey of 15,875 married women revealed that 63 per cent agreed that a husband is justified in beating his wife. Attitudes varied based on education level, employment and urban/rural status. Women without a secondary education were 2.3 times more likely to justify abuse; unemployed women were 1.4 times more likely to justify abuse; and rural women (73 per cent) were more likely to condone abuse than urban women (58 per cent).<sup>45</sup> Similar attitudes were found in Egypt and in the Palestinian West Bank.<sup>46</sup>

Tolerance for domestic violence remains high in some contexts: "...in Egypt, 90 per cent of men and 70 per cent of women said they believe that wives should tolerate violence to keep the family together,"<sup>47</sup> whereas in Yemen, "Almost half (49 per cent) of women believe that a husband is justified in hitting or beating his wife for at least one of the five specified reasons [burns the food; argues with him; goes out

without telling him; neglects the children; refuses to have sexual intercourse with him]."<sup>48</sup>

It is common for women to blame the wife for a husband's abusive response, particularly if she insults her husband, disobeys him, neglects the children or leaves the house without telling him.<sup>49</sup> Proposed ways to address abuse commonly rely on the wife changing her behaviour towards her husband. If this fails, the wife is advised to talk with female kin and then male kin. Seeking support from formal mechanisms, such as police, the criminal justice system, women's organizations or medical assistance, is often a last resort.<sup>50</sup> Oftentimes, this is because these systems are viewed as gender-biased, untrustworthy, ineffective and/or time consuming.

This brief overview highlights the main forms of violence in the Arab region as well as the main debates occurring regarding criminalizing VAW, including domestic violence. Taking these varied forms of violence coupled with the limitations in definitions into consideration, this study utilizes the broad definition of VAW provided by the Declaration on the Elimination of Violence against Women (DEVAW), which is echoed in other international frameworks such as the Beijing Declaration and Programme for Action and has been operationalized in the UN Handbook for Legislation on Violence against Women.

## B. Foundational State practices in responding to domestic violence

From the 1960s to the 1980s, efforts initiated to address domestic violence in States such as

Australia, Canada, the United Kingdom and the United States were centred on grassroots activism due to the State's limited response. Women's rights activists set up hotlines, created shelters, led support groups, provided childcare and networked with medical services to support survivors. Persistent State inaction, often turning a blind eye to abuses in the home, cultivated great scepticism among activists that, in turn, fomented distrust of the criminal justice system. In response, some activists and scholars challenged the merits and neutrality of law,<sup>51</sup> while others lobbied for radical legal and social service reform.<sup>52</sup>

By the late 1980s and 1990s, two streams of response developed – one civil and one criminal – often at odds with each other. The criminal justice stream shifted domestic violence activism and service provision from a grassroots feminist/activist movement to one defined by mandatory policies and services that failed to address the root causes of violence in the home and society or constructively consider the needs of survivors.<sup>53</sup>

Reforms included mandatory arrest, mandatory prosecution, including so-called “no drop” policies, mandatory reporting at hospitals and clinics, as well as the creation of domestic violence units in prosecutors' offices and the development of treatment programmes for perpetrators and support programmes for survivors. Mandatory policies were viewed as a way to encourage law enforcement and the criminal justice system to provide a uniform response to domestic violence, yet these policies often left survivors feeling disempowered because they had no say in the process. In the case of mandatory arrest, police

officers were required to arrest a suspect whenever the officer had probable cause to believe that an assault had taken place, ultimately removing any discretion on the part of the officer. The theory was that the arrest of perpetrators would deter them from future violence. Mandatory arrests gained momentum after a 1984 police study in Minneapolis, Minnesota (United States), revealed that arrests led to a lower likelihood of repeat violence among perpetrators. Notably, the study failed replication elsewhere, but that did not halt mandatory arrest policy formation.<sup>54</sup> To this day, mandatory arrest continues to be utilized in several contexts.

Like mandatory arrest, no-drop policies restricted the discretion of prosecutors and required the prosecution of a perpetrator, regardless of the survivor's wishes. Additionally, no-drop policies commonly forced the survivor to participate in the prosecutorial process, creating an adversarial relationship with the criminal justice system. Thus, once charges were filed, the State, and not the survivor, became the “plaintiff” in the case. Critics contend that no-drop policies could potentially lead to a backlash against survivors, including an increased risk of retaliation by the perpetrator that would, in turn, discourage survivors from ever speaking up and reporting abuse.<sup>55</sup> Similar to mandatory arrest, no-drop policies are still in use.

Another policy cultivated during this period, mandatory reporting by health-care professionals of injuries resulting from domestic violence, was believed to both protect the survivor as well as aid law enforcement. However, health-care professionals soon

pointed out that mandated reporting would jeopardize the survivor's safety and trust in the medical system – perpetrators might deny survivors access to needed health care for fear of outing the abuse or survivors might fear the perpetrator's retaliation if the injuries were reported. Doctors also feared breaching patient confidentiality. Due to these concerns, the American Medical Association officially rejected mandatory reporting laws.<sup>56</sup> Similar debates have occurred in Australia with the Association of Social Workers protesting mandatory reporting policies.<sup>57</sup>

Reformers believed that mandatory policies would send a clear message that the State does not tolerate domestic violence. Yet, it has become clear that mandatory policies leave women feeling disempowered and “coerced” because law enforcement and criminal justice actors often view survivors as “unreliable.”<sup>58</sup> In domestic violence situations, women may not leave an abuse relationship for myriad reasons, ranging from emotional to financial to fearful.

Within the Arab region, social and familial ostracism is also a very important factor, as is preserving the family at all costs.<sup>59</sup> For example, in Lebanon, many sects do not view domestic violence as legitimate grounds for divorce, which in turn endangers a wife's financial security if she does choose to divorce; thus, she may stay for lack of funds.<sup>60</sup> Some women may choose to stay in abusive relationships for fear of losing their children, as documentation from Bahrain, Kuwait and Saudi Arabia attests.<sup>61</sup> Similar justifications were found in Jordan.<sup>62</sup> In Egypt, a study on VAW in the settlement of Manshiet Nasser (Cairo) highlighted that 65 per cent of women considered it shameful to

report a husband to the police; other reasons for not reporting included the welfare of the children (32 per cent), concern for the husband (19 per cent) and fear of the husband's retaliation (13 per cent).<sup>63</sup>

Such responses reveal that legal systems are often unable or unwilling to deal with the complexity of this type of relationship and prefer to focus primarily on criminalization and incarceration. Within this realm, the survivor's autonomy is often negated, particularly when the language of criminal justice is one of retribution and prosecution. This has left little space for survivor “ambivalence or hesitancy”.<sup>64</sup> This was confirmed in the study in Manshiet Nasser, Cairo. Of the women interviewed, 13 per cent went to the police, “However, in all the cases, those who filed complaints withdrew them eventually, since the main aim was to ‘teach the husband a lesson’ only and not to truly cause him any harm [...] One woman, Iman (22), mentioned her husband beating her much more, after she filed a complaint and then withdrawn it [sic] on the same day when he was savagely beaten at the police station.”<sup>65</sup> Mandatory policies also increase the likelihood that the police or the criminal justice system will mistreat or revictimize survivors who are not compliant or who are already marginalized. These women fear engagement with the criminal justice system because they or their partners have previously been discriminated against based on intersectional issues such as race, class, disability, or immigration status.<sup>66</sup> As a result, “...women either want[] to stay out of the system themselves or desire[] that the system exempt their partners from enforcement.”<sup>67</sup> Palestinian citizens of Israel face similar intersectional concerns as a

marginalized and vulnerable population. There is a strong distrust in turning to State institutions – police, criminal justice or social services – that perpetuate abuses towards the Palestinian people. Accordingly, women may “believe that many Israeli institutions and formal service providers are divisive and racist; break up families; and symbolize the oppressive establishment that is not interested in enhancing the well-being, welfare and advancement of Arab [Palestinian] citizens.”<sup>68</sup>

In the end, mandatory policies, which ultimately exclude the survivor, aim to “achieve justice” without accounting for the survivor’s needs or desires.<sup>69</sup> They often fail to address or challenge the root causes of violence. Nor do they provide remedy or relief for social or economic needs, which often are part and parcel of the complex web of reasons a survivor chooses to stay in or return to an abusive relationship.

However, not all reforms have been regarded as disempowering. Amid mandatory policies, the provision of civil protection orders gained a foothold and came to be viewed as both legally responsive and survivor-centred.

### **Civil protection orders: evolution and impact**

While the criminal response to domestic violence focused on mandatory policies, the civil response relied on the provision of protection orders. Civil protection orders as a means to address domestic violence originated in the United States in 1976. Prior to this, obtaining protection meant obtaining a peace bond (commonly a court order to keep the peace and

be on good behaviour for a period of time) during divorce or criminal proceedings.<sup>70</sup> The implementation of civil protection orders stemmed from lawsuits in the United States in the early 1970s that contested law enforcement’s failure to arrest perpetrators of domestic violence.<sup>71</sup> The civil protection order was intended “to provide an easily accessible, free-standing civil cause of action for a victim to obtain immediate, temporary, injunctive relief from physical violence.”<sup>72</sup> According to a study in England, Scotland and Wales, turning to civil law “enable[d] women to actively respond to current abuse and seek to stop future abuse without reliance on the criminal law and its agents.”<sup>73</sup> In Australia, while the women’s movement shied away from greater criminalization measures, it did embrace civil protection orders as the focal point of local domestic violence reforms.<sup>74</sup>

Civil protection orders came to be viewed as a way for survivors to engage with a portion of the criminal justice system while still maintaining some control over the response, an important feature not considered in mandatory policies. The first study into the efficacy of civil protection orders, which was conducted in the United States in the 1980s, found that they were effective for some types of abuse, but less so for physical violence. Importantly, many survivors believed the orders were effective.<sup>75</sup> Legal reforms over the years have refined the civil protection order and its ability to protect. While not a panacea, more recent surveys of research on civil protection orders conclude that they are the legal remedy most often chosen by survivors because they typically increase a survivors’ safety and enhance their autonomy.<sup>76</sup>

Some studies have confirmed that civil protection orders at least deter perpetrators from committing future acts of violence against the survivor and other family members, though intersectional issues may impact the degree to which the violence is perpetrated.<sup>77</sup> Another important feature has been the impact on survivors. While turning to the criminal justice system can be a difficult decision, research reveals that those who obtained a civil protection order and were supported in obtaining other support services commonly felt a greater sense of well-being and safety.<sup>78</sup>

Much of the historic research on civil protection orders has come from Australia, New Zealand, the United Kingdom and the United States, as noted above, while limited research has assessed survivors' perceptions of the orders and/or whether and to what extent the orders reduce the risk of future violence. The exceptions include a study in a district of South Africa, where survivors who utilized protection orders reported a reduction over time of different types of intimate partner violence.<sup>79</sup> Likewise, a study comparing the availability of protection orders on the Caribbean Islands of Barbados versus no availability on St. Kitts and Nevis revealed that protection orders contributed to a lower risk of repeat abuse because the police were obligated to respond.<sup>80</sup> In Singapore, protection orders have existed since 1980 with the ratification of the Women's Charter. Since this time, the access to and the parameters of the protection order have expanded. These reforms are viewed as improving access to protection orders as well as the quality of life of survivors. A study by the Subordinate Courts in Singapore found that the majority (more than 80 per cent) of survivors

with protection orders felt safer and saw an improvement in their lives, as well as their children's lives.<sup>81</sup>

Reflecting on these studies, civil protection orders do more than protect survivors. Secondly, they contribute to a sense of empowerment, they distinguish the survivors as rights-holders and they facilitate access to other services that may further empower the survivor. For some women, having a civil protection order provides a sense of control and the ability to exercise decision-making power, something they had been denied in their relationship.<sup>82</sup> For others, it indicated the ability to "move forward" and set boundaries with the perpetrator.<sup>83</sup> Furthermore, the civil protection order option means that the survivor is able to make choices about the relationship as the one who best knows its dynamic. Perhaps she is not ready to leave the relationship, or it is not safe to do so; the protection order allows her time to weigh the pros and cons of this decision while, ideally, also ensuring that the decision is hers alone.

As a legal document, the civil protection order legitimizes a survivor's right to not be abused and creates a public record of this right.<sup>84</sup> Turning to law, even civil law, allows survivors to adopt a rights-defined identity that simultaneously challenges the State's narrow definition of her as "victim," which also challenges the public-private divide.<sup>85</sup> Furthermore, in contrast to survivors' experiences of mandatory policies, research shows that survivor's engagement with the legal system as rights holders rather than as victims has led some to define their experience as "emancipatory," with some considering themselves as "truth tellers."<sup>86</sup>

## Box 6. The Economic Benefit of Protection Orders to the State

A study in the United States estimated that “for every \$1 spent on the PO [protection order] intervention there is \$30.75 in avoided costs or costs that would have been expected based on the estimated costs of partner violence 6 months before the PO, if there had been no PO intervention.” Ultimately, the provision of protection orders saved the state of Kentucky \$85.5 million per year.

Source: Logan, Walker, Hoyt and Faragher, 2012, p. 11.

Importantly, civil protection orders may also serve as a means of empowering survivors to take other steps to ensure their safety, including gaining formal and informal support and envisioning transformation.<sup>87</sup> Civil protection orders may link survivors to other services that can increase their mental well-being, options and overall safety. Thus, the protection order allows the survivor time to consider her options and explore available services based on her needs. Lastly, the benefits of civil protection order extend beyond the survivor and may positively impact the economy in its entirety (box 6).

## C. Global implementation and localization of protection orders

Drawing upon the lessons learned and experiences of States that initially implemented protection order regimes, many States now offer orders that are unique to the context or more accessible to the survivor. For example, the use of technology to facilitate access to protection orders is on the increase as is the type of authority who can issue an order. In Taiwan, the Domestic Violence Prevention Act of 1989 allows local governments to assist in the application of

protection orders. For survivors in imminent danger, “Applications for protection orders may be made by fax or other means of expedited communication...”<sup>88</sup> The Pacific Island of Vanuatu has several rural and hard to reach communities, where some may not be directly served by courts. In response, the Family Protection Act (2008) “authorizes a temporary protection order to be issued by an ‘authorized person’ as well as a court. Persons who can be authorized under the Act include a principal chief, an assistant chief, a church leader, a community leader, a teacher, a village health worker, a police officer at the rank of inspector or above and anyone else who has applied.”<sup>89</sup> Each authorized person undergoes domestic violence awareness training in addition to training on the Act. In addition to expanding the number of persons authorizing temporary protection orders, the application for an order “can be made orally, by phone, radio, in writing by fax, telex, or email, and a temporary order can be made by an authorized person at ‘any time of the day or night’<sup>90</sup> (for other examples of utilizing technology to enhance good practice, see box 7).

The Philippines has created the Barangay Protection Order<sup>91</sup> under article 14 of Republic Act 9262, which can be administered by the chairperson of the village council. Like an



*ex parte* order, the order is valid only for 15 days, allowing the survivor time to decide her next steps, and bars the perpetrator from committing or threatening physical harm to the survivor. The survivor can be accompanied by a non-lawyer advocate in any proceeding before the chairperson of the village council and a number of persons are able to apply for the order on behalf of the survivor, if necessary.<sup>92</sup> Brazil and Nicaragua allow protection orders to be initiated at a women's police station where they are then sent to a corresponding court.<sup>93</sup>

In Malaysia's newly amended Domestic Violence (Amendment) Act 2017, one of the key features is the introduction of an emergency protection order (EPO) that can be granted immediately by a social welfare officer. The order can be issued two hours after application, is available throughout the week, and does not require a police report for a court hearing. The EPO contains several barring provisions against the perpetrator and is valid for seven days, allowing the survivor time to decide her next steps. Breach of the order may result in up to six months imprisonment.<sup>94</sup>

A survivor's access to safe housing may be compromised when she obtains a protection order. India's Protection of Women from Domestic Violence Act (2005) allows for protection orders (including interim and *ex parte* orders) that bar the perpetrator from contacting the survivor and committing further

harm, among other concerns. Notably, the Act also has a specific provision for residence orders. Residence (occupancy) orders complement protection orders and explicitly recognize a woman's right to residence and to live in a violence-free home even if she is not the primary owner/renter of the residence. The Act also allows for child custody orders and compensation orders.<sup>95</sup> In El Salvador, survivors receive temporary relocation or, if they have a protection order and chose to remain in their home, the perpetrator can be made responsible for paying the rent. Survivors may also receive priority access to public housing programmes.<sup>96</sup>

Cross-border recognition of protection orders can assist a survivor who must relocate for security reasons. In recent years, the European Union (EU) has issued Directive 2011/99/EU on the European Protection Order and Regulation 606/2013 on the mutual recognition of protection measures in civil matters. These two documents provide a legal basis for EU member States to recognize a protection order (civil or criminal) that was granted in another member State. The Directive was required to be mainstreamed into national legislation by 2015. However, as of September 2017, only seven European Protection Orders had been administered. Authorities contrast this number with the estimate that in 2010, over 100,000 women residing in the EU had protection orders to address relationship violence, highlighting the need for greater awareness.<sup>97</sup>

### Box 7. Enhancing good practice: protection orders facilitated through technology

While specific contexts may vary, the following are strategies that use technology to enhance a survivor's access to and usage of civil protection orders:

**Online petition generating programmes:** Self-guided online programmes assist survivors to obtain and complete a protection order. In some cases, instead of printing the forms and taking them to court, these programmes allow survivors to e-file their documents, or transmit their documents via some other method, such as email or e-fax.

**Videoconferencing:** This option is used for temporary order hearings. After filing a petition electronically or by fax, survivors can appear before a judge remotely by video from a safe setting, such as a hospital, domestic violence service provider or a family justice centre. This is an option for petitioners who may not be able to travel to a court due to injury, fear of encountering the perpetrator, time constraints or a lack of childcare or transportation.

**24/7 access to judicial officials:** In Indiana (United States), the Advocate Access programme can be used to file online petitions both during and outside of the court's business hours. A judge can view a petition submitted through Advocate Access/Protection Order Registry from any location at any time and issue an *ex parte* order. The electronic petition for the emergency order is processed immediately. The court can store the order electronically with an electronic signature or a signed paper petition can be filed later.

**Enhancing language access:** Some jurisdictions address language barriers by offering protection order technology solutions in multiple languages.

**Phone and/or email notifications:** In 2014, Milwaukee, Wisconsin (United States) began providing survivors who have obtained temporary restraining orders the opportunity to receive phone and/or email notifications when the order is served to the perpetrator.<sup>a</sup>

**HelpSelf Legal:** Using Artificial Intelligence, the programme helps survivors avoid making mistakes that could lead to the court rejecting the submission of protection order paperwork. It also adapts to the user's responses. For example, if a survivor says that a perpetrator owns firearms, it leads to a clear prompt about whether they want the court to consider removing those weapons from the perpetrator's possession.

**Sources:** National Center for State Courts, 2018; Ruiz, 2017.

<sup>a</sup> Fox6 News, 2014.



## 2. Normative Frameworks on Protection Orders



## 2. Normative Frameworks on Protection Orders

This chapter reviews the normative frameworks that call for civil protection orders as part of a coordinated legal response to VAW, as well as the jurisprudence resulting from such frameworks. Specifically, this section will consider the normative frameworks and standards for civil protection orders with regards to the due diligence standard. Building on the due diligence standard, there is now international and regional jurisprudence indicating an evolving norm of criminal and civil protection orders under customary international law. This is further evidenced by States' application of CEDAW to national legislation. Lastly, the chapter will briefly review the United Nations Handbook for Legislation on Violence against Women, which outlines good practice when drafting and implementing protection order legislation. The guidelines of the Handbook will then be applied to legislation in the Arab region in the following chapter.

### A. Due diligence, violence against women and protection orders<sup>98</sup>

Even though international human rights law implies a male rights holder, it has nevertheless impacted States' response to VAW, notably through the application of the due diligence standard. The due diligence standard obligates the State to address VAW not only in the public and private spheres, but also crimes perpetrated by State and non-State actors. These obligations

are known as the 5 Ps: prevention, protection, prosecution, punishment and the provision of redress (box 8). Importantly, the due diligence standard does not mean that a State is directly responsible for all actions of private citizens or non-State actors. Rather, the obligation focuses on a State's (in)action when responding to human rights violations, including VAW, because it is inaction that contributes to a lack of accountability and a culture of impunity.<sup>99</sup>

The SR-VAW regards the due diligence obligation "as a measure of evaluating a State's responsibility for violation of human rights by private actors," and notes that customary law as well as human rights instruments presume State responsibility for the violation of women's human rights by private actors.<sup>100</sup> This applies to the availability and enforcement of protection orders by the State for situations of domestic and interpersonal violence.

Within CEDAW, the due diligence obligation is indirectly referenced under article 2(e) where States are called to take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise.<sup>101</sup> The standard is further elaborated on in DEVAW, which urges States to prevent, investigate and punish acts of VAW in accordance with national legislation, whether those acts are perpetrated by the State or by private persons (article 4(c)). The directive is restated verbatim in the Beijing Declaration and

Platform for Action, under paragraph 124(b) of Platform D on VAW. Due diligence is explicitly noted in the African, Asian, inter-American and European human rights systems.

The second SR-VAW, Ms. Yakin Ertürk, published a report in 2006 entitled “The due diligence standard as a tool for the elimination of violence against women” where she noted States’ limited application of the standard to responding to VAW. In many instances, this equated to legislative reform, access to justice and service provision with little to no focus on prevention or redress (box 9). Harmful gender-based stereotypes and norms were not being challenged and there were few examples of developing more responsive accountability mechanisms.<sup>102</sup> By 2013, the third SR-VAW,

Ms. Rashida Manjoo, noted that the due diligence standard “serves as a tool for rights holders to hold States accountable, by providing an assessment framework for ascertaining what constitutes effective fulfilment of a State’s obligations, and for analysing its actions or omissions.”<sup>103</sup> The current SR-VAW, Ms. Dubravka Šimonović, explains that protection orders are “directly or indirectly enshrined in international and regional legal and policy human rights instruments and have been further elaborated by independent mechanisms that monitor their implementation.”<sup>104</sup> This is evidenced by regional and national jurisprudence that clarifies the availability and enforcement of protection orders as part of a State’s due diligence to respond to VAW.

### Box 8. The 5 Ps of due diligence

The due diligence principle, as part of customary international law, obligates a State to take the following actions:

**Prevention:** Targeting the underlying causes of VAW; Changing mindsets and modifying behaviour; Eliminating risk factors; Providing outreach and ending isolation; Broadening the scope of violence against women programmes; Formulating comprehensive laws and constitutional guarantees; Collecting data and designing programmes; Incorporating intersectionality and providing for at-risk groups; Maintaining a sustained strategy; Collaborating with women’s/feminist organizations.

**Protection:** Ensuring availability of and accessibility to coordinated support services; Ensuring availability of and accessibility to protection orders; Upholding the duties of first responders; Fostering positive attitudes and sensitization through sustained training; Implementing a multi-sectoral approach and coordinating services.

**Prosecution:** Addressing victims’ needs and fears; Developing policies to reduce attrition; Ensuring the police provide positive early victim/survivor engagement; Establishing the affirmative duty to investigation; Establishing the affirmative duty to prosecute; Fostering confidence in the police and judiciary; Establishing specialized prosecutors and courts; Considering alternative dispute resolution; Ensuring that plural legal systems align with agency approach.

**Punishment:** Holding perpetrators accountable; Ensuring punishment is commensurate with the offence; Meeting the goals of punishment; Broadening the available punishment regime beyond incarceration, where appropriate; Ensuring punishment is premised on the principle that VAW is not justified.

**Provision of redress:** Adopting a victim/survivor-centred perspective; Ensuring proportionality to gravity of harm or loss suffered; Assuming responsibility for recuperating reparations from perpetrators; Working towards institutional reform and transformative change.

Source: Due Diligence Project, 2014, pp. 80-85.

### Box 9. Redress: monetary compensation awarded to a domestic violence survivor in Malaysia

All too often, States believe due diligence focuses on penalization and prosecution, but fail to acknowledge the final obligation, which is redress. Courts in Malaysia, however, have responded as documented by the Women's Aid Organisation (WAO):

"Z was involved in a polygamous marriage. Her husband also had affairs with other women throughout their 13 years of marriage. Z's husband has abused her on many occasions. Once, her husband hit her on the head, and slapped, kicked, and pushed her around. Another time, she was hit with a key over the left side of her face and hit by a metal object over her chest. He would hit her repeatedly in front of their children. Z and her children lived in constant fear. Z applied for divorce.

Z successfully obtained an interim protection order (IPO) and protection order (PO) against her husband. Throughout the criminal and divorce proceedings, Z was constantly harassed and threatened by her husband and his family. They have on many occasions forced her to recant the criminal case against him as well as the Syariah [sic] court case. This has forced her to make another report against her husband for violating the PO.

The court found Z's husband guilty under section 323 of the Penal Code for voluntarily causing hurt. As a consequence, he was obliged to perform community service for three months. The court successfully took into consideration the pain and suffering of the victim, the physical and mental injury suffered, and the cost of medical treatment for injuries by ordering the husband to pay Z RM 4,000 [USD 963] as compensation."

Source: Women's Aid Organisation (WAO), 2015, pp. 45-46.

Within the European system, *Opuz v. Turkey* (2009) serves as a landmark case concerning the State's due diligence obligation, domestic violence and the enforcement of protection orders (links to case law provided after the bibliography). Ms. Opuz had been severely abused by her husband during her marriage. Even after divorcing, her estranged husband targeted her and her mother with increasing brutality, and eventually killed Ms. Opuz's mother. Despite Ms. Opuz seeking help within the context of Turkey's domestic violence law (Law no. 4320), the Turkish authorities failed to take significant action to investigate claims and implement and maintain effective and timely

protective measures. Furthermore, despite receiving a life sentence for killing Ms. Opuz's mother, her ex-husband was released from prison on appeal. The police subsequently withdrew a protection order Ms. Opuz had in place, further endangering her. In response, the European Court of Human Rights ruled that State authorities had failed to prevent and protect Ms. Opuz and her mother against domestic violence, which constituted a form of gender-based discrimination. Subsequent cases in the European system highlight State negligence in not providing or appropriately enforcing protective measures, including protection orders.<sup>105</sup>



Within the inter-American system, the case of *Jessica Lenahan (Gonzales) et al v. the United States* (2011) highlights that protection orders must not only be available to survivors, but that the State is obligated to enforce such orders. As a survivor of domestic violence, Ms. Lenahan had a protection order against her estranged husband that allowed for limited visitation rights of their three daughters. However, in 1999, Ms. Lenahan's estranged husband abducted their daughters. Ms. Lenahan then implored the local police to find the girls noting that a protection order was in place. Local police did not respond in a timely or coordinated matter, going so far as to declare that, "at least you know where the kids are right now." The ordeal ended in a shoot-out between her estranged husband and the police in the parking lot of the police station. He was shot and killed by the police and her daughters were also found dead in the car, having been killed by him earlier. The case was initially heard by the United States Supreme Court in *Castle Rock v. Gonzales*, 545 U.S. 748 (2005), which ultimately ruled that Ms. Lenahan had no due process right to the enforcement of a civil protection order. Six years later the case was heard by the Inter-American Court of Human Rights, which alternatively found the United States in violation of its international obligations under multiple human rights frameworks within the inter-American human rights system. The Commission argued that the United States had a State responsibility to address domestic violence and enforce the protection order.

The Optional Protocol to CEDAW (OP-CEDAW) has also impacted how the international community views protection orders. Usage of the OP-CEDAW activates the accountability mechanism of the CEDAW Committee.<sup>106</sup>

Although the Committee is a quasi-judicial body, its rulings have a profound effect on understandings of the Convention and a State's obligation to respond to VAW, including domestic violence. The case of *A.T. v. Hungary* (2005) was the first domestic violence complaint reviewed by the Committee where the lack of provision and enforcement of a protection mechanism such as protection orders served as the central theme. A.T. tried countless times to protect herself and her children from domestic violence, but Hungary did not offer protection orders, resulting in ongoing physical abuse and property destruction, even after separating from her partner. The Committee ruled that Hungary was responsible for violating A.T.'s human rights and failed to prevent and protect her and her children from domestic violence.

The CEDAW Committee has heard subsequent cases concerning a State's failure to enforce protection orders, including *Şahide Goekce (deceased) v. Austria* (2005) and *Fatma Yildirim (deceased) v. Austria* (2005).<sup>107</sup> Ms. Goekce's husband was issued three expulsion and prohibition to return orders that he repeatedly violated. An interim injunction order was then issued, which was also violated; additionally, her husband was in possession of a handgun. The public prosecutor denied requests to detain the husband after the violation. Consequently, Ms. Goekce was shot and killed by her husband in front of their two daughters. Similarly, in *Yildirim*, the public prosecutor failed to detain Ms. Yildirim's husband after the violation of an expulsion and prohibition to return order. Two different interim injunctions were then issued and repeatedly violated without the police or the public prosecutor taking any action. Shortly

after filing for divorce, Ms. Yildirim was stabbed to death by her husband. In both cases, the CEDAW Committee noted that Austria's failure to protect the women, despite frameworks in place, resulted in a violation of their right to life and to their physical and mental integrity.<sup>108</sup>

Other cases before the Committee continue to highlight how, even when mechanisms are in place, a State's lack of enforcement and/or accountability to the survivor perpetuates persistent or greater harm, while also enforcing gender stereotypes and denying access to justice.<sup>109</sup> This includes the case of *Ángela González Carreño v. Spain* (2012). In November 2018, the Government of Spain ruled on a judgment by the CEDAW Committee's individual complaint mechanism brought by Ms. González

Carreño in 1999 when, after exhausting all possible protection options, her estranged husband threatened to and eventually killed their 7-year-old daughter, as well as himself. The Committee ruled in Ms. González Carreño's favour. She then took the case to the Spanish courts to enforce compliance with the recommendation. The Supreme Court of Spain subsequently acknowledged the violation of Ms. González Carreño's rights and ordered the Government to pay 600,000 euros as compensation for the damages she suffered.<sup>110</sup>

Within the Arab region, only Libya and Tunisia have acceded to the OP-CEDAW. To date, no plaintiff from either State has activated the measure, possibly owing to a lack of awareness of its availability.

### Box 10. The due diligence standard and violence against women and girls in international and regional frameworks

#### Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)

Article 2. States Parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women and, to this end, undertake:

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

<p><b>General Recommendation No. 19 (CEDAW): Violence against women</b></p>	<p>General Comments</p> <p>8. The Convention applies to violence perpetrated by public authorities. Such acts of violence may breach that State's obligations under general international human rights law and under other conventions, in addition to breaching this Convention.</p> <p>9. It is emphasized, however, that discrimination under the Convention is not restricted to action by or on behalf of Governments (see articles 2(e), 2(f) and 5. For example, under article 2(e) the Convention calls on States parties to take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise. Under general international law and specific human rights covenants, States may also be responsible for private acts if they fail to act with <b>due diligence</b> to prevent violations of rights or to investigate and punish acts of violence, and for providing compensation.</p>
<p><b>General Recommendation No. 28 (CEDAW) on the core obligations of States parties under article 2 of the Convention on the Elimination of All Forms of Discrimination against Women</b></p>	<p>II. Nature and scope of obligations of States parties</p> <p>13. Article 2 is not limited to the prohibition of discrimination against women caused directly or indirectly by States parties. Article 2 also imposes a <b>due diligence</b> obligation on States parties to prevent discrimination by private actors. In some cases, a private actor's acts or omission of acts may be attributed to the State under international law. States parties are thus obliged to ensure that private actors do not engage in discrimination against women as defined in the Convention. The appropriate measures that States parties are obliged to take include the regulation of the activities of private actors with regard to education, employment and health policies and practices, working conditions and work standards, and other areas in which private actors provide services or facilities, such as banking and housing.</p>
<p><b>General Recommendation No. 35 (CEDAW) on gender-based violence against women, updating general recommendation No. 19</b></p>	<p>III. State party obligations in relation to gender-based violence against women</p> <p>B. Responsibility for acts or omissions of non-State actors</p> <p>24. Under general international law, as well as under international treaties, acts or omissions of a private actor may engage the international responsibility of the State in certain cases, which include the following:</p> <p>2. <b>Due diligence</b> obligations for acts or omissions of non-State actors</p> <p>(b) Article 2 (e) of the Convention explicitly provides that States parties are to take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise. That obligation, frequently referred to as an obligation of <b>due diligence</b>, underpins the Convention as a whole and accordingly States parties will be held responsible should they fail to take all appropriate measures to prevent, as well as to investigate, prosecute, punish and provide reparations for, acts or omissions by non-State actors that result in gender-based violence against women, including actions taken by corporations operating extraterritorially. In particular, States parties are required to take the steps necessary to prevent human rights violations perpetrated abroad by corporations over which they may exercise influence, whether through regulatory means or the use of incentives, including economic incentives. Under the obligation of <b>due diligence</b>, States parties must adopt and implement diverse measures to tackle gender-based violence against women committed by non-State actors, including having laws, institutions and a system in place to address such violence and ensuring that they function effectively in practice and are supported by all State agents and bodies who diligently enforce the laws. The failure of a State party to take all appropriate measures to prevent acts of gender-based violence against women in cases in which its authorities are aware or should be aware</p>

	of the risk of such violence, or the failure to investigate, to prosecute and punish perpetrators and to provide reparations to victims/survivors of such acts, provides tacit permission or encouragement to perpetrate acts of gender-based violence against women. Such failures or omissions constitute human rights violations.
<b>Declaration on the Elimination of Violence against Women (DEVAW)</b>	<p>Article 4. States should condemn violence against women and should not invoke any custom, tradition or religious consideration to avoid their obligations with respect to its elimination. States should pursue by all appropriate means and without delay a policy of eliminating violence against women and, to this end, should:</p> <p>(c) Exercise <b>due diligence</b> to prevent, investigate and, in accordance with national legislation, punish acts of violence against women, whether those acts are perpetrated by the State or by private persons.</p>
<b>Convention on the Rights of the Child (CRC)</b>	<p>Article 19</p> <p>1. States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.</p>
<b>Convention of Belém do Pará</b>	<p>Article 7. The States Parties condemn all forms of violence against women and agree to pursue, by all appropriate means and without delay, policies to prevent, punish and eradicate such violence and undertake to:</p> <p>1. (b) apply due diligence to prevent, investigate and impose penalties for violence against women.</p>
<b>Istanbul Convention</b>	<p>Article 5. State obligations and <b>due diligence</b></p> <p>1. Parties shall refrain from engaging in any act of violence against women and ensure that State authorities, officials, agents, institutions and other actors acting on behalf of the State act in conformity with this obligation.</p> <p>2. Parties shall take the necessary legislative and other measures to exercise <b>due diligence</b> to prevent, investigate, punish and provide reparation for acts of violence covered by the scope of this Convention that are perpetrated by non-State actors.</p>
<b>Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol)</b>	<p>Article 4. The Rights to Life, Integrity and Security of the Person</p> <p>2. States Parties shall take appropriate and effective measures to:</p> <p>(a) Enact and enforce laws to prohibit all forms of violence against women including unwanted or forced sex whether the violence takes place in private or public;</p> <p>(b) Adopt such other legislative, administrative, social and economic measures as may be necessary to ensure the prevention, punishment and eradication of all forms of violence against women;</p> <p>(c) Identify the causes and consequences of violence against women and take appropriate measures to prevent and eliminate such violence;</p>

	<p>(e) Punish the perpetrators of violence against women and implement programmes for the rehabilitation of women victims;</p> <p>(f) Establish mechanisms and accessible services for effective information, rehabilitation and reparation for victims of violence against women.</p> <p>Article 25. Remedies</p> <p>States Parties shall undertake to:</p> <p>(a) Provide for appropriate remedies to any woman whose rights or freedoms, as herein recognized, have been violated;</p> <p>(b) Ensure that such remedies are determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by law.</p>
<b>Declaration on the Elimination of Violence Against Women in the ASEAN Region</b>	<p>Article 4. To enact and, where necessary, reinforce or amend domestic legislation to prevent violence against women, to enhance the protection, healing, recovery and reintegration of victims/survivors, including measures to investigate, prosecute, punish and where appropriate rehabilitate perpetrators, and prevent re-victimization of women and girls subjected to any form of violence, whether in the home, the workplace, the community or society or in custody.</p>

## B. The application of CEDAW to national legislation

Accession to CEDAW means that States submit a periodic report to the CEDAW Committee, engage in a “constructive dialogue” with Committee members, and consider and locally disseminate resulting Concluding Observations and recommendations provided by the Committee. General Recommendation no. 19 serves as the CEDAW Committee’s entry point for compelling States to report on VAW, which the Committee in turn reports on in its Concluding Observations. The document provides guidance for States to mainstream violence throughout the reporting on the Convention’s articles, in addition to a stand-alone section on VAW that most commonly features under article 5 on gender stereotypes. Since 2014, the CEDAW Committee sends States an approved list of issues prior to reporting

(also known as ‘LOIPR’) that always includes VAW-related topics.

While the majority of Arab States participate in the CEDAW reporting process, only a few States have been directly questioned about the provision of protection orders.<sup>111</sup> In 2010, the Committee called upon Tunisia to develop legislation to ensure that “women and girls who are victims of violence have access to immediate means of redress and protection, including protection orders.”<sup>112</sup> In 2012, Jordan was requested to collect data on protection orders issued and violated, which it has yet to do.<sup>113</sup> In 2017, the Committee noted that the State of Palestine did not have any VAW legislation and called for “the issuance of protection orders as well as systematic data collection on the number of protection orders issued and violated.”<sup>114</sup>

At the national level, judges may draw upon CEDAW when there is no clear means to implement protection orders through national legal frameworks; however, this may not be possible in all contexts as some States do not regard international law to be above national law.<sup>115</sup> The most common approach is indirect application in order “to assist in the interpretation of another legal norm which operates in that legal system.”<sup>116</sup> In States that have ratified CEDAW, it may be commonly cited in national rulings concerning gender discrimination.<sup>117</sup> For example, the Algerian judiciary cited CEDAW in the case of *M.F. v. S.Kh.* (File No. 415123, 31 March 2008) whereby the Supreme Court challenged the concept of consent when a wife did not want to continue with her marriage.<sup>118</sup> Similarly, the Algerian courts ruled on violence perpetrated against a wife who asserted her equal rights as a parent; the judge ruled that through CEDAW, Algerian law outlined the responsibilities shared between spouses in the upbringing of their children and subsequently convicted the husband for acts of violence.<sup>119</sup> In Iraq, a husband wanted to marry a second wife because he believed he was providing a “humanitarian” service to a divorced woman. He was then told by the court that his intentions were “not on the basis of equality and being a woman with her humanitarian presence [sic], and she represents an important part of society and contributes to its construction, and she is not a weak creature begging for pity from the man, which constitutes an intersection with the United Nations Convention on the Elimination of Discrimination against Women [sic], ratified by Iraq and has become a national law that must be followed, while this justification does not

comply with the constitutional principles of the Iraqi constitution in force in terms of equality and equal opportunities between sexes.”<sup>120</sup>

A 2013 ruling in Lebanon (prior to passage of Law. No. 293) from the Court of Cassation noted that an ex-husband was denied access to the house occupied by his former wife and her daughter to protect them from his persistent violence. This occurred despite the ex-husband owning a portion of the house. The Court stated that “the safety of a human being comes before all other considerations and assault by one party against another justifies in principle the denial of contact that might lead to the occurrence of harm.”<sup>121</sup> This was documented in Lebanon’s fourth and fifth periodic reports submission to the CEDAW Committee. Lebanon’s Law no. 293<sup>122</sup> has also resulted in several rulings that reference CEDAW, among other important human rights frameworks.

Specific to the application of protection orders, in the case *Jesus C. Garcia v. Ray Alan T. Drilon, et al.* (2013), the Supreme Court of the Philippines struck down a challenge to the constitutionality of Republic Act 9262 entitled, “An Act Defining Violence against Women and Their Children, Providing for Protective Measures for Victims, Prescribing Penalties Therefore, and for Other Purposes.” Arguing that the survivor had reasonable grounds to believe that she and her children were in imminent danger of violence, the Court upheld the survivor’s right to a protection order. The Court argued further that, “As a State Party to the CEDAW, the Philippines bound itself to take all appropriate measures “to modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the

inferiority or the superiority of either of the sexes or on stereotyped roles for men and women.”<sup>123</sup>

Reference has also occurred in contexts that have not formally acceded to the Convention. For example, the United States has not ratified CEDAW, yet the city of San Francisco has incorporated CEDAW into local law and periodically reports on its progress. Likewise, in the United States Supreme Court case of *Grutter v. Bollinger*, 539 U.S. 306 (2003) on affirmative action admissions policies, the majority opinion cited both CEDAW and the Convention on the Elimination of all Forms of Racial Discrimination.<sup>124</sup>

### C. The United Nations model legislation on violence against women

The international conventions and frameworks discussed above provide the legal arguments for a State’s obligation to address VAW through various means, including the provision of civil protection orders. This is particularly detailed in the CEDAW Committee’s General Recommendation no. 35 under article 40(b) and article 49, which also calls for States to document “the number and types of protection orders issued, the rates of dismissal and withdrawal of complaints, prosecution and conviction rates as well as time taken for disposal of cases.” However, implementation requires more specificity, including guidelines for good practice. In 1996, Ms. Radhika Coomaraswamy, as the SR-VAW, proposed a framework for universal model legislation on domestic violence, including the provision of civil protection orders and *ex parte* orders, as

part of a coordinated response to domestic violence.<sup>125</sup> The civil protection order, as part of a model response to VAW, was then adopted by the General Assembly of the United Nations in 1997.<sup>126</sup> More than 10 years later, in 2008, the Division for the Advancement of Women and the Office on Drugs and Crime held an expert group meeting where guidelines and a model framework for legislation on VAW, including the provision of civil protection orders, was discussed.<sup>127</sup> These efforts resulted in the development of the United Nations Handbook for Legislation on Violence against Women, which now serves as the primary framework for VAW legislation and the development of more responsive and comprehensive civil protection order legislation that is also survivor-centred.<sup>128</sup>

Utilizing the due diligence standard, the United Nations model aims “to provide all stakeholders with detailed guidance to support the adoption and effective implementation of legislation which prevents violence against women, punishes perpetrators, and ensures the rights of survivors everywhere.”<sup>129</sup> This involves detailed coverage of how civil protection order legislation should be drafted and implemented, including a discussion of:

- Protection orders for all forms of violence against women;
- The relationship between protection orders and other legal proceedings;
- The content and issuance of protection orders;
- Emergency orders;
- Post-hearing orders;
- Standing in application for protection orders;

- Evidence of complainant/survivor sufficient for granting of protection order;
- Issues specific to protection orders in cases of domestic violence, including mutual protection orders and citations for provocative behaviour; addressing child custody in protection order proceedings;
- The criminal offence of violation of a protection order.<sup>130</sup>

The provision for civil protection order legislation outlined in the Handbook serves as a useful framework of analysis for legislation in the Arab region, as will be discussed in the following chapter.





### **3. Policy Frameworks and Legislation within Arab States**

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### 3. Policy Frameworks and Legislation within Arab States

In the Arab region, as elsewhere, a variety of legislation (constitutions, penal codes, stand-alone laws) in addition to policy frameworks and strategies, guide the State's response to VAW, including domestic violence. This chapter will examine relevant legislation and policy frameworks that support the provision of civil and criminal protection orders in Arab States, while also highlighting and critiquing the details of those provisions.

In the Arab region there is no clear documentation on how protection orders came to be utilized in national domestic violence legislation. However, it is safe to say that transnational feminist networking, coupled with guidance from the United Nations, has significantly influenced the actions of member States. Historically, VAW activism was often localized. This activism gained momentum through movement building in the mid-1990s with the emergence of the AISHA Network and later the SALMA Network in 2003. Civil society's participation in the SALMA Network resulted in the passage of domestic violence legislation in several Arab States.<sup>131</sup> Efforts to impact VAW legal reform continued over the years and were a primary agenda item for several States emerging from the Arab uprisings 2010-2011 - some specifically through transitional mechanisms and others through policy reform - with varying degrees of success.<sup>132</sup>

While a targeted legal approach to VAW is relatively new for States in the Arab region, efforts to impact gender-sensitive legal reform, particularly the reform of personal status laws, has been on the agenda for decades. This is famously evidenced by the efforts of the Collectif '95 Maghreb Égalité to reform the personal status codes of Algeria, Morocco and Tunisia, as well as the One Million Signatures Campaign that successfully targeted Morocco's personal status law, the Moudawana.<sup>133</sup>

Likewise, in the State of Palestine in the post-Oslo era (1994-1998), the Women's Centre for Legal Aid & Counselling assembled the Palestinian Model Parliament: Women and Legislation. The goal of the project was not only to produce model legislation concerning the labour law, political and public life, health, education and social welfare, criminal law and the personal status law, but also to "integrate women's rights and interests into the emerging political structure and organization of post-Oslo Palestinian society."<sup>134</sup> Thus, for many activists in the region and contrary to early activists in civil and common law settings, "...centralized law, carefully drafted and properly implemented, remain[s] the target of much women's rights advocacy in the region."<sup>135</sup>

In recent years, it is possible to find VAW addressed within regional and national strategies, constitutions, penal code reform

and stand-alone legislation. While States acknowledge the need for legal reform to respond to different forms of violence targeting women and girls, reform has been piecemeal, and the explicit provision of protection orders is primarily within the domain of stand-alone legislation.

## A. Arab Legal frameworks

The Arab region includes a wide variety of legal structures, many of which are implicitly and explicitly informed by religion and custom. However, in many cases, the privileging of religion by the State, particularly Islam, impacts constitutions and legislation, particularly personal status laws and emerging domestic violence laws. Specific to domestic violence legislation, scholars note that “...efforts to implement law reforms to enhance the rights and protection of women within the family are bound up in contestations over the role and the jurisprudence of religious law, and social acceptance of reforms is contingent on their perceived compatibility with religious beliefs.”<sup>136</sup>

While this framework does exist in the background, Arab States have committed to addressing VAW through national strategies and stand-alone legislation. To date, there is no binding regional legislation addressing VAW (however, the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol) has been adopted by four Arab States – Comoros, Djibouti, Libya and Mauritania). However, the recently proposed draft Convention for Elimination of Violence against Women in the

Arab States Region calls upon States to take necessary steps to protect survivors, outlining the provision of protection orders (article 36).<sup>137</sup> According to the proposed Convention, protection orders should be made available without delay or financial obligation and should be initiated independent of other legal proceedings (article 36). The Convention also calls upon States to ensure that violators of the orders are held to account through sanctions (article 27) and introduces a team of regional experts to monitor the proposed Convention (articles 47-50).

Other regional legislation includes the Arab Charter on Human Rights (2004). Ratified by 14 Arab States as of 2017, the Charter condemns violence in the family under article 33(2) but does not prescribe any civil or criminal legal remedies for such violence, though it does have the Arab Human Rights Committee.<sup>138</sup>

Constitutions serve as a State's contract with its citizenry and may outline actions needed to ensure gender equality and women's empowerment, including combating VAW. Only five Arab States clearly prohibit VAW or violence in the family or acknowledge the State's obligation to protect women from violence in their constitutions. For instance, Egypt calls upon the State to protect women from all forms of violence under article 11 of the constitution, whereas Tunisia notes that the State will take the necessary steps to eliminate VAW under article 46 of the constitution, but neither explicitly mentions the mechanisms by which they will do so. Somalia's provisional constitution prohibits any form of violence against women, among other types of violence

(article 15) and in Yemen, article 128 notes that the State shall protect women from all forms of violence. Iraq's constitution more broadly condemns all forms of violence and abuse in the family, school, and society under article 29. States may also codify their commitment to international frameworks, including CEDAW, within their constitutions.<sup>139</sup>

Gender-sensitive penal code reform is an important mechanism for addressing VAW. In the past decade, several Arab States have issued stand-alone legislation to combat VAW, including Bahrain, Jordan, Lebanon, Morocco, Saudi Arabia and Tunisia. And since 2014, several States, including Jordan, Lebanon, Morocco, the State of Palestine and Tunisia, have revoked so-called "marry your rapist" laws. Egypt's Decree no. 50 of 2014 amended the penal code to define and criminalize sexual harassment for the first time and introduce penalties. The State of Palestine passed Law No. (5) of 2018 that amends article 99 of the 1960 Penal Code to prohibit the use of mitigating sentences in crimes against women and children. Similar reforms to the Palestinian penal code in previous years include amending article 98 and abolishing article 340 of the 1960 Penal Code, and amending article 18 of the 1936 Penal Code, applicable in Gaza, all of which relate in some way to utilizing an honour-based defence for harms against wives and female family members.<sup>140</sup>

National strategies ensure that all elements of States' responses to VAW are deployed in a comprehensive and holistic manner, which in turn multiplies the efficiency of such interventions. Many development strategies, women's rights strategies and/or thematic

strategies, such as those on VAW in the Arab region call for legislative reform to respond to VAW. For some States, this involves addressing impunity, ensuring accountability and developing both civil and criminal response mechanisms, which may include protection orders. For example, a strategic objective of the State of Palestine's National Strategy to Combat Violence against Women (2011-2019) is to promote a legal framework and institutional mechanisms to protect women from violence through the development and amendment of local laws.<sup>141</sup> The National Strategy for the Empowerment and Leadership of Women in the United Arab Emirates (2015-2021) calls for developing a legislative framework in line with the good practice in the field of women's empowerment that is compatible with State obligations to international treaties.<sup>142</sup> Likewise, the fourth pillar on legal remedies of Egypt's National Strategy for Combating Violence against Women (2015-2020) seeks to establish a mechanism to prevent and protect survivors that is compatible with international treaties.<sup>143</sup> While no strategy specifically mentions protection orders, developing national legislation in line with international treaty obligations would support the creation of protection order provisions.

## **B. Violence against women legislation in the Arab Region: protection order analysis<sup>144</sup>**

While the larger legislative and policy frameworks should create an environment conducive for addressing VAW holistically, the development of stand-alone legislation is a

necessary complement. As of mid-2019, only six States had such laws: Bahrain,<sup>145</sup> Jordan,<sup>146</sup> Lebanon,<sup>147</sup> Morocco,<sup>148</sup> Tunisia<sup>149</sup> and Saudi Arabia,<sup>150</sup> though this study also reviews available draft legislation from Egypt,<sup>151</sup> Iraq<sup>152</sup> and the State of Palestine<sup>153</sup> for a more in-depth analysis. Most of these laws provide for civil protection orders, albeit with varying parameters. With their increasing availability, it is fair to assert that the provision of protection orders is an emerging norm within the Arab region. While the adoption of civil and criminal protection orders is increasing, few States collect timely data on their application, issuance or breach, making it difficult to assess their impact.<sup>154</sup>

In Arab States that do not have stand-alone legislation, many are able to provide protection orders at a **judge's** discretion through the State's code of criminal procedures when instances of marital violence are tried through the criminal justice system. However, while such orders might play a beneficial role in criminal proceedings, their scope is limited to the trial period and they are not likely to prioritize survivors' needs and preferences. Thus, it is imperative that these States take strides to draft national domestic violence legislation that provides for the option of complementary civil protection orders.

ESCWA has reviewed all stand-alone and select draft legislation on VAW in the Arab region and their provisions for protection orders. Of the six States with stand-alone violence against women legislation, five explicitly provide for civil protection orders; of the three draft laws, two outline the provision. Stand-alone legislation on VAW in the Arab region generally contains the following provisions:

- Bar perpetrators from contacting or harming survivors, their children and other family members either directly or indirectly (through a third party);
- Require perpetrators to stay a specified distance from survivors and their children, wherever they may be;
- Bar perpetrators from damaging survivors' personal property or property held in common (car, house, furniture);
- Bar perpetrators from accessing assets held jointly with survivors;
- Allow survivors to access the family dwelling or to seek refuge elsewhere, if needed;
- Compel perpetrators to leave the family home for a fixed period;
- Compel perpetrators to provide financial assistance for support and costs incurred from violence, including medical treatment and shelter;
- In general, there is no explicit cost associated with obtaining a protection order<sup>155</sup> and orders can be requested outside of normal working hours.

In addition to those provisions, some Arab States with protection order provisions set out the steps necessary for a survivor to secure and maintain an order. They may also include other relevant provisions, as outlined in the Handbook for Legislation on Violence against Women. What follows is an analysis of the main features of protection orders in the Arab region, including: types of violence that protection orders address; who, in addition to the survivor, is able to obtain a protection order; the availability of *ex parte* or emergency orders; the typical length of the orders; whether other legal proceeding are required; the provision of mediation or reconciliation; the provision of

child custody; the provision of services for the survivor; the provision of rehabilitation for the perpetrator; the penalties associated with breaching a protection order.

As will be discussed below, protection order provisions in the Arab region are generally aligned with international frameworks and good practice. Nevertheless, no State has enacted comprehensive protection order legislation that encompasses all the necessary protocols that would respond to the specific protection needs of survivors.

### C. Types of violence covered by protection orders

Marital violence is one of the most prevalent forms of violence experienced by women, but other forms persist. The Handbook recommends protection orders for survivors of all forms of VAW, including all forms of intimate partner violence outside of marriage, as well as violence that may be perpetrated amongst family members. The CEDAW Committee has also noted that courts should take into account all forms of VAW, not just life-threatening forms of violence.<sup>156</sup> Additional consideration should be given to violence perpetrated in a specific context, such as in the work place or at school, or specific types of violence such as so-called “harmful practices.”<sup>157</sup> For example, the United Kingdom has developed protection orders for potential victims of forced and child marriage or FGM.<sup>158</sup> Australia’s legislation has expanded the definition of “relationship” to include caregivers of persons with disabilities.<sup>159</sup> In California (United States), employers can seek a protection

order for an employee if they are threatened at work.<sup>160</sup>

Based on analysis, protection order legislation in the Arab region primarily focuses on violence within the context of a marital relationship or the family. The definitions of violence provided in all States’ domestic violence legislation acknowledge physical, psychological, economic and sexual violence (box 11), however no State has explicitly clarified that marital rape is a crime, though the judiciary may rule otherwise. Several religious arguments allow for a husband’s sexual access his wife as fundamental to the marriage contract (namely the exercise of “marital rights”). This assumption of a marital right to sex means that marital rape is perceived as “uncriminalizable”. Ironically in some contexts, resisting sex within the marriage may result in a wife being labelled as “disobedient,” thus justifying physical admonishment by her husband.<sup>161</sup>

Additionally, no State provides protection orders for non-marital or non-family violence, as recommended in the Handbook. This reveals that legislation is not nuanced enough to address different forms of VAW, and potentially alienates marginalized women or those with intersectional concerns that may experience compounded harms. Thus, while the provision of protection orders for domestic violence is an excellent first step, a significant portion of women in the population is left vulnerable to violence and is denied the opportunity to access justice, something that must be addressed as legislation evolves and as States aspire to meet their international human rights obligations.



### Box 11. Protection orders in Lebanon: emotional abuse and marital rape

A woman filed for a protection order in court on 23 September 2014 alleging that during 12 years of marriage, she suffered emotional violence from her husband. The woman was married as a minor; the relationship produced an 8-year-old son. She alleged that throughout her marriage, her husband would force her from the house, prevent her from seeing her son, curse at her, falsely accuse her of wrongdoing and rape her. The husband also prevented her from working; thus, he was the sole provider for the family. Prior to seeking the order, he had forced her to leave the house for no reason and prevented her from returning. Owing to the ongoing physical, sexual and emotional abuse, she developed fibromyalgia and other systemic health problems that led to repetitive hospital visits. Her doctor believed that the abuse led to the physical ailments.

After reviewing the case within the context of Law no. 293, the judge granted the following:

- The husband will not inflict any type of physical or emotional abuse on his wife or child;
- The husband will be prevented from denying his wife or children the ability to reside in the house;
- The husband will pay US\$1500 monthly for child support, including food, clothing and education;
- The husband will not damage any communal property or belongings of the wife or child;
- The husband will not damage the household furniture and will not use any shared funds.

In citing the merits of the case, the judge directly referred to the United Nations Charter on Human Rights, the Universal Declaration of Human Rights, CEDAW (particularly Articles 2(c) and 5(a)), and the Convention on the Rights of the Child, all of which Lebanon is party to, in addition to the principles of natural law that prevail within Lebanon.

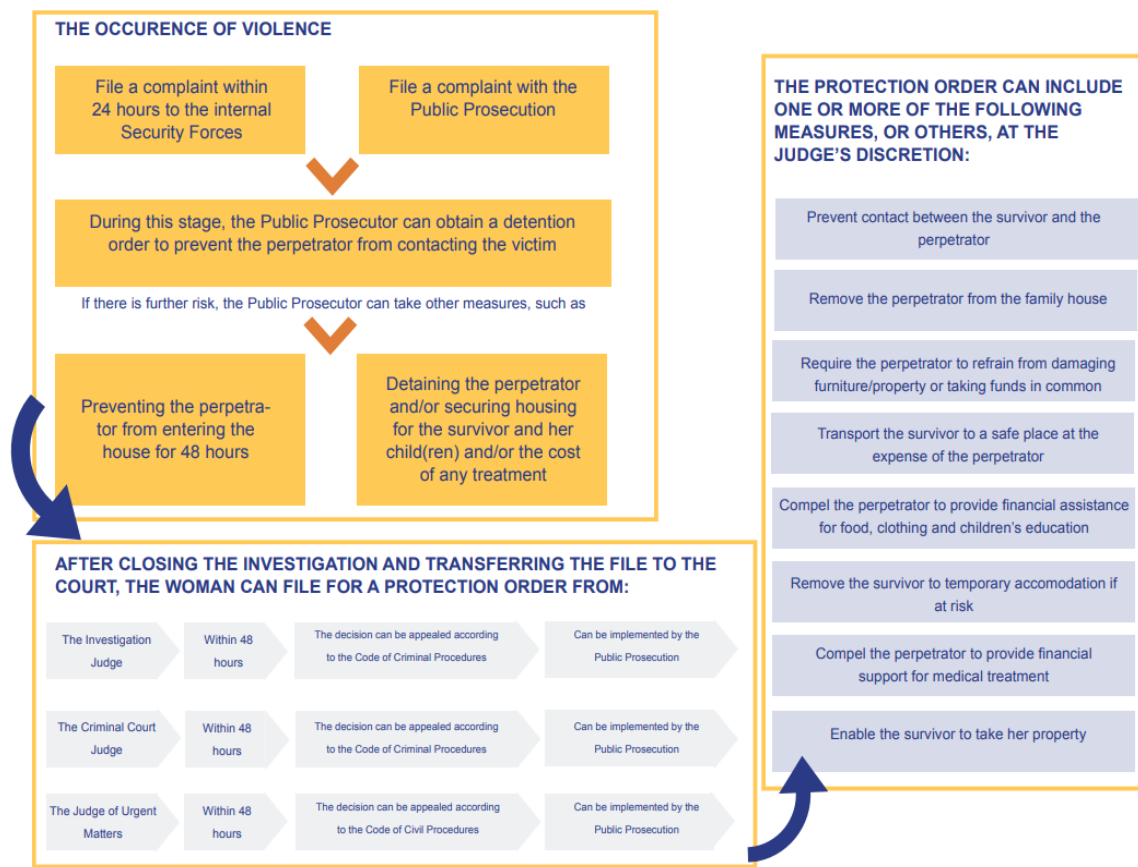
Source: تحديات تطبيق القانون رقم 293 (حماية النساء وسائر افراد الاسرة من العنف الأسري) (2014) الطبعة الأولى, جميع الحقوق محفوظة – منظمة "كفى عنف واستغلال", ص. 38-41.

## D. Obtaining an order

Ideally, the survivor should obtain a protection order on their own. However, exceptions can be made if the survivor is a minor or incapacitated in some way. If a survivor is unable to apply for an order in person, in some instances it may be necessary for a proxy to do so (also known as “standing in application”). Therefore, legislation may allow for others, such as family members or support professionals, to do so, but this should be done with discretion given the possibility that outside persons might compel the survivor to

go against her own wishes. State actors such as prosecutors or police may have the ability to apply for orders, but in all cases, the survivor’s wishes must be respected. As this study has argued, civil protection orders originated to obtain both a measure of protection, as well to empower the survivor. Therefore, it cannot be stressed enough that protection orders must be a tool initiated by the survivor and that proxies, whether they be family, support professionals or State actors, must take steps to ensure the survivor’s wishes are respected and maintained. If not, the premise of civil protection orders is undermined.

## Box 12. Procedure for obtaining a protection order in Lebanon



Most Arab States allow for someone other than the survivor to apply for a protection order. Jordan allows a third party to obtain a protection order in addition to the survivor with the consent of the survivor unless she is legally incompetent (article 4); this includes public or private service providers. Additionally, the court is also allowed to have standing in applications for protection orders, with the presence or absence of the perpetrator, and with the consent of the survivor (article 16). Similarly, Saudi Arabia elaborates that the survivor, in addition to State actors such as the police or the Public

Prosecutor, and health-care professionals, may obtain a protection order on behalf of the survivor, though it is not clear if the survivor's consent is sought (article 4).

Tunisia allows the survivor in addition to a person delegated for that purpose to apply for a protection order (with the survivor's consent), including the public prosecutor's office, a child protection officer (if the survivor is a child or if there is a child present) or a family court judge (article 29). Prior to application, a specialized unit is activated to engage the survivor and

inform her of her right to an order and other protective measures, such as shelter.

In Lebanon (box 12), the Judiciary Police are required to inform survivors of the right to obtain a protection order and receive legal assistance (article 10). Protection orders may be requested before an investigating magistrate or an urgent matters judge as an emergency request (article 13) and can be obtained without the assistance of a lawyer and without cost (article 16). The survivor may also request that the order be amended or canceled if new circumstances emerge (article 17). Bahrain's law allows a protection order to be issued by the Public Prosecutor or at the request of the survivor (article 15). The State of Palestine's draft law states that the survivor or a member of her family may apply for an order (article 12). Egypt's draft law mentions only that the Public Prosecution shall issue a protection order but provides no other instructions (article 27). Iraq's draft law includes the survivor and her legal representative (article 16). Data gathered by ESCWA from National Women's Machineries indicate that while survivors may be empowered to obtain protection orders on their own, other entities may assist in the application process, namely court staff, the police (including specialized units) and civil society organizations, such as women's organizations or legal aid societies.

## E. *Ex parte*/emergency orders

Survivors must have access to a variety of protection orders and *ex parte* orders (emergency protection orders) serve as the first

layer of defence for those in immediate danger. As an emergency mechanism, *ex parte* orders do not require a court hearing with both parties present and should prioritize the safety of the survivor above all else. Once the order is issued, the relevant authorities must be activated to maintain contact with the survivor and remove the perpetrator from the home.

*Ex parte* orders are important because they respond to situations of immediate danger and provide a window of time for the survivor to obtain a reprieve from the violence, as well as the opportunity to assess and access social or legal services. Most reviewed States outline the provision of *ex parte* orders. For example, the Public Prosecutor in Bahrain can issue a protection order unilaterally or at a survivor's request (article 15). Jordan provides emergency orders, which activate a response by the Ministry of Social Development to ensure that survivors receive access to medical care and shelter (article 6). In Saudi Arabia, State authorities are called upon to issue an emergency order if there is an allegation of immediate danger (article 9); however, the text is silent on what steps must be taken and which authorities are responsible. In Tunisia, a judge can issue a protection order on an emergency basis (article 30). In Lebanon, the provision is not explicit, but the Public Prosecutor is empowered to keep perpetrators away from survivors, or to incarcerate perpetrators for 48 hours so that survivors can seek out a protection order (article 11). The State of Palestine's draft law allows for protection orders to be issued "with urgency," though it does not refer to them as emergency orders *per se* (article 14).

## F. Length of protection orders

After an *ex parte* order expires, survivors must have the option to apply for a longer-term or final civil protection order, which may also be known as a post-hearing order. A longer-term civil protection order means that a full hearing will take place between the survivor and the perpetrator. These orders may vary in length but are longer than emergency orders and serve to reduce the number of times a survivor goes to court for protection. The United Nations Handbook does not clarify what length of time constitutes good practice for longer-term protection orders. Worldwide, jurisdictions vary on what constitutes a long-term protection order – in Ireland, an order can be up to three years; in Malaysia, they are valid for one year; in California (United States), they can last up to five years; in South Africa they are unlimited; in Colombia, they can be permanent. Therefore, it is up to a particular jurisdiction to assess the appropriate length of time for a longer-term protection order.

There is no standard length of time for typical civil or criminal protection orders in the region. In Morocco, where protection orders are tied to criminal proceedings, the court has the authority to issue orders for as long as necessary; this can be up to five years and can be made permanent with judicial authorization. The protection order can be shortened or made void by mutual consent and/or reconciliation of the spouses involved (article 5). In Tunisia, the duration of the protection order should not exceed six months and can only be extended once, based on an assessment of a family court judge (article 33). In Bahrain, the protection order is valid for one month and can be extended to three months by the court in case

of a violation (article 15). Without specifying a length of time for the order, the protection order in Lebanon is seen as a temporary measure, providing the survivor time to ensure her safety and decide next steps (article 12). The laws in Jordan and Saudi Arabia are also silent on the length of their respective protection orders. The State of Palestine's draft law outlines that a protection order may only be issued for a period not exceeding twenty-one days per application (article 13).

## G. Requirement of other legal processes

Civil protection orders must be made available to survivors without the requirement of criminal or divorce proceedings, nor must they serve as replacements for these proceedings. However, civil protection orders may be allowed to serve as material fact in criminal or divorce proceedings.

Most of the States with stand-alone legislation, including Jordan (article 16), Lebanon (article 15), Saudi Arabia (article 14) and Tunisia (article 29), do not require that other legal proceedings (for example, criminal or divorce) are initiated to apply for a protection order; nor does the protection order preclude them from pursuing a different proceeding. Saudi Arabia clarifies that protection orders are available independent of other legal proceedings if they do not contravene any other domestic legislation or international commitment (article 14). In Morocco, the protection order is directly linked to other criminal proceedings against the perpetrator (article 5). There is no requirement in the State of Palestine's draft law (article 2);

ultimately, the protection order is seen as complementary to the provisions of the penal code and any other enacted law.

## H. Mediation and reconciliation

Mediation is not considered a good practice. The United Nations Handbook warns that mediation “removes cases from judicial scrutiny, presumes that both parties have equal bargaining power, reflects an assumption that both parties are equally at fault for violence, and reduces offender accountability.”<sup>162</sup> The option of mediation might be more appealing to family or community members who may then place unwelcomed pressure on survivors to resolve the situation without considering their needs or preferences. This includes the provision of mediation mechanisms that, while perceived as beneficial to preserving the integrity of the family, are not survivor-centred.

In rare cases, the laws stipulate that protection orders may be removed if the survivor chooses to reconcile or pursue mediation with the perpetrator. This is the case in Jordan, where reconciliation and mediation services are provided as an option if there are no criminal charges (article 8). In Morocco, the legislation allows orders to be cancelled in the case of reconciliation (article 5), which may add undue pressure on survivors to drop the claim linked to the criminal proceeding. Furthermore, protection orders are issued in addition to rather than in lieu of other legal remedies and the issuance is treated as a material fact in subsequent proceedings.

Iraq’s draft law supports reconciliation. If chosen, the survivor and perpetrator are referred to Department of Social Research for reconciliation. If reconciliation proceeds, any legal action against the perpetrator must stop; when reconciliation fails, legal action is resumed (article 19). Alarming, even though the protection orders bar the perpetrator from contacting the survivor at her home or place of work, there is a provision allowing the perpetrator to do so if the intention is family reconciliation, which may be supported by a decision from a judge and coordinated under the supervision of Department of Family Protection (article 17).

## I. Child custody

Concerning child custody and visitation, the United Nations Handbook notes that the best interests and desires of the child (according to age) should be considered. Good practice dictates that custody should not be awarded to the perpetrator, nor should the perpetrator have unsupervised visitation. The Handbook also recommends that the perpetrator’s visitation rights should be conditional on attendance of a treatment programme. In the Arab region, personal status laws may play a role in how the parameters of child custody manifest once the protection order is issued; however, few States are explicit enough or offer direction on this important conflict.

It appears that most laws presume that the child(ren) will automatically remain with the survivor during the duration of the protection order. This is only specified in Tunisia where, under article 33, it is noted that the survivor

maintains custody of the children and that a visitation schedule with the perpetrator must be based on the best interest of the children. Similarly, in the Palestinian draft law, there is a provision for protective mechanisms for scheduling and overseeing child visitation (article 11).

In Lebanon, the children legally included under the protection order are those who are under the age of legal custody in accordance with one of the 15 personal status laws in force (article 12), which means that there are 15 different scenarios for child custody. This is because issues surrounding legal custody are dealt within the jurisdiction of the respective personal status courts, to which Law no. 293 must defer (article 22). Therefore, if the survivor leaves the family home, only those of her children who are of the age of legal custody are permitted to leave with her (article 14). However, a mother may request a separate protection order for children not in her custody through Law No. 422 (2002) on the Protection of Juveniles in Conflict with the Law or at Risk.

## J. Evidence required for the protection order

The protection orders outlined in the Handbook are civil documents, which means that the threshold or burden of proof must be lower than criminal protection orders. Therefore, the live testimony or sworn statement/affidavit of the survivor should be sufficient evidence, and no other evidence (namely medical reports, criminal complaints, photographs, witness testimony) should be required.

According to recommendations made by Lebanese civil society, survivors can provide proof that they are a victim of violence and may submit medical reports, previously submitted complaints, documented threats, and/or accounts from witnesses as evidence when they apply for the protection order in Lebanon, though there is no specification for evidence in Law no. 293.<sup>163</sup> In Bahrain, an affidavit from the survivor is sufficient evidence; supportive evidence such as medical documentation is optional. In Morocco, the law fails to provide that courts should consider all forms of evidence in domestic violence cases or that a victim's court testimony may be sufficient evidence to reach a conviction. The draft law in the State of Palestine notes that an application for a protection order is reinforced by a medical report or a complaint, but it is not required (article 13).

## K. Provision of support services and rehabilitation

In general, protection orders may contain a variety of measures to protect the survivor, including ordering the perpetrator to stay a specified distance away from the survivor and other relevant persons (particularly children) and refraining from initiating third party contact; restraining the perpetrator from causing further violence to the survivor; instructing the perpetrator to vacate the family home and not destroy or appropriate any common property or finances; instructing the perpetrator to provide financial assistance or support; and prohibiting the perpetrator from accessing weapons. With regards to the shared domicile, the survivor

should never be removed against her will, even if alternative shelter options are available.

Each law in the region outlines the provision of support services for survivors, particularly access to timely medical care and emergency shelter. This includes Morocco, where the law calls for shelter and medical care for the survivor, if needed (article 5). Morocco also obligates public authorities to take prevention measures, including programmes to raise awareness on VAW (article 17) and provides for specialized units to serve the needs of women and children in court, in addition to government agencies and security forces, as well as local, regional, and national committees to address women's and children's issues (articles 9-16). Saudi Arabia also offers shelter and medical care, in addition to counselling (article 7).

Under article 6 of Jordan's law, the Ministry of Social Development's Family Section must ensure that the survivor is offered the provision of medical services and shelter. Furthermore, Jordan's law stipulates that the court can add other measures deemed necessary for the protection of the survivor and her dependents (article 16). Tunisia (box 13) asserts the provision of medical services for the survivor (article 25). Bahrain's law calls for a survivor to obtain family counselling services, medical care, rehabilitation and/or shelter, but notes that rehabilitative services should also be available for the perpetrator (article 7). Lebanon's law clarifies that when violence results in medical attention, the survivor will receive medical treatment at the expense of the perpetrator, to be paid in advance (article 11). The law also mandates the creation of a fund for survivors to provide care and support (article 21).

Many States' protection order legislation suggests or requires that perpetrators receive some type of therapy or rehabilitative intervention. This is true for Jordan (article 10), Morocco (article 5) and Saudi Arabia (article 7). Bahrain's law calls for psychosocial, health and rehabilitation services for both the survivor and the perpetrator (article 7). Lebanon's law states that the court may oblige the perpetrator to undergo rehabilitation courses at a specialized centre (article 20); a special fund is to be created to support rehabilitation (article 21).

The draft law from the State of Palestine notes that resources for the survivor and the family will be available during the duration of the protection order. The order may mandate the defendant to provide financial assistance to cover medical costs incurred, as well as alimony (article 11). This article also mandates therapy sessions by the Family Protection Department and allows for supervised visitation (article 11). In Iraq, medical and psychological support should be made available to the survivor, as should accommodation within 24 hours (article 17(6)). The draft law also mentions the need for the government to create "safe centres" for survivors (article 8). However, under article 16(1) there is a provision that the perpetrator can legally challenge not only the protection order, but also the survivor's access to shelter, which is a dangerous prospect that should be removed. Additionally, the draft law notes that the perpetrator is responsible for medical costs and child support (pending a decision from the personal status court); however, this payment is noted as a "loan" rather than as compensation (article 17(3)).

### Box 13. Tunisia: temporary emergency measures for protection orders

Pending the issuance of a protection order, the competent unit may authorize the adoption of temporary and urgent measures until a decision has been issued after obtaining permission from the Public Prosecutor. These measures are as follows:

- Transfer the victim and the children who live with her, if necessary, to a safe place in coordination with the competent structures and the child protection representative;
- Transfer of the victim to receive first aid, if necessary;
- Remove the perpetrator from the dwelling or prevent him from approaching the survivor or being near her place of residence or place of work when there is a significant danger to the survivor or to the children residing with her.

**Source:** Background paper provided by Judge Anouar Mnasri, President of the First Instance Chamber Administrative Court in Tunisia.

## L. Penalties for violating the protection order

The violation of any protection order, civil or criminal, must be penalized, particularly when the violation reflects criminal behaviour. The perpetrator's rights should never take precedence over the safety of the survivor and the enforcement of the protection order; additionally, the enforcement of protection orders must be mandatory, not discretionary. And, while VAW must be taken seriously, good practice notes that penalization should be commensurate to the gravity of the crime.

In general, violations of protection orders by the perpetrator may result in a combination of fines and/or imprisonment in the Arab region. Saudi Arabia's law is the only one that does not outline a provision of penalties. In Jordan, if the order is intentionally violated by the perpetrator, the penalty is imprisonment for a period not exceeding one month or a fine not exceeding 100 Jordanian dinars (JD) or both. If violence

accompanies the violation, the penalty increases to imprisonment for a term not exceeding three months or a fine not exceeding 200 JD or both, considering other applicable penalties within the penal code (article 17).

The violation of a protection order in Lebanon may result in imprisonment for up to three months and a significant fine (a maximum of double the minimum wage). The penalty is compounded if violence is used during the violation and may be doubled for repeat offenders (article 18). Article 8 contains a provision to criminalize judicial officers who might coerce a survivor into dropping her complaint. The penalty for breaching a protection order in Bahrain is imprisonment for not more than one month or a fine not exceeding 100 Bahraini dinars (BD) or both penalties (article 16). The penalty can be extended to a term not more than three months or a fine not exceeding 200 BD or both (article 17). In Morocco, if the perpetrator violates the order, the penalty



is a combination of imprisonment and/or fines, which are not specified (article 5). In Tunisia, resisting or preventing delivery of the protection order is punishable by a six-month imprisonment and a fine of 1,000 Tunisian dinars (TD), while a violation of the order is punishable by one-year imprisonment and a fine of 2,000 TD (articles 37-38). The Tunisian law contains a provision to criminalize coercing a survivor to drop her complaint (article 24).

Per Iraq's draft law, the initial penalty for violating the order is a fine of not less than 500,000 Iraqi dinars (ID) and not more than 1 million ID. Failure to pay may result in imprisonment for up to one month. If the order is violated again, a fine of not less than 3 million

ID and not more than 5 million ID will be assessed. If the violation is accompanied by violence or penalties are not paid, the punishment may be imprisonment up to one year (article 20).

A violation of the protection under the State of Palestine's draft law will result in imprisonment for a period of six months or a fine not to exceed 1,000 JD. If the violation is accompanied by violence and results in harm, the penalty will be imprisonment for a period of not less than six months or a fine of not more than 2,000 JD. Repeated violations will result in the penalty increasing to imprisonment for not less than six months but not more than two years, depending on the age of the perpetrator and the extent of the harm (article 21).

## **4. Recommendations: Developing a Holistic and Coordinated Response**



## 4. Recommendations: Developing a Holistic and Coordinated Response

Protection orders serve as part of a coordinated response to combating domestic violence (and other forms of VAW) when coupled with shelter, psychosocial counselling, legal support and safety planning, among other services and measures. As outlined in this report, not only do protection orders provide relief, but they also provide peace of mind and serve to empower survivors as they move forward with decision-making. To cultivate this holistic approach, States must provide survivors of domestic violence unfettered access to both criminal and civil protection orders, while law enforcement and the justice system must do their due diligence to ensure that protection orders remain an effective, accessible and enforced option.

As discussed, several Arab States have already taken the first steps in providing for civil protection orders, but more can be done. For those States that are developing civil protection order legislation, efforts must be taken to ensure that due diligence is observed, international frameworks are referenced, good practice is utilized and that survivors are at the centre of the approach. Therefore, building upon the recommendations in the Handbook for Legislation on Violence against Women and those outlined in ESCWA's 2018 policy brief on Due Diligence Standard, Violence against Women and Protection Orders in the Arab

Region,<sup>164</sup> the following seeks to ensure that protection orders are accessible and part of a holistic and coordinated response to domestic violence and that a survivor-centred approach is employed in line with international good practice. With these considerations in mind, this report recommends the following to member States:

### A. Engage more thoroughly with international frameworks

- Ensure the ratification and full implementation of CEDAW, including its General Recommendations, without reservation;
- Ensure engagement with the CEDAW process, including timely reporting and participation in the CEDAW Committee's constructive dialogue and the adoption of its Concluding Observations;
- Ensure the dissemination and adoption of Concluding Observations nationally;
- Ratify the OP-CEDAW and ensure that women's rights organizations and groups, as well as youth groups, working with survivors are aware of the mechanism;
- Extend an open invitation to the Human Rights Council's Special Procedures and engage with the recommendations and normative standards of the SR-VAW.

## B. Develop comprehensive and compliant regional protection order legislation

- Ensure that regional legislation, such as the proposed Convention for Elimination of Violence against Women in the Arab States Region, includes a provision for civil protection orders and outlines their prescription and enforcement, while also ensuring cross-border recognition and enforcement between Arab States;
- Augment the Arab Charter on Human Rights to clarify States' obligations concerning VAW, particularly domestic violence, including the provision and enforcement of civil protection orders;
- Ensure the ratification and full implementation of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol) among relevant States;
- Ensure that regional mechanisms are in alignment with international frameworks such as CEDAW and the SDGs;
- Develop a regional accountability mechanism for regional legislation to ensure that States meet their due diligence obligations concerning VAW, and that survivors have access to recourse.

## C. Develop comprehensive and compliant national protection order legislation

- Broaden the definition of VAW within legislation to ensure comprehensiveness, and clarify the criminalization of marital rape;

- Utilizing the framework provided in the United Nations Handbook for Legislation on Violence against Women, develop stand-alone VAW legislation with clear provisions for civil protection orders that are comprehensive and survivor-centred;
- For States without protection order legislation or where there is no provision for civil protection orders, in the interim, requirements must be made within the procedural guidelines of the criminal code to always provide for protection orders in instances of domestic violence;
- Develop or update national strategies and/or action plans to articulate the need for civil protection orders through stand-alone VAW legislation;
- Ensure that protection orders are available for all forms of violence, including intimate partner violence outside of marriage, in addition to FGM and child marriage;
- Remove provisions for mediation and/or reconciliation within domestic violence legislation;
- Develop special considerations within civil protection orders for women with disabilities, refugee women, migrant women, victims of trafficking and those with complex needs, etc.;
- Examine and amend existing codes such as the penal and codes on judicial proceedings to ensure alignment with laws to combat VAW;
- Document regional good practice with regards to length/duration; evidence; additional measures for survivors/perpetrators.

## D. Develop enabling policies and protocols within the criminal justice system

Law enforcement bodies:

- Develop protocols that ensure that law enforcement bodies immediately inform survivors of their right to apply for a protection order and facilitate their access;
- Establish a registration system for civil and criminal protection orders that would enable criminal justice officials to determine whether orders are in force and whether any breaches have occurred;
- Allow law enforcement entities to issue *ex parte* orders to survivors when courts are not in session (holidays, weekends, after-work hours);
- Ensure the timely apprehension of perpetrators who breach protection orders.

Judicial bodies:

- Ensure that international frameworks are part of the judicial training curricula and that court rulings are in line with international conventions;
- Improve coordination between relevant courts, such as family/religious courts and criminal court concerning *ex parte*, civil and criminal protection orders;
- Address delays in the issuance of protection orders and ensure their timely implementation;

- Ensure the timely and proportionate prosecution and penalization of perpetrators who breach protection orders.

## E. Develop comprehensive national data collection systems

- Monitor and document court cases at the national level where reference to international law, particularly CEDAW, comprises the basis for court rulings;
- Develop national-level indicators and systematically collect data from all sources (namely police records and courts) on the number of civil and criminal protection orders applied for, issued and breached, in line with global indicators on VAW;
- Data should be collected in conjunction with other data on VAW.

## F. Develop a comprehensive coordinated response to violence

- Enable civil society to provide the required services to survivors of violence, as a complement to, rather than as a substitute for State services;
- Partner with civil society to better reach survivors, provide the most appropriate services and facilitate their access to justice.



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Bahrain. *Law no. 17* (2015).

Egypt. *Draft Law on Violence Against Women* (2013).

Iraq. *Draft Protection Against Domestic Violence* (2015).

Jordan. *Law no. 15, on the Protection from Family Violence* (2008, amended in 2017).

Lebanon. *Law no. 293 on the Protection of Women and Family Members from Domestic Violence* (2014).

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# Endnotes

1. Convention on the Elimination of All Forms of Discrimination against Women.
2. A/HRC/35/30, p. 15.
3. A/RES/48/104.
4. United Nations, 2015.
5. A/72/134.
6. A/RES/65/228.
7. International Covenant on Civil and Political Rights, General Assembly resolution 2200A (XXI).
8. E/ESCWA/ECW/2015/IG.1/7/Report.
9. There is much debate over the use of “victim” or “survivor” when referring to women who experience various forms violence in their lives at the hands of a partner or family member, and the discussion is complicated and nuanced. While good practice clarifies that the person affected by the violence specify how they wish to be identified, for simplicity, this report will use the term “survivor.”
10. This report refers to survivors of violence using the female pronoun because the majority of those impacted by domestic violence are women.
11. A/72/134.
12. World Bank Group, 2015, p. 22.
13. Keilitz, and others, 1997.
14. The Arab States with stand-alone legislation include Bahrain, Jordan, Lebanon, Morocco, Kingdom of Saudi Arabia and Tunisia. Algeria made specific amendments concerning the penalization of marital violence in its penal code outlined under Law no. 15-19 (2015), but it is not stand-alone legislation.
15. This report only addresses violence within the family or domestic sphere (meaning based on relationships due to intimacy or blood) and does not include violence perpetrated against domestic workers.
16. Miccio, 2005.
17. WHO, 2013.
18. Barry, 1980.
19. Blackstone, 1765.
20. Baker, 2012.
21. Sharia commonly refers to Islamic jurisprudence.
22. Bier, 2011, p. 104.
23. An-Naim, 2002, p. 17.
24. Sadiqi and Ennaji, 2006, p. 88.
25. Charlesworth, and others, 1991, p. 626.
26. Charlesworth, and others, 1991, p. 627.
27. Ross, and others, 2004, p. 59.
28. Boyd, 1996, p. 168.
29. Romany, 1994. p. 85.



30. Copelon, 1994.
31. Merry, 2006.
32. Convention on the Rights of the Child, General Assembly resolution 44/25.
33. Charlesworth and Chinkin, 2000.
34. E/ESCWA/ECW/2017/2.
35. Human Rights Watch, 2015.
36. UN Women, 2012, p. 12.
37. A/HRC/26/38, p. 17.
38. WHO, 2013.
39. Assaf and Chaban, 2013.
40. Girls Not Brides, 2019.
41. UNICEF and ICRW, 2017, p. 10.
42. UNICEF, 2015.
43. Kirollos, 2016.
44. FIDH, 2014.
45. Linos, and others, 2012.
46. Yount and Li, 2009; Dhaher, and others, 2010.
47. Promundo and UN Women, 2018, p. 6.
48. Yemen Ministry of Public Health and Population (MOPHP), and others, 2015, p. 181.
49. See: Yount, 2011; Dhaher, and others, 2010.
50. Haj-Yahia, 2002; Yount, 2011.
51. Smart, 1989.
52. Schneider, 2000.
53. Gruber, 2007.
54. Binder and Meeker, 1993.
55. Corsilles, 1994, p. 857.
56. Hayter and Voronov, 2007, p. 292. It is worth noting that in the United States, mandated reporting is universally required by health-care providers and other providers when the individual is a child, dependent adult or elder.
57. Wilcox, 2010, p. 14.
58. Miccio, 2005; Kohn, 2008.
59. Douki, and others, 2003.
60. Human Rights Watch, 2015.
61. Amnesty International, 2005.
62. Clark, and others, 2012.
63. Tadros, 1998, p. 68.
64. Bailey, 2010, p. 1271.
65. Tadros, 1998, p. 66.
66. Miccio, 2005.
67. Gruber, 2007, pp. 759-761.
68. Haj-Yahia, 2002, p. 726.
69. Kohn, 2008, p. 193.

70. Kanuha and Ross, 2004.
71. Schneider, 2000, p. 44.
72. Baker, 2008.
73. Connelly and Cavanagh, 2007, p. 261.
74. Hunter, 2006, p. 737.
75. Grau, and others, 1984.
76. Stoever, 2011, pp. 318-322.
77. Among others, see: Ko, 2002; Thueson, 2004; McFarlane, and others, 2004; Goldfarb, 2008; Logan, and others, 2012.
78. Keilitz, and others, 1997.
79. Peltzer, and others, 2013.
80. Spooner, 2009.
81. Subordinate Courts Singapore, 2001.
82. Connelly and Cavanaugh, 2007, p. 267.
83. Cattaneo, and others, 2015.
84. Schneider, 2000; Ko, 2002; Goldfarb, 2008, pp. 1514-1515.
85. Merry, 2003.
86. Douglas, 2012, p. 132.
87. Stoever, 2011, p. 334.
88. de Silva de Alwis, 2010.
89. Forster, 2011, p. 142.
90. Forster, 2011, p. 142.
91. Barangay means village, district or ward.
92. de Silva de Alwis, 2012, p. 217.
93. Heise, 2011, pp. 77-78.
94. Indramalar, 2017.
95. ICRW, 2007.
96. UNDP, 2017, p. 26.
97. European Parliament, 2011.
98. For a greater in-depth discussion on the due diligence standard, violence against women and protection orders, please see: The Due Diligence Standard, Violence against Women and Protection Orders in the Arab Region. E/ESCWA/ECW/2018/BRIEF.2.
99. Goldscheid and Liebowitz, 2015.
100. E/CN.4/1995/42, pp.23-24.
101. CEDAW does not make an explicit reference to VAW, nor to violence perpetrated by non-State actors. However, the CEDAW Committee has argued, primarily through General Recommendations no. 19, 28 and 35, that VAW and tolerance of VAW are forms of gender-based discrimination.
102. E/CN.4/2006/61.
103. A/HRC/23/49, p. 5.
104. A/HRC/35/30, p. 5.
105. Cases include Kalucza v. Hungary (2012); Mudric v. The Republic of Moldova (2013); Eremia v. The Republic of Moldova (2013); T.M. and C.M. v. The Republic of Moldova (2014); and Bălșan v. Romania (2017).
106. The OP-CEDAW serves as both a communication measure and inquiry process where individuals or groups of women have the right to approach the CEDAW Committee directly about State violations of the Convention. The communication measure

enables women to submit communications (complaints) outlining possible State violations of their rights under CEDAW. The Committee is then authorized to conduct inquiries into a State's actions to understand whether it has committed violations under the Convention. These processes serve as a means for the CEDAW Committee to make specific recommendations to a State on ways to address structural causes of violations.

107. Yildirim (deceased) v. Austria (2005).
108. CEDAW/C/39/D/6/2005.
109. See V.K. v. Bulgaria (2008); Isatou Jallow v. Bulgaria (2011); and Angela Gonzalez Carreño v. Spain (2012).
110. OHCHR, 2018.
111. Other accountability mechanisms have addressed protection orders in the Arab region. Through the Universal Periodic Review process, only Tunisia has been directly questioned about the provision of protection orders. In May 2017, three months before the ratification of organic law No. 2017-58 on eliminating violence against women, it was recommended that Tunisia include "comprehensive protection orders that are part of the Code of Civil Procedure, instead of being integrated into the Criminal Code" (A/HRC/36/5). In 2017, the Committee against Torture advised Bahrain on VAW legislation and to ensure that survivors of marital violence benefited from protection orders (CAT/C/BHR/CO/2-3).
112. CEDAW/C/TUN/CO/6. Tunisian organic law No. 2017-58 on eliminating violence against women was ratified in August 2017.
113. CEDAW/C/JOR/CO/6.
114. CEDAW/C/PSE/CO/1.
115. McCrudden, 2017, p. 21; Park, 2014; Jivan and Forster, 2009.
116. McCrudden, 2017, p. 26.
117. See: Bond, 2014; McCrudden, 2015.
118. Bourouba, 2016, p. 70.
119. Bourouba, 2016, pp. 114-116.
120. Bourouba, 2016, pp. 84-85.
121. CEDAW/C/LBN/4-5.
122. KAFA, 2014.
123. G.R. No. 179267, June 25, 2013 - Jesus C. Garcia, Petitioner, v. The Honorable Ray Alant T. Drilon, Presiding Judge, Regional Trial Court-Branch 41, Bacolod City, and Rosalie Jaype-Garcia, for Herself in Behalf of Minor Children, Namely: Jo-Ann, Joseph and Eduard, Jesse Anthone, All Surnamed Garcia, Respondents.
124. Resnik, 2012.
125. E/CN.4/1996/53 and E/CN.4/1996/53/Add.2.
126. A/52/635.
127. United Nations Division for the Advancement of Women and United Nations Office on Drugs and Crime, 2008.
128. UN Women, 2012a.
129. UN Women, 2012a, p. 1.
130. UN Women, 2012a, pp. 43-48.
131. Chaban, 2017.
132. Chaban, 2018.
133. Salime, 2011.
134. Abu-Dayyeh, and others, 2015, p.1.
135. Welchman, 2007, p. 22.
136. Hajjar 2004, p. 4.

137. The proposed Convention is the work of the General Secretariat of the League of Arab States, with support from UN Women, UNFPA Regional Office for Arab States, ESCWA, the Coalition of Women MPs from Arab Countries to Combat Violence against Women and the Westminster Foundation for Democracy.
138. Arab Charter on Human Rights.
139. Somalia and the Sudan are the only Arab States to not have ratified CEDAW.
140. E/ESCWA/ECW/2017/2, p. 15.
141. Ministry of Women's Affairs [Palestine], National Committee to Combat Violence against Women, 2011.
142. United Arab Emirates General Women's Union, 2015.
143. National Council for Women (Egypt), 2015.
144. This section draws from E/ESCWA/ECW/2018/Brief.2.
145. Law No. 17 (2015).
146. Law No. 15, on the Protection from Family Violence (2008, amended in 2017).
147. This report only analyses Law no. 293 on the Protection of Women and Family Members from Domestic Violence (2014). However, it is important to note that in August 2017, the Lebanese Cabinet approved a proposal to amend Law no. 293. Concerning protection orders, amendments include allowing protection orders to cover a greater number of persons, including children, former spouses, in-laws and other extended family members. Amendments also highlight that protection orders should be enforced by the public prosecution (نيابة عامة). Penalties for breaching the orders have also been augmented. Ten MPs have signed on to amend Law no. 293 and, as of January 2019, a subcommittee in the Lebanese Parliament has been formed to discuss the amendments and to formally endorse them.
148. Law no. 103-13 on Combating Violence against Women (2018).
149. Organic Law n°2017-58 Relative to the Elimination of Violence against Women (2017).
150. Protection from Abuse Act (2013).
151. Draft Law on Violence Against Women (2013).
152. Draft Protection Against Domestic Violence (2015).
153. Draft Family Protection against Violence Law (2009).
154. In a survey sent by ESCWA to National Women's Machineries, only two States reported the number of protection orders issued during a specified time period. In 2017, Jordan issued three protection orders, while Oman issued 63.
155. However, hidden costs may emerge. In Lebanon, although there is no fee for the issuance of the protection order, there is a transportation fee that may be borne by the survivor for the staff of the Ministry of Justice who implement the protection order. This cost is not defined by law and is haphazardly defined by the judge; this can be quite high in some cases.
156. CEDAW/C/49/D/20/2008, para. 9.9.
157. UN Women, 2012b, pp. 30-31.
158. Government of the United Kingdom, 2017; Government of the United Kingdom, n.d.a.
159. Wilcox, 2010, p. 19.
160. Wider Opportunities for Women, 2012, p. 4.
161. Hajjar, 2004, pp. 11-12.
162. UN Women, 2012a, p. 37.
163. KAFA, 2014.
164. E/ESCWA/ECW/2018/Brief.2.

The study documents and analyses domestic violence protection order legislation in the Arab region through the lens of international frameworks and good practice with the aim of having Arab States streamline their legislation in line with these standards. The study calls upon Arab States to implement and make greater use of civil protection orders, in addition to emergency orders and criminal protection orders, arguing that they provide a necessary level of empowerment and protection to survivors of domestic violence.

The study discusses the historic State response to violence against women worldwide, including both the prohibitive and enabling factors of the response. It then reviews the normative frameworks that call for civil protection orders as part of a coordinated legal response to violence against women, as well as the jurisprudence resulting from such frameworks. It analyses the national legal frameworks (constitutions, penal codes, domestic violence laws) and policy frameworks (strategies on combating violence against women) that guide Arab States' responses to violence against women. This chapter also examines in detail civil and criminal protection order legislation from the Arab region. Lastly, a series of recommendations directed at member States' engagement at the international, regional and national/community levels is provided.

