



Mandate of the Special Rapporteur on Violence against Women, its Causes and Consequences

**38th session of the Human Rights Council, Statement by Ms. Dubravka Šimonović, Special Rapporteur on Violence against Women, its causes and consequences
Geneva, 21 June 2018**

Mr. President, Your Excellencies, distinguished delegates, representatives of the NGO community,

It is a great honour for me to address the 38th session of the Human Rights Council, in my capacity as Special Rapporteur on violence against women, its causes and consequences, and to engage with you all in an interactive dialogue on my thematic report on online/ICT facilitated violence against women and girls from a human rights perspective, as well as to inform you of the mandate's long term initiatives and regarding official visits to Australia and the Bahamas.

Mr. President,

In line with the mandate's vision setting report, on 5 October 2017, I addressed the UN General Assembly at its seventy-second session pursuant to General Assembly resolution 69/147, presenting my thematic report (A/72/134)¹ on the adequacy of the international legal framework on violence against women.

In the report I urged States to focus on the implementation of the existing global and regional standards on violence against women, and to consider as a long term solution the adoption of an Optional Protocol to the CEDAW Convention based on the implementation of the new CEDAW general recommendation No. 35 on gender based violence against women, in the elaboration of which my mandate actively participated, and which should now be implemented through national action plans on violence against women. I also called for the development of a global implementation plan on violence against women as the part of the 2020 review process that could also be realized through the organization of a Fifth World Implementation Conference on violence against women.

Today I would like to highlight the importance of the new CEDAW general recommendation No. 35 on gender-based violence against women, updating general recommendation No. 19. The Recommendation provides a new tool for all States to combat and prevent gender-based violence against women and represents a strong instrument against all regressive movements, as it clearly states that "the prohibition of gender-based violence against women has evolved into a principle of customary international law". This new general recommendation aims to tackle gender-based violence against women and further encourages States to improve data collection data on gender-based violence against women, including on femicide or gender-related killings of women, in line with the mandate's GA thematic report (A/71/398) on "modalities for the establishment of a femicides/gender-related killings of women watch".

In March this year, I addressed the 62nd session of the Commission on the Status of Women and organized consultations and high level panels on "Institutional Cooperation between Global and Regional Independent Mechanisms dealing with Violence and Discrimination against Women" and on "Fighting violence against women in politics", with the participation of all global and regional independent

¹ http://www.un.org/ga/search/view_doc.asp?symbol=A/72/134&Submit=Search&Lang=E; statement available at <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=21733&LangID=E>

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mechanisms on violence against women (the Committee on the Elimination of All Forms of Discrimination against Women, the Working Group on the issue of discrimination against women in law and in practice the Special Rapporteur on the Rights of Women in Africa, the Council of Europe's Group of Experts on Action against Violence against Women and Domestic Violence, the Committee of Experts of the follow-up Mechanism to the Belém do Pará Convention and the Rapporteur on the Rights of Women of the Inter-American Commission on Human Rights Organization of American States), as well as the Deputy Secretary General and the Executive Director of UN Women, with the aim of developing thematic collaboration focused on implementation of UN and regional instruments on violence against women and women's rights.

Let me also reiterate my gratitude to the Government of Switzerland, Republic of Korea and Spain for the important support and efforts provided to this mandate's initiative and reiterate my call to other States to support it and to make it sustainable.

Mr President,

In line with the mandate's priority of strengthening cooperation with key international mechanisms dealing with violence against women, I would like to draw your attention to the report A/HRC/38/3–E/CN.6/2018/9 on the activities of the United Nations trust fund on violence against women presented to the Human Rights Council as it is envisaged in the Fund founding resolution. This resolution requests the Fund to cooperate closely with the United Nations Special Rapporteur on violence against women in undertaking any relevant activities. Therefore, I would like to reiterate my call to UN Women and donors of the Trust Fund, to put such cooperation into effect in compliance with the Fund founding resolution.

Thematic report

Mr President,

I am presenting to the Human Rights Council my thematic report on online and Information and Communications Technology (ICT) facilitated violence against women from a human rights perspective.

I would like to take the opportunity to thank all those who responded to a mandate's call and provided important submissions on this topic, as well as to the Due Diligence Project (DDP) and the Association for Progressive Communication (APC) who jointly organized with my mandate an expert group meeting to inform the current report.

Let me also commend the Government of Canada for having contributed to drawing international attention to this issue by proposing this topic as a main subject of this year's resolution. I would like to invite all of you to make the resolution strong and relevant for the protection of women and girls against online and ICT facilitated violence worldwide, in line with the report's recommendations.

The aim of this report is to start the process of understanding how to effectively apply a human rights-based approach and human rights instruments to prevent and combat online violence against women as human rights violations. These emerging types of violence share their root causes with other forms of violence against women and should be dealt with within the broader context of the elimination of all forms of discrimination against women under the women's human rights framework.

New forms of online violence have become increasingly common with the use of internet and digital platforms that are creating new social digital spaces and transforming and reshaping society as a whole. These developments are especially critical for new generations of girls and boys who are increasingly

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accustomed to extensively using new technologies from a young age to mediate relationships affecting all aspects of their lives.

The use of the Internet is happening in a broader environment of widespread and systemic structural discrimination and gender-based violence against women and girls that frames their access to and use of the Internet and other ICTs. I believe there is a significant risk that the use of ICTs without the provision of a proper human rights-based protection of women's rights and against gender based violence against women could even widen sex and gender-based discrimination and increase violence against women and girls in the whole society.

The definition of violence against women should be inclusive of all acts of gender-based violence against women and girls which are committed, facilitated or aggravated by use of ICTs, as well as including threats of such acts. There are many new emerging forms of online violence against women and girls such as "doxing", "sextortion" and "trolling", as well as the non-consensual distribution of intimate content (or "revenge porn"). Some forms of violence against women are not completely new but they have developed digital connotations, such as online mobbing, online stalking and online harassment. Technology has therefore transformed different forms of gender-based violence into something that can be perpetrated across distance, without physical contact and beyond borders, through the use of anonymous profiles to amplify the harm to victim.

There are also gender inequalities in access to technologies and therefore there exists the urgent need to bridge the digital divide, particularly for women and girls in rural areas who often have limited access to ICT.

Within the report, I also highlighted that women human rights defenders, together with other groups of women, such as women in politics, including parliamentarians, journalists, bloggers, young women, women belonging to ethnic minorities and indigenous women, LGBT women, women with disabilities and women from marginalized groups are particularly targeted by online and ICT-facilitated violence.

This report is meant to raise awareness about the urgent need to fully apply human rights standards, particularly on women's rights, to all forms of online violence against women and girls.

In the report, I call for the recognition of the principle that human rights, including women's human rights, protected offline should be protected online and for strengthened cooperation between States, Intermediaries, Non-Governmental Organizations and National Human Rights Institutions to make it operational in line with the international human rights framework.

As my report highlights, one of the many challenges in the fight against online violence against women is that most states still fail to recognize violence against women in digital spaces as a 'real' form of violence and the urgent need for specialized legislative measures at the national level. I recommend that States eliminate any gender inequality in access to technologies, promote digital literacy in the use of the Internet and ICT for all, without sex- or gender-based discrimination, and promote gender equality at all levels of education, including online education, from early childhood onwards.

States should, in accordance with the principle of due diligence, ensure that regulations on Internet intermediaries respect the international human rights framework, including that with regard to business and human rights, which should be explicitly expanded to include women's human rights instruments that prohibit gender-based violence online. In addition, States should:

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- Enact new laws and measures to prohibit new emerging forms of online gender-based violence.
- Clearly prohibit and criminalize online violence against women, in particular the non-consensual distribution of intimate images, online harassment and stalking. The criminalization of online violence against women should encompass all elements of this type of abuse, including subsequent “re-sharing” of harmful content. The threat to disseminate non-consensual images must be made illegal so that advocates and prosecutors may intervene and prevent the abuse before it is perpetrated.
- Apply a gender perspective to all online forms of violence, which are usually criminalized in a gender-neutral manner, in order to address them as acts of gender-based violence.

Anonymity and encryption are also crucial tools to guarantee the right to privacy and freedom of expression.² Separately or together, they create a zone of privacy, including for women’s rights defenders, to facilitate the freedom to seek, receive and impart information and ideas regardless of frontiers, finding solidarity and support and sharing opinions without fear of being identified.³ This holds particularly true for individuals such as those who face discrimination and persecution based on their sexual orientation and gender identity. At the same time this should not provide the ground to perpetrators for gaining impunity.

To achieve these goals not only States, but all stakeholders and private intermediaries in particular have a crucial role to play. They should uphold the principle that human rights are protected online and they should voluntarily accept and apply all core international human rights/women’s rights instruments with a view to contributing to universal human rights protection and achieving the empowerment of women and the elimination of discrimination and violence against them in digital space.

Country visits

Mr. President,

I would now like to present an overview of the findings related to two country visits conducted during the reporting period, while my report following the visit to Canada conducted in April this year will be submitted to the 2019 HRC session.

Australia

I would like to take this opportunity to reiterate my thanks to the Government of Australia for welcoming me to the country and for engaging in an excellent cooperation throughout and after the visit.

During my visit to the country (undertaken from 13 to 27 February 2017) I observed that violence against women in Australia is recognized and addressed as a pandemic by political leaders at the highest levels of Government. Through my visit to different jurisdictions, I commended the National Plan to Reduce Violence against Women and their Children 2010-2022. I also praised examples of good practices, such as initiatives related to prevention like the ‘OUR WATCH’ project and on the inclusion of victims of gender based violence against women in the elaboration of the national policy on violence against women. However, I also noted that such efforts are limited by several factors that impede the achievement of concrete results, including the lack of federal law or harmonized national laws on prevention, protection and prosecution of violence against women - currently there is no single nationally agreed definition of family violence, resulting in different levels of protection of women across jurisdictions - as well as the lack of a comparable data collection on violence against women and femicide.

To this extent, let me flag only a few illustrative recommendations while the full list is provided in the report.

² <https://www.ohchr.org/EN/Issues/FreedomOpinion/Pages/CallForSubmission.aspx>

³ A /HRC/29/32 para. 12

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On *law and policy reform*, I recommended that the Government make CEDAW effective, fully incorporated and directly applicable at the Federal, State and Territory levels through appropriate legal actions, including the withdrawal of two remaining reservations to the CEDAW Convention, in relation to article 11 (2) on maternity leave with pay and a general reservation relating to the exclusion of women from combat duties. In addition, the Government should, as a matter of priority, amend the Constitution or other laws to enshrine the right to equality of women and men as required by article 2 of the CEDAW and the prohibition of discrimination against women, in accordance with the definition in article 1 of the Convention, in order to provide an harmonized standard for laws related to women's rights and prevention of gender based violence against women.

During the visit I also observed a lack of comparable data for evidence-based policy making and the absence of a 'femicide' watch or femicide review panels, including concerning the analysis of root causes that lead to femicides and gaps in prevention and protection systems. Therefore, I urged the Government to further improve the collection of comparable data on gender-related killings of women or femicide by setting up at the federal level a system charged with collecting data from all jurisdictions, in line with what is recommended in my thematic report on modalities for the establishment of a femicide watch (A/71/378).

Funding is also a priority, including with regard to the provision of protection measures and services. The Government should therefore make sure to provide sustainable and separate funding for women's shelters and housing and consider adopting a national plan on housing for victims of GBVAW.

Among other issues, I was particularly concerned to note that violence in Australia is disturbingly common against Aboriginal and Torres Strait Islander women. They are mostly left behind by general policies to tackle violence. Highlighting the institutional, systemic, multiple, intersecting forms of discrimination that these women face I made clear that, in addition to sexism and racism, many women are victims of class-based discrimination due to their low socio-economic status, as well as social exclusion accentuated by their regional or remote geographical location. These factors manifest themselves in an alarmingly high prevalence of violence against Aboriginal and Torres Strait Islander women who continue to experience higher rates of domestic and family violence and more severe forms of such violence if compared to other women. For example, they are 32 times more likely to be hospitalized because of domestic/family violence and up to 3.7 times more likely than other women to be victims of sexual violence.

Therefore, I recommend that the Government urgently elaborate a specific National Action Plan on violence against indigenous women and girls with the adoption of appropriate temporary special measures under article 4.1 of CEDAW, coherent with the commitments made under Article 22 and 23 of the UN Declaration on the Rights of Indigenous Peoples, which states that Aboriginal and Torres Strait Islander women should have ownership of, and administer, initiatives to improve their law and justice outcomes. A similar prevention framework to the one of "Our Watch" should be elaborated.

In addition, given the alarming situation of women and girls who are incarcerated, in particular with regard to indigenous women, the Government should address the overrepresentation of aboriginal women in prison, re-examine laws such as the ones regulating unpaid fines and driving offenses, as well as fully implementing the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules) which provide guidance for specific characteristics and needs of women in prison and, in particular, Rule 26, which recognizes the significant impact that loss of contact with children has on mothers (and the best interests of the child). This includes also the adoption of a gendered approach to women's and girls' incarceration, providing re-offending prevention programmes tailored to indigenous peoples needs and ensuring that girls are held separately from adult women.

The Bahamas

Mr President,

I would now like to present a brief overview of the findings from my visit to The Bahamas undertaken from 11 to 15 December 2017. I would like to take this opportunity to thank the Government of The Bahamas for hosting me and for its good cooperation through the visit.

During my visit I saw some positive steps undertaken by the Government such as the upgrade of the Bureau of Women's Affairs into the Department of Gender and Family Affairs within the Ministry of Social Services and Urban Development and all work done related to CEDAW reporting. I would also like to welcome the lifting, in 2011, of CEDAW reservations on Article 16 (h) on marriage and family relations.

Even though the Bahamas has come a long way, there is still a long way to go to eliminate violence against women and girls, its causes and consequences. I noted with concern that violence against women in the country is deeply rooted in persisting gender stereotypes and patriarchy which is reflected in *de jure* discrimination within the current legislative framework.

I would like to recommend some immediate legislative reforms, including to the Constitution, which could be promptly enacted to help eliminate discrimination against women in private and public life, and ultimately protect women and girls from abuse.

The Government should, as a matter of priority, prohibit sex-based discrimination against women, uphold the principle of equality between women and men and accordingly repeal all discriminatory laws against women. In addition, the Government should strengthen its commitment to the implementation of international human rights standards by ratifying the Optional Protocol to the CEDAW Convention and withdrawing all remaining reservations on Articles 2 and 9 of the CEDAW Convention, that are not permissible as incompatible with CEDAW, one of the main global instruments on violence against women.

In line with these international instruments, I urged the Government to amend the Constitution and adopt other appropriate laws, in order to incorporate the prohibition of sex-based discrimination and principle of equality between women and men within the national legal and policy framework and to:

- Introduce legal provisions that would allow Bahamian women to confer nationality on their non-Bahamian spouses;
- Revise or adopt new criminal law provisions to prohibiting marital rape, including by ensuring “that the definition of sexual crimes, including marital and acquaintance/date rape is based on lack of freely given consent, and takes account of coercive circumstances”, as well as making necessary revisions concerning sexual and reproductive health services, in line with CEDAW General recommendation No. 35.
- Adopt appropriate legislative and educational measures to protect the child from all forms of violence, such as corporal punishment, in all places, including in schools and at homes;
- Ensure that protection orders are duly enforced by public officials and are easily obtainable for all forms of violence against women, and consider removing the need to summon perpetrators for long-term protection. The Government should also Establish an appropriate number of State-funded shelters for women victims of violence, especially in the Family Islands, and ensure a 24/7 fully funded national help line;
- Regularly collect, analyse and publish statistical data on all forms of gender-based violence against women, through a femicide watch or observatory on violence against women, with aggregated data on the number of complaints, convictions and reparations to victims;

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- Support the work of human rights non-governmental organisations, including by allocating to them appropriate financial resources and protection from any kind of retaliation or intimidation as a consequence of their human rights work.

The structural and social underpinnings of gender-based discrimination and violence are tremendous challenges to address in the country. However, I believe that the Bahamas can achieve those results in line with its own policy on violence against women by implementing a number of legislative reforms that it has already prepared, such as the National Strategic Plan on gender-based violence or the bill on gender-based violence against women. The authorities should reflect on the role that could be given to the Task Force on Gender-based Violence in this context. I am deeply convinced that the adoption and implementation of the National Strategic Plan and a comprehensive law protecting women from gender-based violence and all victims from domestic violence can contribute to putting an end to gender inequality, which today perpetuates a state of acceptance of violence in the country.

Conclusion

Mr. President,

To conclude, I would like to inform you that in my next thematic report to the General Assembly, I will address the new challenges brought by violence against women in politics. To inform my upcoming GA thematic report, an expert group meeting was organized in New York from 8-10 March with the excellent cooperation of UN Women. I have also issued a call for submissions to which you are all welcome to respond and that is currently available on the webpage of the mandate. I thank you for your attention and look forward to engaging in a fruitful dialogue with the distinguished members of this Council and the NGOs.

Thank you