

**VIOLENCE AGAINST WOMEN AS A FORM OF
DISCRIMINATION: A CASE STUDY OF CEDAW**

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I. INDEX OF ACRONYMS

CEDAW: Convention on the Elimination of all Forms of Discrimination Against Women

CSW: Commission on the Status of Women

DEVAW: Declaration on the Elimination of Violence Against Women

GBV: Gender-based violence

NGO: Non-governmental organization

UN: United Nations

VAW: Violence against women

WHO: World Health Organization

II. INTRODUCTION

This paper aims to analyze gender-based violence as discrimination against women as a violation of human rights under CEDAW. Case studies from CEDAW will be used to show how GBV (Gender-based violence) constitutes as a discrimination against women, as seen through violations of articles from the Convention by state actors. The five cases analyzed in this paper are: *A. T. v. Hungary* (2005), *Goekce v. Austria* (2007), *Yildirim v. Austria* (2007), *V. K. v. Bulgaria* (2011), and *González Carreño v. Spain* (2014).

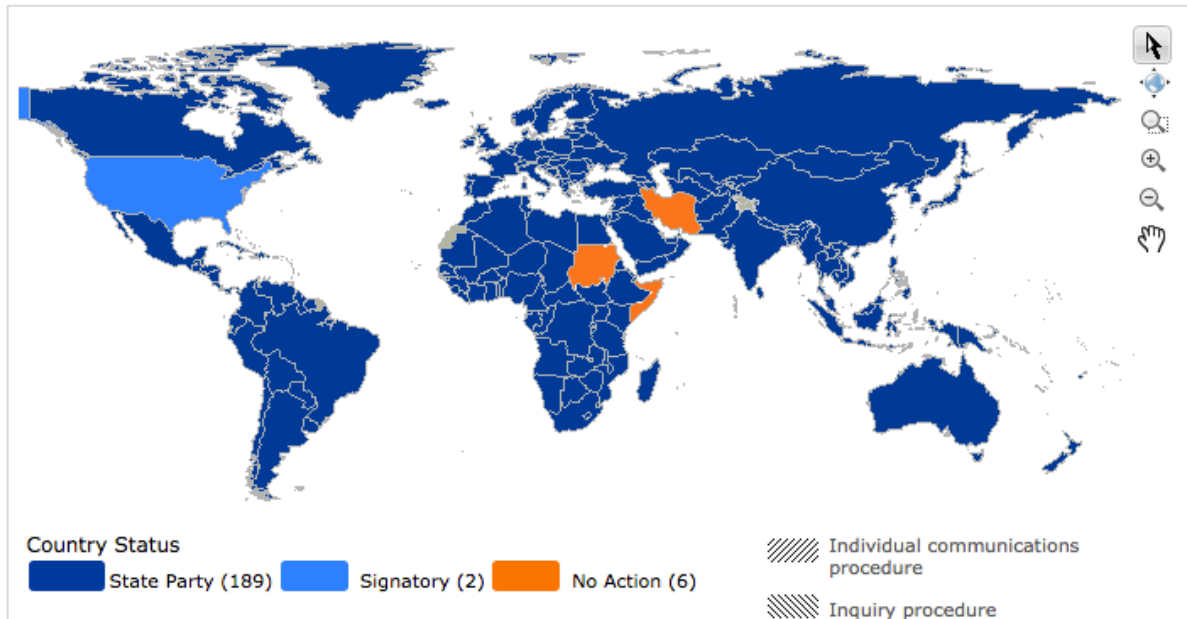
It is important to have a brief historical context of CEDAW and the role of women's rights in international law. Cases brought to the Committee overseeing CEDAW demonstrate the failed protection of women who have experienced violence. The five cases examined in this paper are cases where violence against women has occurred and state actors have failed to comply with their obligations as mandated by CEDAW. The case studies used in this paper also reflect the incorporation of General Recommendation No. 19 of the CEDAW Committee in the conclusions agreed upon by the committee in deciding these cases. These cases demonstrate how CEDAW as an international treaty can highlight the errors states have made in protecting women from violence.

Ideas throughout the paper will demonstrate how violence against women is a discrimination that constitutes a violation of CEDAW, a violation within international human rights law. Themes throughout the paper that are of relevance include applying a gender perspective to human rights, due diligence and the obligation of States in international human rights law, the public/private dichotomy in human rights law, and general treatment of domestic violence and gender-based violence universally.

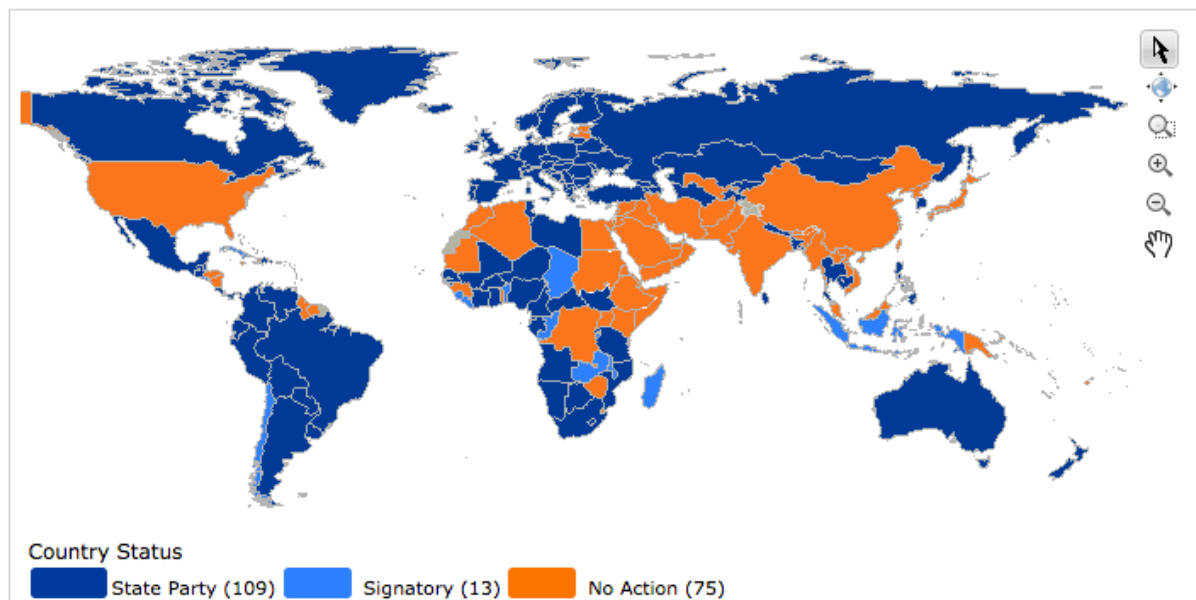
III. SCOPE ON VIOLENCE AGAINST WOMEN & ANTECEDENTS TO CEDAW

1. Graphic: Ratifications of CEDAW

Convention on the Elimination of All Forms of Discrimination against Women



Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women



Source: United Nations Office of the High Commissioner for Human Rights, Committee on the Elimination on the Discrimination of Violence Against Women.

2. Violence against women statistics

Violence against women is an epidemic that is experienced by women universally. While statistics can be hard to gather due to under-reporting, given the stigma survivors of violence face, it is important to present a scope of the problem at hand. The numbers are striking, and demonstrate a crucial need for the issue to be addressed in the area of international human rights law.

According to the United Nations, violence against women is defined as follows: “Any act of gender-based violence that results in, or is likely to result in, physical, sexual or mental harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life.”¹

- Global estimates published by WHO (World Health Organization) indicate that about 1 in 3 (35%) women worldwide have experienced either physical and/or sexual intimate partner violence or non-partner sexual violence in their lifetime.²
- Most of this violence is intimate partner violence. Worldwide, almost one third (30%) of women who have been in a relationship report that they have experienced some form of physical and/or sexual violence by their intimate partner in their lifetime.³
- Globally, as many as 38% of murders of women are committed by a male intimate partner.⁴
- Although little data is available—and great variation in how psychological violence is measured across countries and cultures—existing evidence shows high prevalence rates. Forty-three per cent of women in the 28 European Union Member States have experienced some form of psychological violence by an intimate partner in their lifetime.⁵
- It is estimated that of all women who were the victims of homicide globally in 2012, almost half were killed by intimate partners or family members, compared to less than six per cent of men killed in the same year.⁶

¹ World Health Organization Media Centre, *Violence against women, Intimate partner and sexual violence against women Fact Sheet*, (2016), available at <http://www.who.int/mediacentre/factsheets/fs239/en/>.

² Ibid.

³ Ibid.

⁴ Ibid.

⁵ European Union Agency for Fundamental Rights, *Violence against Women: An EU-wide survey*, Luxembourg: Publications Office of the European Union (2014), available at http://fra.europa.eu/sites/default/files/fra-2014-vaw-survey-main-results-apr14_en.pdf.
⁶ http://www.unodc.org/documents/gsh/pdfs/2014_GLOBAL_HOMICIDE_BOOK_web.pdf.

3. Antecedents

Several instruments, treaties, declarations, and conferences were crucial in bringing international attention to violence against women and women's human rights before the adoption of CEDAW¹ and afterwards with the Committee and the Optional Protocol. Bringing topics of women's struggles, particularly gender-based violence, to the realm of international human rights law has been a slow process that is not yet complete. The full realization of women's human rights has not been accomplished in any country, but strides have been made with movements on the international human rights platform. The Commission on the Status of Women (CSW) was an instrumental factor in what was to eventually become CEDAW and recognizing women's human rights. It is important to draw attention to other instruments such as DEVAW (Declaration on the Elimination of Violence Against Women), the Vienna Declaration and Programme of Action, and the Beijing Platform for Action. Recognizing where women's human rights have stood throughout modern history is vital in understanding the role of CEDAW and how women can claim their human rights currently.

In 1947 the Commission on the Status of Women had its first meeting shortly after the founding of the United Nations. Here, all fifteen government representatives were women. The Commission was instrumental in its contributions to changing discriminatory language within treaties and conventions along with proposing legislation to focus on gender discrimination. The reason "men" is not used to represent human beings in the Universal Declaration of Human Rights is due to the work of the Commission.⁶ The first international tool that recognized the political rights of women was the Convention on the Political Rights of Women, drafted in 1953 by the Commission.⁷

⁶ United Nations General Assembly, Convention on the Elimination of All Forms of Discrimination Against Women, 18 December 1979, United Nations, Treaty Series, vol. 1249.

⁷ United Nations General Assembly, UN Doc A/RES/640(VII), *Convention on the Political Rights of Women*, 20 December 1952.

With endorsement from the United Nations General Assembly, the first World Conference on Women was held in Mexico City in 1975, concerning efforts to promote women's equality along with peace and development. Conferences to follow were held in Copenhagen (1980), Nairobi (1985), and Beijing (1995). Notably, in between the Nairobi and Beijing conferences was the adoption of DEVAW (Declaration on the Elimination of Violence Against Women) by the General Assembly, as a result of mainstreaming efforts to place violence against women on an international platform. The Beijing Declaration and Platform for action in 1995 to date was considered the "most progressive blueprint" on women's rights, with 189 participating governments.⁸ One of the twelve areas of concern in its objective of empowering women globally is violence against women. Cited in the Declaration and Platform is the stress placed on governments to be concerned with the issue of violence against women:

"Violence against women both violates and impairs or nullifies the enjoyment by women of their human rights and fundamental freedoms. The long-standing failure to protect and promote those rights and freedoms in the case of violence against women is a matter of concern to all States and should be addressed."⁹

While there are 5-year reviews on the progress of implementing the Beijing Declaration and Platform for action, it does not have the binding capability of an international human rights law treaty. Activism and movements in placing women's human rights at the center of discussion regarding international law have proven to be extremely important, as these tools and instruments have demonstrated. However, states are held accountable by treaties they have signed and ratified, also by giving competence to the Committee to decide on violations of treaties such as CEDAW, where violence against women is viewed as discrimination.

⁸ UN Women *The Beijing Platform for Action: inspiration then and now* (2005) available at <http://beijing20.unwomen.org/en/about>.

⁹ United Nations, *Beijing Declaration and Platform of Action*, adopted at the Fourth World Conference on Women, 27 October 1995, para. 112. available at http://beijing20.unwomen.org/~media/headquarters/attachments/sections/csw/pfa_e_final_web.pdf.

4. VAW in International Human Rights Law

A. Recognition of Violence Against Women in International Human Rights Law

In CEDAW, violence against women is nowhere to be found in the Convention itself. The Convention concerns discrimination against women, but violence against women was not added in the original text. There may be a reason for this, as CEDAW is one of the most-ratified human rights treaties of the UN, but with a very high number of reservations.¹⁰ Upon ratifying the Convention seventy-seven countries entered reservations initially.¹¹ Why was violence against women left out of the definition of discrimination against women and left out of CEDAW's original text?

CEDAW entered into force as an international treaty in 1981 after 20 country ratifications, mentioning specifically in its introduction the importance of guaranteeing women social, economic, civil, political, and cultural rights. Reproductive rights, trafficking and prostitution are mentioned, but not violence. In her article "The Recognition of Violence against Women as a Violation of Human Rights in the United Nations System", Shazia Qureshi explains:

"It would have taken much more time and efforts to create a fresh instrument that would exclusively address the right of women to have a violence free life. Instead the strategy to combat VAW by making it a part of obligations set out in the, already widely ratified, Women's Convention, was seen more appropriate to avoid likely resistance from member states."¹²

Feminist and women's rights movements have faced difficulty in all countries striving to recognize violence against women as a crime and support women victims while attempting to eradicate this form of violence within their own countries, and as is shown by the adoption of CEDAW with no mention of violence against women, the objective to recognize violence against women as a human rights violation was not reached at the

¹⁰ A list of countries that have ratified *CEDAW* as well as countries who have reservations on the treaty can be found on the United Nations Treaty Collection Website, Status as of 26 August 2017, available at https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-8&chapter=4&clang=_en

¹¹ L.M. Keller "The Impact of States' Parties Reservations to the Convention on the Elimination of All Forms of Discrimination Against Women", *Michigan State Law Review*, Vol. 309 (2014), 309-326, p.311.

¹² S. Qureshi "The Recognition of Violence against Women as Violation of Human Rights in the United Nations System", *A Research Journal of South Asian Studies*, Vol. 28, No. 1 (2013), 187-198, p. 192.

time of adoption. Due to oppressive patriarchal structures universally, it is plausible, while very far from ideal, that leaving out violence against women as discrimination enabled more countries to ratify CEDAW.

The first instance where violence against women is recognized by the Committee is in General Recommendation No. 12 from the year 1989. In this very short recommendation (one half of one page long) the Committee urges States to include data, legislation and measures adopted, along with support services for women in their periodic reports to the Committee.¹³ Generally speaking, General Recommendation No. 19 was much more significant, as it precisely names the relationship between gender-based violence and discrimination in its opening paragraph: “Gender-based violence is a form of discrimination that seriously inhibits women’s ability to enjoy rights and freedoms on a basis of equality with men.”

The direct link between violence and discrimination was significant in granting a right to women to live a life free from violence, stipulated under international human rights law. The expanded definition in General Recommendation No. 19 to include gender-based violence against women as a form of discrimination closed a gap that existed within CEDAW.¹⁴ The definition in the Recommendation “...identified the discriminatory pattern of VAW which constitutes a form of gender-based violence, thereby impairing women’s enjoyment of human rights.”¹⁵

As shown by the adoption of General Recommendation No. 19, along with the other General Recommendations adopted by the Committee, CEDAW is a changing instrument. Recommendations allow for additions and so-called “amendments” to be made to the Convention, making it adaptable to shifting notions on discrimination, but

¹³ Committee on the Elimination of Discrimination Against Women, General Recommendation No. 12 (1989) on Violence against women.

¹⁴ Ibid. p. 188. Here, Qureshi cites this idea with R. McQuigg “The Responses of States to the Comments of CEDAW Committee on Domestic Violence” *The International Journal of Human Rights* Vol. 11(4) (2007), 461-479.

¹⁵ Ibid. p. 188.

also to become more inclusive of women's human rights.¹⁶ General Recommendation No. 19 demonstrated the absence of violence against women from the original Convention. Rikki Holtmaat describes the “transformative approach” in how CEDAW can really be effective in eliminating violence against women in all of its forms. He divides this objective into three sub aims: “To ensure full equality of women before the law; to improve the de facto position of women; and to modify gender-based stereotypes.”¹⁷ Ensuring equality but also encompassing improving the status of women and eradicating stereotypes are essential in eliminating violence against women, an objective now within CEDAW.

Most recently, CEDAW has updated General Recommendation No. 19 with General Recommendation No. 35 in July of 2017. The objective of this Recommendation is to provide additional guidance to State parties in eliminating violence against women.¹⁸ It includes further recommended actions for State parties to implement domestic legislation that promotes ending violence against women, reiterating gender stereotypes and oppressive structures that contribute to further discrimination against women. Updates to the Convention like this Recommendation illustrate the transformative nature of the Convention, in clarifying its obligations for member States and measures to effectively eliminate gender-based violence. These updates also demonstrate the desire to center around areas of women's human rights that have not fully been realized to date within the scope of international human rights law.

¹⁶ CEDAW Article 21 reads: “The Committee shall, through the Economic and Social Council, report annually to the General Assembly of the United Nations on its activities and may make suggestions and general recommendations based on the examination of reports and information received from the States Parties. Such suggestions and general recommendations shall be included in the report of the Committee together with comments, if any, from States Parties.”

¹⁷ R. Holtmaat “The CEDAW: a holistic approach to women's equality”, in A. Hellum, H. Sinding Aasen (eds.), *Women's Human Rights: CEDAW in international, regional, and national law*, Cambridge University Press, Cambridge 2013, 95-123, p. 95.

¹⁸ Committee on the Elimination of Discrimination Against Women, UN Doc C/GC/45, General Recommendation No. 35 (1992) on gender-based violence against women.

B. Applying gender perspective to international human rights law regarding violence against women

When analyzing the phenomenon of violence against women in all countries of the world, a gender perspective must be applied to the international law countries are bound to that is supposed to protect the rights of women and girls. This international law also concerns discrimination against women, directly what CEDAW is supposed to protect once countries have ratified the treaty. In our current society, international law and treaties protect human rights. It is important to distinguish international law that comes from a gender perspective versus an international law that does not.

In her essay on gender perspective related to a human-rights based focus, Elena de Luis Romero describes characteristics that comprise a gender perspective in general, including most importantly a focus on power relations between men and women and women's struggle to access resources men have always been able to access. She notes that women's exclusion is as important to mention as inequality.¹⁹

Why is it important to apply gender perspective in human rights? Based on the characteristics on gender perspective, it is obvious certain practices, laws, and stereotypes have created gender discrimination for women in relation to men being able to exercise their fundamental human rights. It is advantageous to consider the history and social circumstances surrounding this gender discrimination in order to understand how to prevent it from occurring. Romero also describes gender analysis as a powerful tool in combating inequality, referencing the concept based on Irene López's understanding in her article "Integrando el análisis de género en el desarrollo":

"El *análisis de género* se consolida como una herramienta clave para describir situaciones de desigualdad entre hombres y mujeres y se utiliza para comprender las relaciones entre mujeres, hombres y niñas y niños. Parte de la consideración de que hombres y mujeres participan de forma

¹⁹ E. De Luis Romero "La Perspectiva de Género y su Interrelación con el Enfoque Basado en Derechos Humanos" in E. Vargas Trujillo and H. Gambara D'Errico (eds.), *Evaluación del Grado de Sensibilidad Frente al Enfoque de Derechos Humanos y la Perspectiva de Género*, Los Libros de la Catarata, Madrid 2012, 99-125, p.118. Regarding the characteristics that make up gender perspective, De Luis Romero cites: Grupo de trabajo sobre Igualdad de Género, del CAD. OCDE 1998.

diferente en los distintos ámbitos de la vida política, sociedad, y economía. Este análisis permite identificar estructuras y procesos que pueden perpetuar los patrones de desigualdad.”²⁰

Based on this understanding, it is crucial that gender analysis and gender perspective are applied to human rights. CEDAW is an example. Why was a human rights convention created with its objective of ending discrimination against women? It was necessary to apply a gender analysis to human rights, noting that women’s human rights differ than those of men. Due to patriarchal society and other oppressive structures, men do not always share the violations of human rights that women have suffered. Using a gender analysis as a tool to combat discrimination leads into investigation of women’s human rights as a separate and important issue.

If women’s human rights are to be a separate issue of importance, they must be recognized as such. Originally, this was not the case in international human rights law. Susanne Zwingel explores the notion of using “gender blindness” that impacted original international human rights law:

“The process of standard setting in international human rights unfolded simultaneously to the growing awareness of women’s concerns within the UN. While human rights law decrees a life in freedom and dignity for women to the same extent as men, the rights discourse within the UN remained “gender-blind” for a long time.”²¹

It proved to be insufficient to have human rights treaties that focused on non-discrimination solely. It was important, as demonstrated by CEDAW, to create a treaty specifically targeting non-discrimination of women.

In this paper, analyzing human rights from a gender perspective is necessary when discussing violence against women as gender discrimination. Because domestic violence and gender-based violence affect women disproportionately more than men, implementing laws and implementing human rights treaties must come from a gender perspective. It is an issue that requires understanding of history, social movements,

²⁰ E. De Luis Romero, *op. cit.*, p. 119.

²¹ S. Zwingel, *How do international women’s rights norms become effective in domestic contexts? An analysis of the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW)*, Ruhr-Universität Bochum, Bochum 2005, p. 90.

current legal protection, and more. We see in the country reports that are presented to CEDAW how states claim they are aiming to implement legislation that protects discrimination against women, improve education and training, along with other examples to demonstrate the meaning of gender analysis in attempting to achieve equality between women and men. For example, in Austria's Ninth Periodic Report of States Parties to the CEDAW Committee submitted in May of this year, 2017, we see examples of how using a gender perspective in attempts to change ideas on stereotypes and social norms that harm women:

“Awareness-raising campaigns about all forms of violence against women and specific projects to support victims of violence were continued and expanded during the reporting period. A campaign about a life free of violence was carried out in 2014/2015 which included the following initiatives: (a) posters, flyers, videos and radio spots to make the helpline for women more widely known; (b) awareness-raising events for the general public about violence against women and support options; (c) support of third parties in implementing projects against violence — 136 partners serve as multipliers across Austria; (d) workshops and information material for five different target groups: health care managers, occupational groups involved in high-risk cases, migrants, adolescents and journalists.

Gender aspects have been consistently incorporated into the National Strategy on Violence Prevention in Schools. Information and teaching material, workshops, dialogues and qualification initiatives for students and key multipliers in schools all address (sexual) violence against women and girls, honour crimes, stereotyped beauty ideals for girls, bullying in schools and anti-sexist boys work.”²²

In this example, two excerpts from the report were used to see how gender analysis is necessary when implementing recommendations from the CEDAW Committee responsible for the monitoring and cooperation in implementing women's human rights. Here, violence against women is specifically mentioned in the public sector of Austrian society, and what steps the state is willing to take to diminish this practice, per their report. Applying a gender analysis to the practice of implementing CEDAW internally is a concrete way states are able to contribute to the elimination of violence against women as expected from the treaty.

²² Committee on the Elimination of Discrimination Against Women, UN Doc CEDAW/C/AUT/9, *Consideration of reports submitted by States parties under article 18 of the Convention Ninth periodic report of States parties due in 2017: Austria*, 15 May 2017, paras. 90, 94.

C. Special Rapporteur

The position of the Special Rapporteur on Violence Against Women was created in 1994. Within the United Nations system, Special Rapporteurs are Experts appointed to provide reports, conduct country visits, and in situations within countries of alleged human rights violations, communicate urgent appeals to the particular State. It is possible for the Rapporteur to carry out visits with other experts, appointed rapporteurs, and working groups within the United Nations system. The mandate for the Special Rapporteur on Violence Against Women was established in Resolution 1994/45 from the United Nations Commission on Human Rights. The Special Rapporteur is another tool used in the realm of international human rights law, monitored by the United Nations. The Rapporteurs are appointed based on expertise in thematic areas. Within the treaty body of the Committee on the Elimination of Discrimination Against Women, there is a Special Rapporteur on Violence Against Women and a Special Rapporteur on Trafficking in Persons.

The current Special Rapporteur on Violence Against Women is Dubravka Šimonović, who was appointed in August of 2015. She was formerly a member and chairperson of the CEDAW Committee. Šimonović along with former Special Rapporteurs on Violence Against Women have been instrumental in reporting on violence against women universally. With their expertise, these rapporteurs have also published articles that help scholars and lawyers tackle difficult situations concerning law, gender-based violence, and discrimination.²³ The work method of the Rapporteur also includes working with civil society actors and NGOs to appropriately address all forms of violence against women within countries.²⁴ The position can be viewed as a

²³ See for example: D. Šimonović, “Global and Regional Standards on Violence Against Women: The Evolution and Synergy of the CEDAW and Istanbul Conventions”, *Human Rights Quarterly*, (2014), 590-606.

²⁴ Office of the High Commissioner for Human Rights, *15 Years of the United Nations Special Rapporteur on Violence Against Women, its Causes and Consequences* (2009), available at <http://www.ohchr.org/Documents/Issues/Women/15YearReviewofVAWMandate.pdf>.

preventative but also proactive tool on behalf of the United Nations system to tackle violence against women.

The Rapporteur has the ability make recommendations per the Mandate's request to: "Recommend measures, ways and means at the local, national, regional and international levels to eliminate all forms of violence against women and its causes, and to remedy its consequences."²⁵ Along with recommendations from the Committee in individual cases, the Rapporteur as a tool allows for particular States to be held accountable for violations under the Convention and instances of violence against women that are incompatible with the Convention and human rights principles.

IV. CASE STUDY: CEDAW

1. Admissibility Procedure

Familiarity with the admissibility procedure is central to understanding the cases analyzed in this paper that have been brought to CEDAW as well as other communications that are submitted to United Nations treaty bodies where citizens have felt their rights have been violated under a human rights convention. The ability for individuals or groups of individuals to submit communications to CEDAW came with the adoption of the Optional Protocol in 1999, twenty years after the adoption of the Convention. The Optional Protocol is a separate treaty that must be signed and ratified by States in order to give competence to the Committee that was established. The Committee is comprised of 23 independent experts and meets three times per year to review the complaints submitted for violations under the Convention. An individual or group of individuals who feels they have had their rights under the Convention violated by their State have a right to seek compensation, and an adequate remedy at the national level. In the form of "views", the Committee provides recommendations to the State party if it finds a violation, or several violations, of the Convention.

²⁵ Ibid. p. 33.

The admissibility procedure will be explained in order to understand the criteria that need to be met in order to submit a complaint to the CEDAW Committee. The ability for citizens to present complaints to international human rights treaty bodies is significant, it shows how international law can be used by individuals to claim their respective rights under conventions their country has ratified. These are the admissibility criteria for submitting a complaint to the CEDAW Committee, per the guidelines set by the Office of the High Commissioner for Human Rights Fact Sheet:²⁶

1. In writing, the complaint must be submitted in one of the six official languages of the UN (English, French, Spanish, Chinese, Russian, or Arabic)
2. The complaint cannot be submitted as anonymous. However, in the Committee's final decision it may be requested that the individual's information is kept concealed
3. The intended State party of which the complaint is about must have ratified the Convention and the Optional Protocol
4. In the submission, the individual or group of individuals must claim a violation of a right protected within the Convention
5. The rights violated must be indicated in the complaint, along with additional documentation and pertinent facts for the submission
6. The exhaustion of domestic remedies is essential before submitting the complaint. "The case must have been brought to the national court system's last instance or otherwise evidence why national remedies are ineffective, unavailable or unreasonably prolonged needs to be provided"
7. It must be indicated if the complaint has been submitted or is currently under review by any other international procedure

If these criteria are met, the Committee will consider a case. If the case is accepted and becomes registered with the Committee, the State party has a time frame of six months to respond with its views on admissibility and merits. Once returned, the authors of the complaint may respond based on a time frame given by the Committee at the time of the submission, along with another chance for the State party to respond with any additional comments. After this, the case may be considered inadmissible. If the case is admitted, the Committee will continue to the merits stage and present its decision in the form of views and recommendations. While it is impossible to enforce immediate and/or

²⁶ United Nations Office of the High Commissioner for Human Rights, *How to submit individual complaints under the Optional Protocol to CEDAW*, available at <http://www.ohchr.org/EN/HRBodies/CEDAW/Pages/CEDAWIndex.aspx>.

adequate action on the recommendations, the State party, if found to have violated the Convention, must respond to the Committee on any actions it has taken on the recommendations.

The cases examined in this paper highlight that four States have violated the Convention by discriminating against women. Given the admissibility procedure and the requirement of exhausting internal remedies, it is shown how four States' remedies were not enough to protect women from violence and discrimination or prevent violence from occurring. Submitting these complaints to an international human rights treaty body demonstrates failure of compliance by States in their obligations under the international human rights law, as their domestic remedies are not in line with the obligations set out in the Convention.

2. Five Cases Brought to CEDAW

A. Table: Five Cases and Articles Violated

Case	Date of Communication	Date of Views Adopted	Articles Violated*
<i>A. T. v. Hungary</i>	October 10, 2003	January 26, 2005	<ul style="list-style-type: none"> • Article 2 parts a, b, e • Article 5 part a • Article 16
<i>Goekce v. Austria</i> (Victim deceased)	July 21, 2004	August 6, 2007	<ul style="list-style-type: none"> • Article 2 parts a, c, f • Article 3 in conjunction with Article 1 • General Recommendation No. 19
<i>Yildirim v. Austria</i> (Victim deceased)	July 21, 2004	August 6, 2007	<ul style="list-style-type: none"> • Article 2 parts a, c, d, e, f • Article 3 in conjunction with Article 1 • General Recommendation No. 19
<i>V. K. v. Bulgaria</i>	October 15, 2008	July 25, 2011	<ul style="list-style-type: none"> • Article 2 parts c, d, e, f in conjunction with Article 1 • Article 5 part a • Article 16 part 1 • General Recommendation No. 19
<i>González Carreño v. Spain</i>	September 19, 2012	July 16, 2014	<ul style="list-style-type: none"> • Article 1 • Article 2 parts a, b, c, d, e, f • Article 5 part a • Article 16 part 1 (d) read in conjunction with Article 1 • General Recommendation No. 19

*In this table, General Recommendation No. 19 is included in the “Articles Violated” column. It is important to note that unlike the Articles in the Convention, General Recommendation No. 19 is non-binding. However, the Committee references General Recommendation No. 19 in several of its decisions marking State obligations and recommended practices in eliminating and prosecuting perpetrators of violence against women.

B. *A. T. v. Hungary*

In the Committee on the Elimination of Discrimination Against Women's decision in 2005 in the case of *A.T. v. Hungary*, we see a clear violation of human rights concerning violence against women, specifically, domestic violence. The case of *A. T. v. Hungary* demonstrates the first violation of CEDAW the Committee issued with regards to domestic violence. In this case, Hungary violated Articles 2 (a, b, e), 5 (a), and 16. The Committee also mentions its General Recommendation No. 19 on violence against women in its consideration of the merits.

This case will be referenced in several other decisions and views adopted by the Committee in violations of CEDAW where violence against women constituted a violation of rights. It is important to note that while 2005 may seem “late” for the first complaint on domestic violence to be reviewed by the Committee, the Optional Protocol of CEDAW did not enter into force until 1999, with ratifications coming in years after by member states of the Convention. Hungary ratified CEDAW in 1980 and later the Optional Protocol in 2000.

The complaint presented by the author of this case, Ms. A. T., in 2003, focuses on the State party's failure to protect her from domestic violence, and actually perpetuating this violence by its inaction and discriminatory behavior.²⁷ Because the author during this time found herself to be in imminent danger, she requested interim measures of protection on behalf of the Committee. According to the Rules of Procedure of the Committee:

“At any time after the receipt of a communication and before a determination on the merits has been reached, the Committee may transmit to the State party concerned, for its urgent consideration, a request that it take such interim measures as the Committee considers necessary to avoid irreparable damage to the victim or victims of the alleged violation.”²⁸

²⁷ Committee on the Elimination of Discrimination against Women, UN Doc CEDAW/A/60/38 *A. T. v. Hungary*, views adopted on 26 January 2005, para. 3.1.

²⁸ Rules of Procedure of the Committee on the Elimination of Discrimination against Women, UN Doc HRI/GEN/3/Rev.3, 28 May 2008, rule 63 para.1, available at http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/1_Global/Part%20of%20HRI_GEN_3_Rev-3_7080_E.pdf

Even though the author requested an interim measure of protection because she felt threatened by her former partner, in this case referred to as L.F., Hungary failed to appropriately provide these measures as requested by the Committee in 2003, after the author first submitted the communication²⁹. Hungary as the state party at fault in this case, had the possibility to follow the communication by the Committee to provide immediate protection to the victim. Instead, after several months and statements that the victim did not have proper legal representation, the Working Group on Communications noted that "...the State party had furnished little information on the interim measures take to avoid irreparable damage to the author", including another request to Hungary to immediately place the victim and her children in a safe space.

The request for interim protection measures on behalf of the author makes this case unique from the others studied in this paper. The Committee has the capacity to issue requests to State parties to provide special protection measures, but beyond that, there is nothing it can do to enforce this request, it is a written or request via note verbale. This gives the State party somewhat of an opportunity, you could say, to redeem itself, in providing some form of protection that would benefit the victim. Here, Ms. A.T. was not given protection or any form of justice or reparation during her years of suffering domestic violence, only to have this protection continue to be non-existent and not given by the State party after it was requested by a Committee overseeing CEDAW. The Committee addresses this in its recommendations to the State party concerning the author of the communication firstly recommending that the State party: "Take immediate and effective measures to guarantee the physical and mental integrity of A.T. and her family; Ensure that A.T. is given a safe home in which to live with her children..."³⁰

To provide some background information on the case, the author, A.T., had been subjected to physical and verbal abuse by her partner, L.F. The two shared a home with their two children, one of whom was brain-damaged. A.T. was subject to battery and

²⁹ Communication No. 2/2003 *A. T. v. Hungary*, para. 4.1.

³⁰ Communication No. 2/2003 *A. T. v. Hungary*, para. 9.6.

domestic violence, ending up in the hospital on several occasions to due injuries sustained by the violence inflicted upon her by L.F. Even after L.F. had moved out of the apartment, he continued to attempt to break in and in one instance did break in violently to the apartment, inflicting threats and violence upon A.T. A.T. claimed that there was no existing law in Hungary to apply for a restraining/protection order, and that she was unable to flee to a shelter due to the fact that the shelter would be unable to care for her child with brain damage. As a consequence of the domestic violence A.T. suffered, 10 medical certificates had been issued since 1998 after hospital visits the author experienced after injuries.³¹

Analyzing the violation of Article 2 parts a, b, and e in this case, it is highlighted by the Committee that the State of Hungary placed a higher value on the rights of L.F. as a property owner over the rights of A.T. as a woman entitled to a safe life. In the consideration of the merits the Committee writes: “Women’s human rights to life and to physical and mental integrity cannot be superseded by other rights, including the right to property and the right to privacy.”³² This demonstrates a clear example of discrimination against women, violating Article 2 of the Convention. Hungary did not “adopt appropriate legislative and other measures, including sanctions where appropriate, prohibiting all discrimination against women” per Article 2 (b) of the Convention.

This case highlights Hungary’s lack of a law relating to domestic violence as well as restraining orders, which the Committee previously addressed in its comments to a State party report from 2002. Comments on violence within the state included: “The Committee is concerned about the prevalence of violence against women and girls, including domestic violence. It is particularly concerned that no specific legislation has been enacted to combat domestic violence and sexual harassment and that no protection or exclusion orders or shelters exist for the immediate protection of women victims of

³¹ Ibid. para. 2.3.

³² Ibid. para. 9.3.

domestic violence.”³³ The victim in her communication highlighted the lack of legal protection for women in Hungary, seeking legal protection from a former or current partner, or anyone inflicting violence or harm upon women.

In A.T.’s claim, she is not only seeking justice for herself but also an intervention from the Committee into the situation of violence against women in Hungary. This demonstrates how individual cases against states violating human rights treaties do matter, and can have an impact on a State party’s action or inaction regarding particular human rights. Here, A.T.:

“...calls for the (a) introduction of effective and immediate protection for victims of domestic violence into the legal system, (b) provision of training programmes on gender-sensitivity, the Convention on the Elimination of All Forms of Discrimination against Women and the Optional Protocol, including for judges, prosecutors, police and practising lawyers, and (c) provision of free legal aid to victims of gender-based violence, including domestic violence.”³⁴

This call for action from the victim is reflected in the Committee’s recommendations to Hungary. Hungary, in its submission on admissibility and merits, admits that “the system of remedies against domestic violence is incomplete in Hungarian law and that the effectiveness of existing procedures is not sufficient.”³⁵ The Committee addresses this in its considerations stating: “The author could not have asked for a restraining or protection order since neither option currently exists in the State party.” Later on in the recommendations, the Committee suggests an immediate implementation of such a law, along with the task of guaranteeing domestic violence victims “the maximum protection of the law by acting with due diligence to prevent and respond to such violence against women.”³⁶

Analyzing this recommendation, it is clear the Committee is laying out States’ obligations regarding domestic violence and treatment of women by public authorities

³³ Report of the Committee on the Elimination of Discrimination Against Women, Supplement No. 38 UN Doc A/57/38, Exceptional Session 5-23 August 2002, available at <http://www.refworld.org/docid/3f5604264.html>.

³⁴ Communication No. 2/2003 *A. T. v. Hungary*, para. 3.2.

³⁵ *Ibid.* para. 5.7.

³⁶ *Ibid.* para. 9.6.

and the law. The first part of the recommendation insists the state: “Respect, protect, promote and fulfill women’s human rights, including their right to be free from all forms of domestic violence, including intimidation and threats of violence.”³⁷ It is important that women’s human rights are specifically mentioned, as violence against women is an epidemic that entrenches every country in the world. General Recommendation No. 19 on violence against women states: “Gender-based violence, which impairs or nullifies the enjoyment by women of human rights and fundamental freedoms under general international law or under human rights conventions, is discrimination within the meaning of article 1 of the Convention.”³⁸ The State has an obligation to intervene, investigate, prevent, and protect women from this violence that disproportionately affects women compared to men.

Financial abuse is also a form of violence that women suffer at the hands of their partners and former partners. As made evident in A.T.’s case, she suffered financial stress as a single parent living in a property she used to share with her former partner. In the facts of the case, it is presented that the father of the children, L.F. was not paying child support for three years, causing A.T. to seek the support from police and the courts.³⁹ One of A.T.’s two children is severely brain-damaged, impeding her from seeking a shelter because they were not appropriately fit to support the child. The State did not enforce any action on behalf of public authorities or officials to enforce the child support payments the perpetrator had missed.

When women are not financially independent, or cannot survive financially alone, they may be at higher risk to be caught in helpless situations, seeking help from public officials and/or the law. Not only was A.T. suffering domestic violence, she also withstood three years without child support payment from the father. According to Article 16 of the Convention, treating men and women as equals when it comes to the

³⁷ Ibid. para. 9.6.

³⁸ Committee on the Elimination of Discrimination Against Women, UN Doc A/47/38, General Recommendation (1992) on violence against women, para. 7.

³⁹ Communication No. 2/2003 *A. T. v. Hungary*, para. 2.2.

rights and responsibilities during and after marriage and as parents is necessary.⁴⁰ Because public authorities handled A.T.'s claims in a discriminatory manner, Hungary violated Article 16 of the Convention. The failure of L.F. to pay child support along with public authorities' unwillingness to persecute this offense and aid A.T., lead to a violation, discriminating against her because she alone was unable to financially support her children, when it is equally the responsibility of both parents according to the Convention.

As the first domestic violence case submitted and decided upon by the Committee, the case of *A. T. v. Hungary* resulted as highly important for future submissions to the Committee. The case will be referenced in others examined in this paper. The physical and emotional violence inflicted upon A. T., financial abuse, and the lack of a domestic violence law in Hungary make the case unique and important to study regarding women and their rights concerning domestic violence and international human rights.

C. Goekce v. Austria

In the cases of *Goekce v. Austria* as well as *Yildirim v. Austria*, both women victims of violence were killed by their husbands. The communications of both cases came on the same date, with the views of the Committee adopted in *Goekce v. Austria* first. What will make these cases different from the other three cases studied in this paper is the fact that the authors of these two cases with Austria are not the direct victims themselves. The deceased victims in these cases are represented by two Austrian organizations: The Vienna Intervention Centre against Domestic Violence and the Association for Women's Access to Justice.

⁴⁰ CEDAW Article 16 part (d) reads: "The same rights and responsibilities as parents, irrespective of their marital status, in matters relating to their children; in all cases the interests of the children shall be paramount."

On December 7, 2002, Şahide Goekce was fatally shot by her husband in their apartment in front of her two daughters. The murder came after many incidents over the span of several years of violent abuse that Ms. Goekce faced at the hands of her husband, their children also many times witnesses to the violence that took place within the home. In this case, the descendants (the two daughters of Şahide Goekce) are represented by the Organizations submitting the case to the Committee to find violations by the State party of the Convention.

According to Rule 68 in the Committee's rules of procedure, of the Committee, a deceased victim could still be represented in order to submit a case to CEDAW: "In cases where the author can justify such action, communications may be submitted on behalf of an alleged victim without her consent."⁴¹ The authors in this case refer to the Organizations representing the children of Şahide Goekce. The authors state in the complaint of the case that no financial compensation or redress for the children is being sought in the aftermath of the decision. Interestingly, it is acknowledged within the complaint section that: "The authors state that they have submitted the communication in order to call the State party to account for its omissions and negligence rather than to obtain compensation for the heirs."⁴² The outcome of the Committee's decision in its consideration and recommendations to the State party will not be able to provide protection or compensation for the victim, as she is deceased, differing from other cases analyzed in this paper. Here, the authors are: "...seeking justice for Şahide Goekce and to improve the protection of women in Austria from domestic violence so that her death would not be in vain."⁴³

In this case, three articles were violated, fewer than other cases discussed in this paper, but that does not mean the case is not "severe". While the case may seem more

⁴¹ Rules of Procedure of the Committee on the Elimination of Discrimination Against Women UN Doc HRI/GEN/3/Rev.3, 28 May 2008, rule 68.

⁴² Committee on the Elimination of Discrimination Against Women, UN Doc CEDAW/C/39/D/5/2005, *Goekce v. Austria*, views adopted on 7 August 2007, para. 3.11.

⁴³ *Ibid.* para. 3.13

extreme because the victim, Şahide Goekce, was murdered by her husband, the recommendations from the Committee stem from how the State did or did not fulfill its obligations. Austria ratified the Convention as well as the Optional Protocol in the years 1982 and 2000 respectively.

Article 2 parts a, c, and f as well as Article 3 read in conjunction with Article 1 are the Articles of the Convention violated by Austria in this case. Article 2 describes the measures State parties should undertake to eliminate discrimination.⁴⁴ This case in particular highlights a clear violation of Article 2 parts c and f. The State party did not carry out the “effective protection of women” in its legislation and actions of public authorities.

In its recommendations, the Committee first asserts that the State party: “Strengthen implementation and monitoring of the Federal Act for the Protection against Violence within the Family and related criminal law, by acting with due diligence to prevent and respond to such violence against women and adequately providing for sanctions for the failure to do so.”⁴⁵ The police themselves, along with ineffective communication between police and the public prosecutor, exemplify a failure to prevent and respond, or to produce an adequate response. Police knew from previous reports, including reports from the victim’s father and brother-in-law, that Şahide Goekce’s husband threatened to kill her and that he owned a handgun. Analyzing these cases is not meant to go through all of the facts and see what adds up – in this case, the authors and the State party tell different versions of the story regarding how Şahide Goekce reacted when police arrived at her home and her “unwillingness” to prosecute her husband as a criminal (the reaction the State party claims came from the victim). The job of the Committee is to review the facts as presented and decide if there is reason to hold that the

⁴⁴ CEDAW Article 2 reads: “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...” Article 2(c) reads: “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.” Article 2(f) reads: To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women.”

⁴⁵ Communication No. 5/2005 *Goekce v. Austria*, para. 12.3.

State party has violated the rights of the victim under the Convention and if they have carried out their obligations as presented in the Convention.

In *Goekce v. Austria* the right to life and physical and mental integrity is mentioned several times by the Committee. Specifically in its considerations, the Committee affirms:

“While noting that Mustafa Goekce was prosecuted to the full extent of the law for killing Şahide Goekce, the Committee still concludes that the State party violated its obligations under article 2 (a) and (c) through (f), and article 3 of the Convention read in conjunction with article 1 of the Convention and general recommendation 19 of the Committee and the corresponding rights of the deceased Şahide Goekce to life and physical and mental integrity.”⁴⁶

The rights of the perpetrator cannot supersede the rights of the woman, specifically these rights to life and physical and mental integrity. The Committee references its own views on this matter from the case of *A. T. v. Hungary*. The case of *A. T. v. Hungary* was the first case concerning domestic violence that was submitted and decided upon by the Committee, as mentioned earlier in the study. It is now used as a reference to reiterate the rights of the women cannot be superseded by the rights of the perpetrator.

In the case of *Goekce v. Austria* it is interesting that the State party mentions how the right of perpetrator cannot be overlooked saying: “The State party asserts that, although the present case is an extremely tragic one, the fact that detention must be weighed against an alleged perpetrator’s right to personal freedom and a fair trial cannot be overlooked.”⁴⁷ This is not in line with the Committee’s views, as seen above regarding their deliberations and reaffirms statements made in its decision in *A. T. v. Hungary*.

Regarding the State party’s obligation, this is the due diligence factor that is crucial in implementing CEDAW, in line with international human rights law. In the facts presented by the State party, they place blame several times on the victim for not proceeding with prosecuting her husband after incidents of violence and restraining order

⁴⁶ Ibid. para. 12.1.6.

⁴⁷ Ibid. para. 8.17.

that followed. In reality, it is the State party's obligation to protect against violence and prosecute perpetrators of violence. According to the obligations laid out in General Recommendation No. 19:

“Family violence is one of the most insidious forms of violence against women. It is prevalent in all societies. Within family relationships women of all ages are subjected to violence of all kinds, including battering, rape, other forms of sexual assault, mental and other forms of violence, which are perpetuated by traditional attitudes. Lack of economic independence forces many women to stay in violent relationships. The abrogation of their family responsibilities by men can be a form of violence, and coercion. These forms of violence put women's health at risk and impair their ability to participate in family life and public life on a basis of equality.”⁴⁸

Living under threat and constant fear of violence is contrary to living out the fundamental freedoms guaranteed in human rights conventions and national constitutions. Women do not always have the free choice to leave their abusive partners. Many women are fearful that leaving will cause more harm, including harm to their children, whom perpetrators of violence can use as leverage to maintain control.

There is an unequal power relation within couples where domestic violence is a factor. In these situations where perpetrators of domestic violence are not punished, there exists a discrimination if the unprotected woman continues to be victimized at the hands of public authorities and officials who are able to protect the victim and prevent the violence, but instead due to inaction or inadequate action fail to stop the recurring crimes. In Article 3 of the Convention, it maintains that States must take the appropriate measures to guarantee women “the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men.”⁴⁹ In this case, Şahide Goekce was evaluated by police without serious consideration of the threats she was facing, including the fact that her male partner who had abused her owned a gun illegally.⁵⁰ Here, Şahide Goekce was unable to exercise rights equally. As mentioned above, the

⁴⁸ Committee on the Elimination of Discrimination Against Women, UN Doc A/47/38, General Recommendation No. 19 (1992) on violence against women, Article 16.

⁴⁹ CEDAW Article 3 reads: “States Parties shall take in all fields, in particular in the political, social, economic and cultural fields, all appropriate measures, including legislation, to ensure the full development and advancement of women, for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men.”

⁵⁰ Communication 5/2005 *Goekce v. Austria*, para. 12.1.3.

“perpetrator’s right to personal freedom” was valued over Şahide Goekce’s rights to life and physical and mental integrity, showcasing a violation of Article 3.

Per General Recommendation No. 19, states can be held responsible for acts of individuals, including private acts. It will be consequently analyzed in this paper how domestic violence had formerly existed in the “private” sphere, but that States need to intervene and protect victims, and punish criminals. This case involves the murder of a woman and is a clear example of how the State can be held accountable for the actions of an individual actor, in the private or public sphere. The Committee’s decision is based in part on the fact that the death of Şahide Goekce was preventable; that actions by law enforcement and public officials were insufficient or non-existent in protecting Ms. Goekce and preventing her death.

D. *Yildirim v. Austria*

The Committee decided upon *Yildirim v. Austria* and *Goekce v. Austria* on the same date, August 6, 2007. The same organizations representing the deceased victims in these cases, Şahide Goekce and Fatma Yildirim, had relationships with the victims, as these women were clients of the organizations’ services. The Vienna Intervention Centre against Domestic Violence and the Association for Women’s Access to justice are the authors of these cases who submitted the communications to the Committee in 2004. The authors in both circumstances represent the deceased women along with their heirs, Şahide Goecke’s two children and Fatma Yildirim’s three children.

In the case of *Yildirim v. Austria*, domestic violence occurred mostly in the form of threats. The victim, Fatma Yildirm, had received countless death threats from her husband, including threats that took place at her workplace. She was living under fear of

her husband, and did file for divorce, but was killed one month later. She was fatally stabbed by her husband on her way home from work.⁵¹

This is an example of how physical violence does not need to be inflicted in order to live under threat, to live a life where you are not able to exercise your rights to life and physical and mental integrity, as the authors argue on behalf of Ms. Fatma Yildirim. The Committee, in its consideration of the merits, cites the failed obligation of the State regarding General Recommendation No. 19. In its definition of gender-based violence, threats are included. The Recommendation affirms:

“The Convention in article 1 defines discrimination against women. The definition of discrimination includes gender-based violence, that is, violence that is directed against a woman because she is a woman or that affects women disproportionately. It includes acts that inflict physical, mental or sexual harm or suffering, threats of such acts, coercion and other deprivations of liberty. Gender-based violence may breach specific provisions of the Convention, regardless of whether those provisions expressly mention violence.”⁵²

The wording “threats of such acts” is important, and implies an included responsibility of member States to monitor these situations adequately, punish perpetrators and prevent said violent acts from being carried out.

An argument of the State party in its submission is identical to the argument made in *Goekce v. Austria*; Austria maintains that:

“Irfan Yildirim had no criminal record, did not use a weapon and appeared quiet and cooperative to the police officers who intervened. Fatma Yildirim had no apparent injuries. On this basis, and taking into account that a suspect must be presumed innocent, the Public Prosecutor finally decided in the concrete case not to file a request to detain Irfan Yildirim because — from an ex ante point of view — this would not have been proportionate.”⁵³

⁵¹ Committee on the Elimination of Discrimination Against Women, UN Doc CEDAW/C/39/D/6/2005 *Yildirim v. Austria*, views adopted on 6 August 2007, para. 2.13.

⁵² Committee on the Elimination of Discrimination Against Women, UN Doc A/47/38, General Recommendation No. 19 (1992) on violence against women, para. 6.

⁵³ Communication No. 6/2005 *Yildirim v. Austria*, para. 4.5.

Later on in the State's review of admissibility and submission on the merits they go even further stating: "The State party maintains that, at that time an arrest warrant seemed disproportionately invasive since Irfan Yildirim had no criminal record and was socially integrated."⁵⁴ These statements provoke the Committee to make similar recommendations to those seen in the cases of *Goekce v. Austria* and *A. T. v. Hungary*.

Recommended by the Committee again, as similar to the case of *Goekce v. Austria*, is a reference to *A. T. v. Hungary* and the proportionality of rights. The Committee asserts:

"The Committee considers the failure to have detained Irfan Yildirim as having been in breach of the State party's due diligence obligation to protect Fatma Yildirim. Although, the State party maintains that, at that time — an arrest warrant seemed disproportionately invasive, the Committee is of the view, as expressed in its views on another communication on domestic violence that the perpetrator's rights cannot supersede women's human rights to life and to physical and mental integrity."⁵⁵

Again, with this reference that the Committee makes to the rights of the perpetrator being treated with a higher importance than the right to life of a woman, discrimination is clearly present. This case includes a violation of Article 3 of the Convention, a guarantee of "exercise and enjoyment" of fundamental rights. These rights were not granted to Fatma Yildirim on "a basis of equality with men."⁵⁶

Victim-blaming is present in the case. Fatma Yildirim was blamed by the State party for not carrying out actions she could have taken. In the State party's supplementary observations, Austria claims Fatma Yildirim could have brought forward a complaint against the Public Prosecutor "had she [Fatma Yildirim] considered the official actions of the responsible Public Prosecutor to have been unlawful."⁵⁷ It is telling

⁵⁴ Ibid. para. 12.1.5.

⁵⁵ Ibid, para. 12.1.5. The Committee in this paragraph refers to Communication No. 2/2003 *A. T. v. Hungary*, para. 9.3.

⁵⁶ CEDAW Article 3 reads: "States Parties shall take in all fields, in particular in the political, social, economic and cultural fields, all appropriate measures, including legislation, to ensure the full development and advancement of women, for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men."

⁵⁷ Communication No. 6/2005 *Yildirim v. Austria* para. 10.2.

that the State party here is trying to place blame on the victim rather than acknowledge the missteps and inadequate response police and public authorities took when addressing the threats reported by Fatma Yildirim. This is another area where discrimination is evident: a woman under threat for her life is still responsible for claiming further prosecution from men in positions of power and authority who would not assist her in the first place. The State party's comment above along with actions taken by the Austrian officials attempt to diminish the severity of Yildirim's case. Austria further claims in the submission that if the victim's mental health was severely affected, she could have taken additional measures.⁵⁸

In its decision, the Committee makes it clear that the victim took appropriate measures to protect herself stating: "Fatma Yildirim made positive and determined efforts to attempt to sever ties with her spouse and save her own life."⁵⁹ According to the Committee, the additional remedy that the State party suggested that the victim could have taken "would not be likely to bring effective relief". It is important that the Committee refutes the State party's position by claiming its suggestions are inadequate and inappropriate, while instead supporting the actions that the victim took. While the State party may guise the blame it places on the victim for not seeking alternative remedies for her situation as a way to make the case inadmissible by the Committee, it is clear this is yet another way they have chosen not to support the victim and not punish the perpetrator based on the dangerous situation Fatma Yildirim was in. The Committee reaffirms this:

"As to the State party's contention that it would have been possible for Fatma Yildirim to bring a complaint under section 37 of the Public Prosecutor's Act, the Committee considers that this remedy — designed to determine the lawfulness of official actions of the responsible Public Prosecutor — cannot be regarded as a remedy which is likely to bring effective relief to a woman whose life is under a dangerous threat, and should thus not bar the admissibility of the communication."⁶⁰

⁵⁸ Ibid. para. 10.3.

⁵⁹ Ibid. para. 12.1.3.

⁶⁰ Ibid. para. 11.4.

Not only was Fatma Yildirim constantly threatened by her spouse, but her children had also been threatened. Fatma Yildirim's 26-year-old son was threatened by Irfan Yildirim, Fatma's husband, and also reported the incident to police. This occurred after several threats had previously been made against and reported to police by Fatma. Children are also victims in domestic violence cases, and experience trauma from threats and violence they may face directly or indirectly. The authors express the interests of the children in seeking justice as heirs of their mother, in hopes that the Committee will find negligence and liability from the State party.

The Committee finds that the State party has not exercised its due diligence in the case of Fatma Yildirim. This is a significant additional remark to make in the Committee's decision, as it finds that Austria has violated several articles of the Convention, namely Article 2 parts (a) and (c-f), Article 3 in conjunction with Article 1, and General Recommendation No. 19. The State not only has a responsibility to its citizens in preventing and punishing acts of violence, including domestic violence and threats in this particular case, but also to effectively implement the Convention in order to eliminate discrimination against women, which includes gender-based violence. The Committee in its consideration of the merits asserts the following:

“...In order for the individual woman victim of domestic violence to enjoy the practical realization of the principle of equality of men and women and of her human rights and fundamental freedoms, the political will that is expressed in the aforementioned comprehensive system of Austria must be supported by State actors, who adhere to the State party's due diligence obligations.”⁶¹

As can be concluded from this comment and the Committee's decision in this case, the State's obligation to protect women from individual perpetrators of violence is crucial if the State is to follow the Convention and ensure equality between men and women. Whether in the private or public sphere, State authorities, officials, judicial members, and actors must act with due diligence and in a non-discriminatory way.

⁶¹ Ibid. para. 12.1.2.

E. *V. K. v. Bulgaria*

The case of *V. K. v. Bulgaria* is a technical case, with many facts presented by the victim and state party related to steps the victim took within the public judicial system after she experienced domestic violence at the hands of her former husband. As the Committee states in their Consideration of the Merits:

“The Committee reiterates that it is not in a position to review the assessment of facts and evidence by domestic courts and authorities, unless such assessment was in itself arbitrary or otherwise discriminatory. The decisive question is therefore whether or not the refusal of the Plovdiv courts to issue a permanent protection order against the author’s husband was arbitrary or otherwise discriminatory.”⁶²

In this case, the author, Ms. V. K. from Bulgaria, was not granted a permanent protection order from local or regional courts. Rather, a short-term protection order was granted after complaints of domestic violence, but this did not ensure the life and health of V. K. were protected.

What makes the case of *V. K. v. Bulgaria* different from the others studied in this paper is that the victim experienced violence outside of her home country as well as within it. As stated in the facts of the case, V. K. moved to Poland with her husband (who is referred to as F. K. in the case) and two children for a job in Poland in 2006. V. K. suffered physical, emotional, psychological, and economic abuse from her husband while living in Poland. F. K. did not allow her to leave for Bulgaria with her two children. She was granted some help in Poland by a Women’s Foundation, and dangerously returned to Bulgaria in 2007 with her two children. After filing an application with the District Court in Plovdiv, Bulgaria, she was granted a temporary protection order and not permanent due to the fact that:

“It [the District Court] applied article 10, paragraph 1 of the Law, which provides that a request for a protection order must be submitted within one month from the date on which the act of domestic violence occurred, and found that no domestic violence had been perpetrated against the author by her husband on 21 September 2007, nor at any other time during the relevant one-month

⁶² Committee on the Elimination of Discrimination against Women, UN Doc CEDAW/C/49/D/20/2008 *V.K. v. Bulgaria*, views adopted on 25 July 2011, para. 9.6.

period prior to her application for a protection order (27 August to 27 September 2007). It also found no immediate danger to the life and health of the author and her children.”⁶³

The “Law” referred to in the paragraph above is Bulgaria’s Law on Protection against Domestic Violence, adopted in 2005. In its recommendations, the Committee commends the Law for the ability to issue immediate protection orders, but that in this case, all actors of the State, including the courts, must follow through adequately with what is required by Bulgaria in its obligations laid out by CEDAW “...to effectively protect the author against domestic violence.”⁶⁴

It is important to note here that Bulgaria is the country of focus, not Poland, due to the fact that the State has an obligation to its citizens, even if they experience violence abroad. V. K. continued to face domestic violence, along with other forms of abuse, upon her return to Bulgaria.

A striking factor in this case is the existence of an exception for family members and domestic violence in Bulgaria’s Penal Code as noted in the complaint:

“Domestic violence can only be prosecuted under general provisions on assault and battery or bodily harm (article 161 of the Penal Code). In addition, certain types of assault are exempted from ex officio prosecution if committed by a family member, although the State party prosecutes similar acts if committed by a non-family member.”⁶⁵

This is a blatant form of discrimination, knowing that women are more likely to be victims of domestic violence than men, experiencing violence from family members and their partners. This sheds light on the fact that the “private” matter of domestic violence cannot remain private, States have an obligation to protect against all forms of violence against women. In General Recommendation No. 19 of CEDAW this is explicitly stated: “States parties should take appropriate and effective measures to overcome all forms of gender-based violence, whether by public or private act.”⁶⁶

⁶³ Ibid. para. 2.18.

⁶⁴ Ibid. para. 9.4.

⁶⁵ Ibid. para. 3.3.

⁶⁶ Committee on the Elimination of Discrimination Against Women, UN Doc A/47/38, General Recommendation No. 19 (1992) on violence against women, para. 24 (a).

The author also goes so far as to mention the Committee's concluding observations on Bulgaria from 1998. In these observations, the Committee expressed the need for the State to change its current view on and handling of violence against women, specifically "...to change prevailing attitudes to domestic violence, which view it as a private problem."⁶⁷

In the complaints by the author (who is represented by counsel in the case) she specifically cites General Recommendation No. 19 on violence against women reiterating: "...the Committee stated that gender-based violence that lessens or nullifies women's enjoyment of human rights constitutes discrimination against women within the meaning of Article 1 of the Convention."⁶⁸ V. K., here as the victim and author in this case, has a clear understanding that her human rights have been violated based on gender discrimination. For this reason, she is seeking recognition from the Committee that her claims are valid.

While the Committee can only recommend actions to the State Party, the implication of violations in these cases is significant. Showing State violations in cases like these may have several outcomes. Protection and reparations are a key objective, however, the case can be referenced in future communications brought to the Committee concerning violence against women, more specifically, domestic violence, and condemn the State's discriminatory practices. This demonstrates the need for international law to be implemented internally, and how the international community will see human rights violations by State actors under specific treaties.

In this case, the Committee calls for interim measures of protection to be enacted by the State party in 2009, following the communication of the author in 2008. This is to "...avoid irreparable damage to [the author and her two children] while their

⁶⁷ Communication No. 20/2008 *V. K. v. Bulgaria*, para. 3.4.

⁶⁸ Committee on the Elimination of Discrimination Against Women, UN Doc A/47/38, General Recommendation No. 19 (1992) on violence against women, para. 7.

communication is under consideration by the committee.”⁶⁹ Unlike the case of *A. T. v. Hungary*, the Committee in this case requests the interim measures of protection and not the author. The Committee is able to do so via the first paragraph of Article 5 of the Optional Protocol and Rule 63 from the Committee’s rules of procedure. Article 5.1 of the Optional Protocol reads:

“At any time after the receipt of a communication and before a determination on the merits has been reached, the Committee may transmit to the State Party concerned for its urgent consideration a request that the State Party take such interim measures as may be necessary to avoid possible irreparable damage to the victim or victims of the alleged violation.”⁷⁰

Bulgaria in this case did not respond to the first request from the Committee. After the Committee’s second request, Bulgaria issued a response stating that the District and Regional Courts had “established beyond doubt that no act of domestic violence had been committed against the author.”⁷¹ The discrimination that Bulgaria is at fault for can be seen clearly in the phrase above cited in the case. The State itself admits that its judicial systems had not found enough evidence of domestic violence to criminalize the act and the perpetrator, and was not willing to investigate further.

An observation interesting to note is how the non-governmental sector played a role in assisting V. K. and her children. In Poland, three months after filing for protection measures and financial assistance, a foundation in Warsaw called The Centre for Women’s Rights assisted the author. In Warsaw, the Centre even filed a criminal complaint with the public prosecutor’s office for V. K. NGOs assisted in bringing V. K. and her children back to Bulgaria: “The Foundation in Warsaw and the Bulgarian Gender Research Foundation in Sofia jointly supported her and her children by providing legal assistance and directing her to non-governmental organizations in Bulgaria providing support to battered women.”⁷² It is evident that the role NGOs and Foundations play are crucial for the safety and well-being of women and children affected by violence. These

⁶⁹ Communication No. 20/2008 *V. K. v. Bulgaria*, para. 5.1.

⁷⁰ United Nations General Assembly, UN Doc A/RES/54/4, Optional Protocol to the Convention on the Elimination of All Forms of Discrimination Against Women, 15 October 1999, Article 5.1.

⁷¹ Communication No. 20/2008 *V. K. v. Bulgaria*, para. 4.8.

⁷² *Ibid.* para. 2.14.

acts of assistance and protection could be carried out by the State. In this case, where States failed to help and protect the victim in a timely or adequate manner, non-governmental agencies and organizations played that role.

Simone Cusack and Lisa Pusey note the limited understanding for domestic violence in this case concerning Bulgaria. The existing gender stereotypes in law and practice in Bulgaria as well as what can constitute gender-based violence are mentioned. Referencing the Committee's recommendations they state:

“In holding the state party accountable for refusing VK such an order, the Committee criticised its reliance on an overly restrictive understanding of domestic violence, its failure to take the complete history of violence into account and the excessively high standard of proof imposed on the victim/survivor. The Committee cautioned against such a restrictive understanding and clarified that gender-based violence must be understood to include actual and threatened physical and non-physical violence, coercion and other deprivations of liberty; a direct and immediate threat to life, health or physical integrity, it said, is not required. At the same time, the Committee clarified that it is inconsistent with CEDAW and current anti-discrimination standards to require an individual victim/survivor in civil proceedings to prove domestic violence beyond all reasonable doubt. The Committee was also highly critical of the lack of domestic violence shelters and the domestic courts' reliance on gender stereotypes.”⁷³

The danger with a restrictive understanding of gender-based violence or domestic violence falls upon victims of these types of violence. According to statistics gathered by the European Union Agency for Fundamental Rights in 2014, 23% of women between the ages of 18 and 74 in Bulgaria at least once in their lifetimes will experience intimate partner physical violence and/or sexual violence.⁷⁴ If the State is unwilling to recognize a broader definition that is not entrenched in discriminatory notions, there exists a deprivation of liberty to victims of violence, most notably women who experience this type of violence at alarming rates.

⁷³ S. Cusack and L. Pusey, “CEDAW And the Rights to Non-Discrimination and Equality”, *Melbourne Journal of International Law*, Vol. 14 (2013), 54-92, p. 74-75.

⁷⁴ European Union Agency for Fundamental Rights, *Violence against Women: An EU-wide survey*, Luxembourg: Publications Office of the European Union (2014), p.158.

F. *González Carreño v. Spain*

Spain's first violation of CEDAW came from the CEDAW Committee's decision on July 16, 2014, two years after the initial submission of the communication by the author. Formerly, the committee due to *rationae temporis* considered a communication submitted in 2005 by Cristina Muñoz-Vargas y Sainz de Vicuña inadmissible; Spain had not yet ratified the convention at the time of the act of discrimination. The case focused on the right to inherit her father's title of nobility for property.

González Carreño v. Spain was a very important case regarding the violations of CEDAW and Spain as a member party. Spain ratified the Convention in 1984 after signing in 1980 and ratified the Optional Protocol in 2001, two years after it entered into force. The decision for *González Carreño v. Spain* was adopted thirteen years after Spain ratified the Optional Protocol, a noticeable amount of time. We cannot speculate the amount of violations any state can produce due to individuals who may not always come forward with their case. The Committee has focused on domestic violence as an area of concern in recommendations and adopted views in cases, and has noted domestic violence as an area where governments need to improve prevention and protection measures.⁷⁵

What makes the case of *González Carreño v. Spain* different than the other cases studied here is Angela González Carreño's daughter Andrea, who was murdered by her father, referred to in the case as F.R.C. This case is an example of violence against both women and girls. In the facts presented by the author in the case, the author describes being subjected to physical and psychological violence by F.R.C. Also presented in the facts of the case are notes from social workers describing the victim's daughter, Andrea,

⁷⁵ See, for example, General Recommendations 12 and 19 by the Committee on the Elimination of Discrimination Against Women that focus on violence against women and how states must fulfill their obligations under *CEDAW* by also being concerned with gender-based violence that includes domestic violence. General Recommendation 19 addresses domestic violence specifically. UN Doc A/47/38, General Recommendation No. 19 (1992) on violence against women, para. 24.

saying she wished to not to spend more time with her father more than the “required” existing regime of unsupervised visits. As written in the facts: “During the months of unsupervised visits, social services issued several reports...there were probably objectionable situations consisting of repeated questions about the private and emotional life of the mother and confusing comments by the father to the girl.”⁷⁶ The father would insist his daughter, Andrea, give information about her mother. He “...questioned the child about the author’s relationships, spoke ill of her, repeatedly called her a “whore” and accused her of having other relationships with men.”⁷⁷ The facts presented in the case describe Andrea as developing anxiety and becoming afraid of her father, rejecting to spend time with him.

The Committee’s decision to invoke a violation of Article 16 (1,d) read in conjunction with Article 1 highlights the importance of Andrea as a child in this case. This Article and subsection reads: “The same rights and responsibilities as parents, irrespective of their marital status, in matters relating to their children; in all cases the interests of the children shall be paramount.”⁷⁸ While CEDAW is not a treaty directed at protecting the rights of children, children are not to be discriminated against, and their best interest is to be kept in mind by the state party. In this case, we see from the reports mentioned in the facts of the case by the author and later analyzed by the Committee demonstrate a failure by Spanish authorities to keep the interest of the child, Andrea, in mind regarding the supervised and unsupervised visits.

The violation of Article 2 parts (b) and (c) demonstrate Spain’s failure to provide appropriate reparations to González Carreño after the murder of her daughter.⁷⁹ “Her

⁷⁶ Committee on the Elimination of Discrimination against Women, UN Doc CEDAW/C/58/D/47/2012 *González Carreño v. Spain*, views adopted on 16 July 2014, para. 2.15.

⁷⁷ *Ibid.* para. 2.4.

⁷⁸ CEDAW Article 16 is referenced in this portion of this paper as reflecting the importance of the interests of the child. This is a different analysis from the analysis of Article 16 regarding the case of *A. T. v. Hungary* where the perpetrator of violence failed to pay child support along with the unwillingness of the state to prosecute this offense was discriminatory to the victim, A. T.

⁷⁹ CEDAW Article 2(b) reads: “To adopt appropriate legislative and other measures, including sanctions where appropriate, prohibiting all discrimination against women.” Article 2(c) reads: “To establish legal

efforts to obtain redress have been futile” notes the Committee in its deliberations.⁸⁰ Per these sections in Article 2 of the Convention, Spain failed to invoke sanctions and did not provide adequate legal protection and ensure equal treatment in national tribunals along with other public institutions. Following the death of her daughter, González Carreño attempted several times to seek justice from public authorities. In 2009 after she filed an appeal with the Supreme Court, it was later denied. One year later her appeal in amparo before the Constitutional court was denied by the Court as lacking constitutional relevance. It is clear that after the murder of her child, the authorities failed to give appropriate redress or reparation to González Carreño, also a victim of domestic violence that went unaddressed by Spanish public officials and authorities.

Would the state have violated the rights of Andrea under the Convention of the Rights of the Child? That connection will not be explored in this paper, as the focus is CEDAW and the case of *González Carreño v. Spain*. However, the Committee in its decision specifically mentions how Andrea is a child and the state also failed to protect and prevent harm against her as it did to her mother, Angela. “The relevant decisions do not disclose an interest by those authorities in evaluating all aspects of the benefits or harms to the child of the regime applied.”⁸¹

It is extremely important to note the focus that the committee not only puts on the author, Angela, but also her daughter. This case shows that “women” does not only encompass adults. In this case, Spain failed to protect both Angela and her daughter Andrea. Andrea ultimately died due the state’s failure to protect her. Andrea, as the author’s daughter, has the best interest of the Committee in mind. The victim bringing the complaint to CEDAW is Angela, the mother, but the daughter suffered as well and died in this case. This highlights how discrimination against Andrea, along with her mother Angela, prevented the wellbeing and right to life of Andrea.

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.”

⁸⁰ Communication No. 47/2012 *González Carreño v. Spain*, para. 9.8.

⁸¹ *Ibid.* para. 9.4.

It is evident in this case how two victims of domestic violence, intimidation, and lack of protection suffered. As a woman who lives in a state that has ratified CEDAW, the author was able to present her case on behalf of herself and her daughter. Cases brought to the Committee come on behalf of individuals claiming their country has violated their human rights via discrimination against women. But here, we see the importance of Angela as a victim herself also seeking justice that was not served to her daughter Andrea. In the facts presented by the author, Andrea as a child suffered enough at the hands of her father, witnessing violence and abusive language toward her mother, as well as aggressive acts and abuse mentally and emotionally during her visits. This affected Andrea's health and stability. As noted in the facts, the child witnessed several incidents of violence and harassment that involved both her and mother, an example being:

“On one occasion, in 2000, he (F.R.C.) approached them at the entrance to the building where they lived, insulting the author and attempting to pull the girl away...upon reaching the police station [where author and daughter drove to and were followed by F.R.C.] in front of a police officer, continued to insult her, [author] threatening to kidnap the girl. Seizing her by the hair while the author had Andrea in her arms, he tried to throw her to the ground.”⁸²

This horrifying incident, along with numerous others, would naturally cause a reaction in any child to not want to have any sort of interaction with the perpetrator, even if the perpetrator is a parent. This incident in particular caused a “nervous outburst”⁸³ in the daughter. As victims of this psychological abuse, the author and her daughter have a right not only to be protected from this abuse, but also to live a dignified life where this abuse and violent behavior are not present. Regarding equality and dignity of life, the Convention mentions in its introduction the UN Declaration of Human rights and “...affirms the principle of the inadmissibility of discrimination and proclaims that all human beings are born free and equal in dignity and rights and that everyone is entitled to all the rights and freedoms set forth therein.”⁸⁴ Here, Angela and her daughter Andrea were unable to exercise the freedom of living a life with dignity, living in fear and threat,

⁸² Ibid. para. 2.4.

⁸³ Ibid. para. 2.4.

⁸⁴ CEDAW's preamble mentions this discrimination principle referencing the Declaration of Human Rights. United Nations General Assembly UN Doc 217 [III] A, *Universal Declaration of Human Rights*, 10 December 1948, Article 7.

and facing opposition and no assistance from state authorities that are supposed to protect them.

How does domestic violence in this case constitute a violation of CEDAW by the state party? The recommendations by the committee are telling that Spain did not do enough to protect Angela González Carreño and her daughter Andrea. In referencing its Communication No. 5/2005, *Goekce v. Austria*, the Committee explains in its deliberations that Spain failed to complete its obligation in treating the victim of domestic violence in this case with particular attention and non-discrimination to realize substantive equality, that the current model the state was using for domestic violence was broad and for a woman it was necessary to have the support of public officials (which in this case was not present, after the victim had presented many claims to authorities and courts).⁸⁵

Gender stereotyping is evident in this case, similar to the gender stereotyping in *Goecke v. Austria* and *A. T. v. Hungary* as described by Simone Cusack in her brief of the González Carreño case for the Spanish NGO Women’s Link Worldwide:

“The Committee continues to recognise the linkages between stereotyping and domestic violence, through its ever-expanding jurisprudence. In *A.T. v. Hungary*, for example, the Committee noted that “traditional attitudes by which women are regarded as subordinate to men contribute to violence against them” and reiterated its concern that “entrenched stereotypes regarding the role and responsibilities of women and men in the family” are a root cause of domestic violence in Hungary.¹² In a further example, in *Şahide Goekce v. Austria*, the Committee affirmed “that there are linkages between traditional attitudes by which women are regarded as subordinate to men and domestic violence.”⁸⁶

Anybody can suffer domestic violence act at the hands of a perpetrator, but in this case, due to gender stereotypes and antiquated views on gender (i.e. father’s rights and numerous claims and reports to police by the author that were dismissed or rejected based on the fact that domestic violence was historically viewed as a private matter not to be

⁸⁵ Communication No. 47/2012 *González Carreño v. Spain*, para. 9.8.

⁸⁶ S. Cusack, “Ángela González Carreño v. Spain CEDAW Communication No. 47/2012: Amicus Curiae Brief” *Women’s Link Worldwide* (2014) available at http://www.womenslinkworldwide.org/files/gjo_amicus_brief_Simone_Cusack_angelagonzalez_en.pdf.

interfered with) there was discrimination against the author and a violation by Spain of CEDAW in not complying with required actions as listed in the Convention. Specifically, the violation of Articles 1, 2 (a-f), 16 (1, d) read in conjunction with Article 1, and General Recommendation No. 19.

3. State Obligation

A. Due Diligence Obligation

The obligation of due diligence placed on States is important in the international human rights law being studied in this paper on tackling violence against women specifically through CEDAW. States have responsibilities when signing onto international treaties, most notably in international human rights law where individuals have the ability to denounce their states, contesting that their rights have been violated under certain treaties. The five cases analyzed in this paper from CEDAW demonstrate State failure in its obligation of due diligence. Why is the due diligence standard important in international human rights law regarding violence against women? More specifically, in CEDAW, and how violence against women constitutes as a discrimination against women under this particular treaty.

Former Special Rapporteur Yakin Ertürk in her paper “Integration of the Human Rights of Women and the Gender Perspective: Violence Against Women; The Due Diligence Standard as a Tool for the Elimination of Violence Against Women” explains some historical context and why the due diligence obligation is important in various aspect of preventing and ending violence against women, to be used universally. She affirms the importance of a human rights case ruled on by the Inter-American Court of Human Rights in establishing high importance to due diligence:

The standard of due diligence was taken up in the Inter-American human rights system in 1988 with the landmark decision of the Inter-American Court of Human Rights in *Velásquez Rodríguez v. Honduras*,⁸⁷ which concerned the disappearance of Manfredo Velásquez. The Court held that

⁸⁷ Case of *Velásquez Rodríguez v. Honduras*, (Ser. C) No. 4, Inter-American Court of Human Rights (IACrtHR), 29 July 1988.

Honduras had failed to fulfill its duties under article 1(1) of the American Convention on Human Rights and concluded that, “An illegal act which violates human rights and which is initially not directly imputable to a State (for example, because it is the act of a private person or because the person responsible has not been identified) can lead to international responsibility of the State, not because of the act itself, but because of the lack of due diligence to prevent the violation or to respond to it as required by the Convention.”⁸⁸

Due diligence can often be found, as in this example, linked to prevention of human rights atrocities and violations. Ertürk also argues this need for action in prevention regarding violence against women, citing the previous special rapporteur’s report from the year 2000 along with the good faith principle common in international law treaties such as the United Nations Charter.

“Due diligence obligation must be implemented in good faith with a view to preventing and responding to violence against women. This will necessarily entail taking positive steps and measures by States in order to ensure that women’s human rights are protected, respected, promoted and fulfilled. In her 2000 report to the Commission, the former Special Rapporteur emphasized that due diligence is more than “the mere enactment of formal legal provisions” and that the State must act in good faith to “effectively prevent” violence against women.”⁸⁹

Prevention of violence should eventually lead to its elimination. However, tackling the problem of prevention in gender-based violence has proven to be the most difficult, more difficult than prosecuting perpetrators and compensating victims afterwards. The application of due diligence in this issue has yet to reach prevention effectively, according to Ertürk, who states:

“The application of the due diligence standard, to date, has tended to be limited to responding to violence against women when it occurs and in this context it has concentrated on legislative reform, access to justice and the provision of services. There has been relatively little work done on the more general obligation of prevention, including the duty to transform patriarchal gender structures and values that perpetuate and entrench violence against women.”⁹⁰

As were examined in this paper, the four State parties in the CEDAW cases have failed in their due diligence obligations per their obligations laid out in the treaty. Prevention

⁸⁸ United Nations Economic and Social Council, UN Doc E/CN.4/2006/61 *Integration of the Human Rights of Women and the Gender Perspective: Violence Against Women; The Due Diligence Standard as a tool for the Elimination of Violence Against Women; Report of the Special Rapporteur on violence against women, its causes and consequences*, Yakin Ertürk, 20 January 2006, para. 20.

⁸⁹ Ibid. para. 36. Here, Ertürk cites the UN Charter: United Nations, *Charter of the United Nations*, 24 October 1945, 1 UNTS XVI as well as the former Special Rapporteur’s Report E/CN.4/2000/68/Add.3 (2000), paras. 51-53.

⁹⁰ Ibid. para. 15.

actions may have saved the lives of Şahide Goekce and Fatma Yildirim, the two Austrian women killed by their husbands in 2002 and 2003 respectively. These two cases submitted to the Committee, found that Austria had violated CEDAW, after the authors of the case argued action on behalf of public authorities and officials could have prevented the murders of these women. As explained by the authors in the case of *Goekce v. Austria*, their main objective is to hold the State party accountable pronouncing: “If the State party protected women effectively, there would be no need to establish State liability... The authors state that they have submitted the communication in order to call the State party to account for its omissions and negligence.”⁹¹

Regarding violence against women, due diligence extends the obligation of States to include non-state actors that are in most cases (in all of the cases studied in this particular paper) the perpetrators of this type of violence. “Both customary and conventional international law establish that States have due diligence obligations for preventing, responding to, protecting against and providing remedies for acts of violence against women whether such acts are committed by State or non-State actors.” affirms Ertürk.⁹² Private acts are not to be treated differently than public acts if violence against women or other human rights violations are taking place. General Recommendation No. 19 of the CEDAW Committee clearly states this: “States may also be responsible for private acts if they fail to act with due diligence to prevent violations of rights or to investigate and punish acts of violence, and for providing compensation.”⁹³ The Declaration on the Elimination of Violence Against Women also explicitly mentions due diligence by States that include private acts in Article 4 of its text asserting States should: “Exercise due diligence to prevent, investigate and, in accordance with national

⁹¹ Committee on the Elimination of Discrimination Against Women, UN Doc CEDAW/C/39/D/5/2005, *Goekce v. Austria*, views adopted on 7 August 2007, para. 3.11.

⁹² UN Doc E/CN.4/2006/61 *Report of the Special Rapporteur on violence against women, its causes and consequences*, Yakin Ertürk, 20 January 2006, para. 30.

⁹³ Committee on the Elimination of Discrimination Against Women, UN Doc A/47/38, General Recommendation No. 19 (1992) on violence against women, para. 9.

legislation, punish acts of violence against women, whether those acts are perpetrated by the State or by private persons.”⁹⁴

The Declaration on the Elimination of Violence Against Women (DEVAW) is a resolution adopted by the United Nations General Assembly in 1993, one year after General Recommendation No. 19 from the CEDAW Committee was adopted. The Resolution is often referenced as an important International Human Rights Law text applicable to UN member States. It affirms that effective implementation of CEDAW can contribute to eliminating violence against women. What is important in this Declaration is the clear use of the term “due diligence” and how it must be a part of State responsibility in eliminating violence against women effectively.

Not exercising due diligence is part of the violations the State parties in these particular cases of violence against women have committed in discriminating against women. The treaty is in itself an instrument to eliminate discrimination. From structural types of oppressive discrimination in law, public authorities, and public systems, to gender stereotyping and direct discrimination from Police, courts, and other officials, discrimination occurs at many levels on behalf of States and affects women victims of violence. Article 1 of the Convention that defines “discrimination against women” declares that women must be able to recognize and enjoy their fundamental freedoms and human rights on a basis equal to men.⁹⁵ It is shown in the cases examined in this paper that women suffering violence, including domestic violence, are not able to fully exercise their freedoms and human rights. If the State does not repair the situation, investigate, prosecute perpetrators, compensate victims, and prevent similar situations from happening, they are continuing discriminating practices that negatively affect women at alarming rates.

⁹⁴ United Nations General Assembly UN Doc A/RES/48/104 *Declaration on the Elimination of Violence against Women* Adopted 23 February 2004, Article 4.

⁹⁵ CEDAW Article 1 reads: “For the purposes of the present Convention, the term “discrimination against women” shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.”

The responsibility of due diligence could be spread among non-state actors like organizations and institutions, argue Julie Goldscheid and Debra J. Leibowitz in their article “Due Diligence and Gender Violence: Parsing its Power and its Perils.” In the case of *V. K. v. Bulgaria*, a Polish foundation for women’s rights granted refuge to the victim, Ms. V. K. for two months after she experience domestic violence at the hands of her husband, and later on with help from NGOs in Bulgaria V. K. was able to flee back to her home country with her children. In the cases of *Goekce v. Austria* and *Yildirim v. Austria*, Austrian organizations and associations represented the deceased victims in these cases, as they had relationships of support with the victims while they were both alive. Goldscheid and Leibowitz explain a model of effective responsiveness concerning due diligence and the State:

“An appropriate model of state responsiveness should explicitly grant the State discretion not to respond, or to delegate its response to other stakeholders such as community members, survivors, NGOs, and advocates. It should consider the impact of any intervention on those at the margins— particularly those from racial, ethnic, religious, and sexual minorities— and should take into account the experiences and recommendations of both advocates and survivors.”⁹⁶

It is an interesting argument, as positive impact from NGOs has been demonstrated in protecting women victims of violence in countries all over the world. However, the current model as set out by CEDAW and other international human rights instruments claim that State obligation in protecting human rights and preventing violations includes due diligence.

B. Public/Private Divide

The public/private divide is an issue that has impacted international human rights law generally, not just women’s human rights. In this paper, how the public/private debate impacts women’s human rights is of high importance, especially regarding

⁹⁶ J. Goldscheid and D.J. Leibowitz “Due Diligence and Gender Violence: Parsing its Power and its Perils”, *Cornell International Law Journal*, Vol. 48 (2015), 301-345, p. 301.

violence against women. Many scholars have debated the public/private divide, and the role of the State in preventing or punishing human rights violations in either sphere.

The sphere that is of particular interest in analyzing how violence against women or gender-based violence is a form of discrimination against women is the private sphere. In the five cases studied in this paper, gender-based violence, chiefly domestic violence, was present in all five cases. While there may have been isolated instances where acts of violence (including threats) were public, for example in the case of *Yildirim v. Austria*, Fatma Yildirim's husband went to her work place and threatened to kill her⁹⁷, most of the violence experienced by the women victims in these cases was private.

One of the objectives of CEDAW is to transcend the private sphere; its coverage is explained by Simone Cusack and Lisa Pusey:

“CEDAW’s application to all fields of life — the political, economic, social, cultural, civil or any other field — and discrimination by state and non-state actors allows it to transcend the public/private distinction, which has operated historically to women’s detriment. CEDAW expressly rejects the notion of impunity for violations of women’s rights that occur in the private sphere — including in the family — and/or are caused by non-state actors. The significance of this approach lies in its recognition that, unlike for men, many violations of women’s rights occur within the private sphere and failure to address such violations undermines the exercise and enjoyment by women of their human rights in all spheres of life.”⁹⁸

It is to be noted that the private sphere usually includes family members, and in all five of the cases analyzed in this paper all five women were subject to violence at the hands of their partners or former partners. These cases are just five examples of the danger that women face privately, often in their own homes. In adopting views on these cases, the Committee has made it clear that human rights violations take place in the private sphere, and that States also have an obligation to prevent and eliminate violence in private areas of life.

⁹⁷ Committee on the Elimination of Discrimination Against Women, UN Doc CEDAW/C/39/D/6/2005 *Yildirim v. Austria*, views adopted on 6 August 2007. para. 2.7.

⁹⁸ S. Cusack and L. Pusey, “CEDAW And the Rights to Non-Discrimination and Equality”, *Melbourne Journal of International Law*, Vol. 14 (2013), 54-92, p. 62.

The public sphere has been shown to be favorable to men, and the rights of men, but this domination extends to the private sphere as well. Women in the private sphere have experienced and still experience oppression.⁹⁹ The implication of this oppression is recognized in General Recommendation No. 19 of the CEDAW Committee, calling for States to act: “States parties should take appropriate and effective measures to overcome all forms of gender-based violence, whether by public or private act.”¹⁰⁰ Hilary Charlesworth in “What are Women’s International Human Rights” affirms: “...If violence against women is understood, not just as aberrant behavior, but as part of the structure of the universal subordination of women, it can never be considered a purely “private” issue.”¹⁰¹ Patriarchal structures that remain in place universally extend to the private sphere, affecting gender stereotyping and typically assigned gender roles. This contributes to the subordination of women economically and socially. The ability for women to claim their rights, including rights to be free from violence, is also affected.

Civil and political rights are grouped into the “first” generation of international human rights law, where the context of the public/private split resulted from this set of rights. Violence against women typically has not been appropriately supported by this set of rights or international human rights law.¹⁰² Therefore, the explicit inclusion of violence against women in General Recommendation No. 19 to CEDAW is important. This recommendation however is non-binding. At the United Nations level currently, there is no binding instrument dedicated to violence against women.¹⁰³

The CEDAW Committee still references General Recommendation No. 19 in their decisions concerning domestic violence, firstly in *A. T. v. Hungary*. This decision

⁹⁹ H. Charlesworth “What are “Women’s International Human Rights”?” in R.J. Cook (ed.), *Human Rights of Women: National and International Perspectives*, University of Pennsylvania Press, Philadelphia 1994, 58-84, p. 64.

¹⁰⁰ Committee on the Elimination of Discrimination Against Women, UN Doc A/47/38, General Recommendation No. 19 (1992) on violence against women, para. 24(a).

¹⁰¹ H. Charlesworth, *op. cit.*, p. 73.

¹⁰² H. Charlesworth, *op. cit.*, p. 71-72.

¹⁰³ I. Radacic “Human Rights of Women and the Public/Private Divide in International Human Rights Law”, *Croatian Yearbook of European Law and Policy*, Vol. 3 (2007), 443-468, p. 448.

will be important for cases submitted to CEDAW, as *A. T. v. Hungary* is cited heavily.¹⁰⁴ These decisions by the Committee demonstrate an international human rights organ transcending the private area, asserting State violations against individuals, even though independent actors committed the acts of violence. State responsibility for the actions of individuals was previously discussed in the section in this paper regarding due diligence of the State party in international human rights law, namely CEDAW.

States are no longer the only violators of human rights¹⁰⁵, as is made clear in due diligence clauses in international human rights instruments, including CEDAW and its Recommendations. This added responsibility of States can be useful in eliminating discrimination against women, as we see in cases surround domestic violence that usually occur privately. The shift in how the public/private dichotomy is seen has changed the previous notion of the State's role in protecting human rights in the public arena.¹⁰⁶ Charlesworth argues that the failure to sufficiently protect women from violence in international human rights law is the focus on the public sphere:

“Although the empirical evidence of violence against women is overwhelming and undisputed, it has not been adequately reflected in the development of international law. The great level of documented violence against women around the world is unaddressed by the international legal notion of the right to life because that legal system is focused on "public" actions by the state.”¹⁰⁷

The public/private dichotomy is of special interest on the subject of violence against women. The Secretary General of the United Nations' 2006 report “Ending Violence Against Women” highlights the oppression of women specifically outside of the public realm:

“The roots of violence against women lie in historically unequal power relations between men and women and pervasive discrimination against women in both the public and private spheres.

¹⁰⁴ Committee on the Elimination of Discrimination against Women, UN Doc CEDAW/A/60/38 *A. T. v. Hungary*, views adopted on 26 January 2005.

¹⁰⁵ I. Radacic, *op. cit.*, p. 456.

¹⁰⁶ I. Radacic, *op. cit.*, p. 456.

¹⁰⁷ H. Charlesworth, *op. cit.*, p. 72. Here, Charlesworth references a UN Publication regarding the overwhelming evidence of violence against women: *Violence Against Women in the Family*, United Nations Publication (1989).

Patriarchal disparities of power, discriminatory cultural norms and economic inequalities serve to deny women's human rights and perpetuate violence. Violence against women is one of the key means through which male control over women's agency and sexuality is maintained."¹⁰⁸

Recognition at the United Nations level is important, as discrimination against women occurs both publicly and privately. The citation above demonstrates an understanding of oppressive patriarchal structures and how they harm women universally. It is relevant how viewing "discriminatory cultural norms" relates to how CEDAW works in preventing violence against women, as it is a Convention dedicated to eliminating discrimination against women.

V. CONCLUSIONS

It is important to recognize the violation of human rights that occurs when violence against women takes place. The five cases examined in this paper demonstrate how violence against women, while committed by non-state actors, constitutes discrimination in the way women are treated by the law and public authorities. Current legislation, inadequate action, and failure to prevent violence by the State actors shown in the cases illustrate discrimination against women, contrary to the articles of CEDAW.

The Communications procedure has allowed for cases to be presented to the Committee that reveal a violation of human rights: discrimination against women. Violence against women falls under discrimination, as analyzed throughout the paper in the Committee's General Recommendation No. 19 as well as its decisions in the five cases.

It was crucial that CEDAW was created to solely focus on protecting the human rights of women. The movement to recognize the human rights of women on an international scale may not be over, but great strides are being made. This includes acknowledging that women's human rights include the right to live a life free of gender-

¹⁰⁸ *Ending Violence Against Women: From words to actions*, Study of the Secretary General, United Nations Publication (2006).

based violence, an issue that has plagued the lives of women universally. Addressing this issue as discrimination at the level of protection of the United Nations is very significant, as CEDAW and the Committee's Recommendations have aimed to do.

A significant factor explored in this paper was the role of the State in this discrimination. States are held accountable to human rights treaties. It was shown that States' due diligence includes protecting women in both the public and private spheres of life, with accountability for the actions of non-state actors. States can play proactive and preventative roles in protecting women from violence. Because of existing patriarchal systems and gender stereotypes in governments, public systems, public officials, and legislation, CEDAW has been difficult to implement, most specifically regarding violence against women. The highest number of cases decided upon by the Committee have concerned gender-based violence. States must demonstrate how they are tackling violence against women and following the Convention in follow-up reports to the cases as well as the periodic reports required by Member States.

The cases mentioned in this paper highlight clear discrimination against women by countries. The cases put an international spotlight on violations committed by member states, available online from the United Nations Office of the High Commissioner of Human Rights. The recommendations from the Committee highlight a demand from the realm of International Human Rights Law. The aim is projecting an international standard on how to eliminate discrimination against women, a definition of discrimination that includes violence against women. Heisoo Shin describes this well in her article "CEDAW and Violence Against Women: Providing the 'Missing Link'":

"...Violence against women impairs or nullifies the enjoyment by women of human rights and fundamental freedoms. Speaking in traditional human rights terms, these rights and freedoms include the right to life; the right not to be subject to torture or to cruel, inhuman, or degrading treatment or punishment; the right to equal protection according to humanitarian norms in times of armed conflict; the right to liberty and security of person; the right to equal protection under the law; the right to equality in the family; the right to the highest standard attainable of physical and mental health; and the right to just and favorable conditions of work. This, within the meaning of Article 1 of the Convention, gender-based violence may breach specific provisions of the

Convention, whether or not those provisions explicitly mention violence. Violence against women *is* discrimination against women.”¹⁰⁹

¹⁰⁹ H. Shin, “CEDAW and Violence Against Women: Providing the ‘Missing Link’”, in H.B. Schöpp-Schilling and Cees Flinterman (eds.), *The Circle of Empowerment: Twenty-Five Years of the UN Committee on the Elimination of Discrimination Against Women*, The Feminist Press, New York 2007, 223-233, p. 229.

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