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Policy Brief

**Due Diligence Standard, Violence against Women
and Protection Orders in the Arab Region**



United Nations
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Note: The present policy brief utilizes research and concepts taken from a forthcoming ESCWA study entitled “Beyond boundaries: Utilizing protection orders to cultivate a holistic response to marital violence in the Arab region”.

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Introduction

To date, six Arab countries have implemented stand-alone legislation on violence against women,¹ while others are preparing draft legislation. Such legislation outlines social, legal and/or medical interventions by a country and other actors, such as civil society, to address violence against women. One intervention commonly mandated through this type of legislation is the protection order.² Given that Arab countries are exerting considerable efforts to combat violence against women, the increasing presence of such legislation in the region means that protection orders will play a substantial role in combating violence within the family and supporting survivors. In countries without such legislation, protection orders must be viewed as an obligatory mechanism within a larger coordinated response to violence against women.

The present policy brief discusses the concept of protection orders within the framework of international law and a State's due diligence obligation to prevent, protect against, prosecute, punish and provide reparations for acts of violence against women. It builds upon the ESCWA definition of gender justice, which is described as both a mechanism and an outcome in the Muscat Declaration: Towards the Achievement of Gender Justice in the Arab Region.³ Utilizing the due diligence principal as a methodological framework, the present brief aims to demonstrate how the protection order is an evolving norm under customary international law, through an examination of jurisprudence stemming from regional mechanisms, discussions and Optional Protocol rulings of the Committee on the Elimination of All Forms of Discrimination against Women (CEDAW Committee), and commentary by special rapporteurs on violence against women, its causes and consequences.

The present brief begins by defining protection orders, and introduces the concept of the due diligence standard and its applicability to violence against women perpetrated by State and non-State actors in the public and private spheres. The due diligence standard is then applied to States' provision and enforcement of protection orders as part of an evolving norm under customary international law. This includes a detailed overview of relevant international and regional jurisprudence concerning a State's obligation to provide protection orders to survivors of violence. Lastly, the brief discusses the contents and application of protection orders in Arab countries, and highlights the steps taken and those needed to ensure such orders are in line with international best practice and are survivor-centred. The brief concludes with a series of national and regional recommendations, arguing for greater service provision from non-State actors, such as civil society.

I. PROTECTION ORDERS TO ADDRESS VIOLENCE AGAINST WOMEN

Protection orders are regarded as one of the most effective legal remedies available to survivors of violence, and serve as part of a comprehensive approach to marital violence.⁴ They typically increase survivors' safety while also enhancing their autonomy.⁵ Consequently, they have the ability to deter perpetrators from committing future acts of violence, and can also serve as a means of empowering survivors

¹ Arab countries with standalone legislation include Bahrain, Jordan, Lebanon, Morocco, Saudi Arabia and Tunisia. Algeria has made specific amendments concerning the penalization of marital violence in its penal code outlined under Law No. 15-19 of 2015, but it is not standalone legislation.

² Depending on the context, protection orders may alternatively be known as restraining orders; stay away orders; non-molestation orders; barring orders; or no contact orders. In Arabic, they are commonly referred to as أوامر الحماية.

³ https://www.unescwa.org/sites/www.unescwa.org/files/events/files/report_7th_session_-_final_css_en.pdf;
Also see ESCWA (2017). *The State of Gender Justice in the Arab Region*. Available from <https://www.unescwa.org/sites/www.unescwa.org/files/publications/files/state-gender-justice-arab-region-english.pdf>.

⁴ The present brief acknowledges that protection orders are commonly used for various forms of intimate partner violence inside and outside marriage, as well as for other family members. However, given that violence against women legislation in the Arab region commonly refers to marital violence, this brief will utilize the term 'marital violence' as opposed to 'domestic violence' when referring to member States. However, 'domestic violence' is used when referring to the commentary of the Special Rapporteur on violence against women, and other international or regional mechanisms.

⁵ Stoever, J.K. (2011). Freedom from violence: Using the stages of change model to realize the promise of civil protection orders. *Ohio State Law Journal*, vol. 72, No. 2, pp. 318-322.

to take other steps to ensure their safety. The availability of protection orders also creates a ‘public statement’ about a country’s commitment to addressing violence against women, an important step in transforming the socio-legal culture around gendered violence.⁶

Protection orders are commonly issued by a court, a prosecutor or the police, to protect survivors from violence or the threat of violence. The present brief utilizes the definition of protection orders provided by the Special Rapporteur on violence against women, as follows:

... a “go” order which requires a perpetrator of domestic violence to leave a shared home and to keep at a certain distance from the victim (barring orders). Protection orders can impose a range of restraints on the person subject to the order. For example, they require a perpetrator to vacate the residence of the victim or to stay away from the shared home, from specific places (e.g., the victim’s workplace or her children’s school) or to refrain from contacting the victim or person at risk. Some jurisdictions permit additional orders to require, for example, a perpetrator to pay rent for the family home or child support, or to surrender weapons in his possession [...] They may be ordered independently by a civil court or they may be part of civil or criminal legal proceedings protecting the safety of the victim while other proceedings go forward.⁷

Protection orders may be issued by criminal or civil courts, including on an *ex parte* or emergency basis. A criminal protection order is commonly issued by a court as a condition of pretrial release where there has been an arrest in a case involving domestic violence. The order, its conditions and validity are at the discretion of the judge. In contrast, civil protection orders are initiated by survivors (or their proxies) and are meant to provide immediate relief to survivors from violence, rather than to directly punish perpetrators, initiate divorces or end relationships. The burden of proof for civil protection orders is usually lower, which means that those orders can protect against abuse that might not sufficiently constitute a criminal violation or might lack sufficient evidence to pursue in a criminal court. While criminal and civil protection orders serve as important components of a coordinated response to marital violence, the present brief specifically advocates for the option of civil protection orders because they provide the greatest relief possibilities for survivors.

The effectiveness of a protection order depends on its comprehensiveness, including the specifics of the order and how well it is enforced. It is also reliant on a State’s investment to ensure that such mechanisms are part of a larger coordinated response to violence where social, legal and medical services aim to protect, support and empower survivors, while holding perpetrators to account.

II. DUE DILIGENCE STANDARD AND ITS APPLICATION TO VIOLENCE AGAINST WOMEN

The due diligence standard and its application to violence against women has helped challenge the perception that a State has no obligation to interfere in violations occurring within the private sphere. Due diligence, as it relates to violence against women, is the obligation of a State to prevent, protect against, prosecute, punish and provide reparations for such violence perpetrated by State or non-State actors.⁸ The application of the due diligence standard to violence against women is important because it challenges the public-private divide created within international (and domestic) law; focuses on prevention and effective remedies; requires countries to address the root causes of violence against women; complements other human rights principles and frameworks; and serves as a means to address such violence.⁹

⁶ Schneider, E.M. (2000). *Battered Women & Feminist Lawmaking*. New Haven: Yale University Press, p. 94.

⁷ A/HRC/35/30, p. 11.

⁸ E/CN.4/2006/61.

⁹ Goldscheid, J. & Liebowitz, D.J. (2015). Due diligence and gender violence: Parsing its power and its perils. *Cornell International Law Journal*, vol. 48, pp. 301-345.

The application of the due diligence standard to State responsibility for non-State acts was first developed in a case brought before the Inter-American Court of Human Rights (IACHR), *Velasquez Rodriguez v. Honduras* (1988), which concerned the State's responsibility for enforced disappearances by non-State actors. Prior to this case, a State's due diligence obligation remained relevant only to the protection of individuals from injury caused by State agents. IACHR argued that "an illegal act which violates human rights and which is initially not directly imputable to a State [...] 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".¹⁰ Owing to this ruling, States are now expected to prevent, investigate and punish any violation of an individual's rights by non-State actors, including perpetrators of violence against women and particularly marital violence.¹¹ Due diligence is explicitly noted in the African, Asian, Inter-American and European human rights systems, while both the Inter-American and European systems have binding legislation that addresses due diligence within the context of violence against women.

Due diligence is indirectly referenced in article 2(e) of CEDAW, which calls upon States to take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise, although CEDAW does not make an explicit reference to violence perpetrated by non-State actors as argued by the IACHR. The due diligence standard for violence against women was first explicitly articulated by the CEDAW Committee in article 9 of General Recommendation No. 19, which clarifies that a State can be held liable for gender-based discrimination perpetrated by any person, organization or enterprise; and that under international law and human rights covenants, 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. The Committee then issued General Recommendation No. 28, which clarifies that a State's due diligence is articulated under article 2 of the Convention; and more recently General Recommendation No. 35, which updates No. 19 and defines the different levels of State liability for acts and omissions committed by its agents, including non-State actors.

This concept is further codified in customary international law through the Declaration on the Elimination of Violence against Women, which urges States to exercise due diligence to prevent, investigate and punish acts of violence against women in accordance with national legislation, whether those acts are perpetrated by the State or by private persons (article 4(c)). The Beijing Platform for Action, under paragraph 124(b) of Platform D on violence against women, also calls upon States to refrain from engaging in violence against women and exercise due diligence to prevent, investigate and punish acts of violence against women in accordance with national legislation, whether those acts are perpetrated by the State or by private persons.¹²

While the due diligence standard on violence against women has been cultivated through several avenues, the Special Rapporteur on violence against women has consistently advanced the due diligence standard. As early as 1995, the first Special Rapporteur, Ms. Radhika Coomaraswamy, noted that State responsibility for the violation of women's human rights by private actors was anticipated by customary law, and that the due diligence standard had been generally accepted as a measure of evaluating a State's responsibility for violation of human rights by private actors.¹³

In 2006, the second Special Rapporteur, Ms. Yakin Ertürk, published a report entitled "The due diligence standard as a tool for the elimination of violence against women", outlining the parameters for ensuring due diligence at the following levels: the level of individual women; at the community/family level; at the State level; and at the transnational level. She argued that the due diligence standard had historically been limited in responding to violence against women; when it had been applied, it mainly focused on legislative reform,

¹⁰ http://hrlibrary.umn.edu/iachr/b_11_12d.htm.

¹¹ State obligation is also clarified under international humanitarian law; see Sassòli, M. (2002). State responsibility for violations of international humanitarian law. *International Review of the Red Cross*, vol. 84, No. 846, pp. 401-433.

¹² <http://www.un.org/womenwatch/daw/beijing/pdf/BDPfA%20E.pdf>.

¹³ E/CN.4/1995/42, pp. 23-24.

access to justice and service provision. There had been little focus on prevention, including challenging and transforming harmful stereotypes and norms within society, which must be coupled with more responsive accountability mechanisms. In 2013, when a State's due diligence regarding violence against women became unequivocal, the third Special Rapporteur, Ms. Rashida Manjoo, further argued that the due diligence standard served as a tool for individuals to hold States accountable, by providing an assessment framework for ascertaining what constituted effective fulfilment of a State's obligations, and for analysing its actions or omissions.¹⁴

Consequently, States' due diligence obligations towards violence against women, including marital violence, is presumed under those foundational frameworks. However, this does not mean that a State is directly responsible for actions of private citizens or non-State actors. Rather, the obligation focuses on a State's (in)action when responding to violations. A State's failure to act with due diligence in instances of violence causes additional harm to survivors, which further contributes to a lack of accountability and a culture of impunity.¹⁵

III. PROTECTION ORDERS AS AN EVOLVING NORM UNDER CUSTOMARY INTERNATIONAL LAW

The provision of protection orders as a protective measure issued by a State is an evolving norm under customary international law, as demonstrated by increasing uptake and implementation. According to a 2015 study by the World Bank, protection orders are available in 124 of 173 countries.¹⁶ Customary international law commonly refers to international obligations among States arising from established international practice, and is derived from State practice and *opinio juris* (opinion of the law).¹⁷ This is further confirmed by the definition of custom in article 38 of the Statute of the International Court of Justice as "a general practice accepted as law".

In her work as Special Rapporteur on violence against women, Ms. Coomaraswamy highlighted the increasing adoption of protection orders as a remedy for violence against women.¹⁸ In 1996, she proposed a framework for universal model legislation on domestic violence, including the provision of civil protection orders and *ex parte* restraining orders as part of a coordinated response to domestic violence.¹⁹ The General Assembly of the United Nations subsequently adopted the use of protection orders as part of a model response to violence against women in 1997.²⁰ An expert group meeting held in 2008 by the Division for the Advancement of Women and the Office on Drugs and Crime called for guidelines and a model framework for legislation on violence against women, including the provision of protection orders.²¹ This resulted in the 2012 Handbook for Legislation on Violence against Women, which demands that protection orders be available to survivors of all forms of violence against women (and those at risk) and that they contain a variety of measures, including ordering the perpetrator to stay a specified distance away from the survivor and other relevant persons (particularly children); restraining the perpetrator from causing further violence to the survivor; and

¹⁴ A/HRC/23/49, p. 5.

¹⁵ Goldscheid, J. & Liebowitz, D.J. (2015). Due diligence and gender violence: Parsing its power and its perils. *Cornell International Law Journal*, vol. 48, pp. 301-345.

¹⁶ <http://pubdocs.worldbank.org/en/810421519921949813/Women-Business-and-the-Law-2016.pdf>, p. 22.

¹⁷ https://www.law.cornell.edu/wex/customary_international_law.

¹⁸ E/CN.4/1995/42, pp. 32-33.

¹⁹ E/CN.4/1996/53/Add.2.

²⁰ <http://www.un.org/ga/documents/gares52/res5286.htm>.

²¹ [http://www.un.org/womenwatch/daw/egm/vaw_legislation_2008/Report%20EGMGPLVAW%20\(final%2011.11.08\).pdf](http://www.un.org/womenwatch/daw/egm/vaw_legislation_2008/Report%20EGMGPLVAW%20(final%2011.11.08).pdf).

instructing the perpetrator to vacate the family home.²² In addition, the 2012 Handbook for National Action Plans on Violence against Women advocates for protection orders to be readily available and without charge, or available on an *ex parte* or emergency basis; and for violations of orders to be criminalized, among other requirements. Moreover, States must facilitate cross-border and cross-jurisdictional enforcement of the orders.²³

Subsequent special rapporteurs have further clarified the link between a State's due diligence and protection orders. In her 2006 report, Ms. Ertürk argued that protection orders were regarded as both preventive and protective mechanisms, and as a means for survivors of violence to access justice: "States are required to develop appropriate legislative frameworks, policing systems and judicial procedures to provide adequate protection for all women, including a safe and conducive environment for women to report acts of violence against them and measures such as restraining or expulsion orders and victim protection procedures".²⁴ The current Special Rapporteur, Ms. Dubravka Šimonović, declared that the State's obligation to combat violence against women involved the provision of protection orders and was "directly or indirectly enshrined in international and regional legal and policy human rights instruments and have been further elaborated by independent mechanisms that monitor their implementation".²⁵

The provision of protection orders entered customary international law through the 2000 Optional Protocol to CEDAW.²⁶ Although the CEDAW Committee is a quasi-judicial body, its rulings have a profound effect on understandings of the Convention and a State's obligation to prosecute and provide remedies for marital violence, including through the enforcement or availability of protection orders. The case of *A.T. v. Hungary* (2005) was the first domestic violence complaint reviewed by the CEDAW Committee where the provision and enforcement of protection orders served as the central theme.²⁷ The Committee ruled that failure to protect women from domestic violence was a form of discrimination and a human rights violation, arguing that Hungary had failed to offer protection and support services to A.T., including access to protection orders, while civil and criminal proceedings were in progress.

The CEDAW Committee has heard subsequent cases concerning a State's failure to protect survivors and victims of domestic violence and enforce protection orders. In *Şahide Goekce (deceased) v. Austria* (2005)²⁸ and *Fatma Yildirim (deceased) v. Austria* (2005),²⁹ the Committee found that while Austria had the means to address domestic violence, State actors failed to adhere to the due diligence obligation. For example, in *Goekce*, the perpetrator was issued with three expulsion and prohibition to return orders, which were repeatedly violated. An interim injunction order was then issued, which the perpetrator also violated, in addition to being in possession of a handgun. Requests to detain the perpetrator after the violation were denied by the public prosecutor. Subsequently, Ms. Goekce was shot and killed. Likewise, in *Yildirim*, the public prosecutor failed to detain the perpetrator after an expulsion and prohibition to return order was violated.

²² http://www.unwomen.org/-/media/headquarters/attachments/sections/library/publications/2012/12/unw_legislation-handbook%20pdf.pdf?la=en&vs=1502.

²³ <http://www.un.org/womenwatch/daw/vaw/handbook-for-nap-on-vaw.pdf>.

²⁴ E/CN.4/2006/61, p. 18.

²⁵ A/HRC/35/30, p. 5.

²⁶ The Optional Protocol to CEDAW serves as both a communication measure and inquiry process where individual or groups of women have the right to approach the CEDAW Committee directly about State violations of the Convention. The communication measure enables women to submit communications (complaints) outlining possible State violations of their rights under CEDAW. The Committee is then authorized to conduct inquiries into a State's actions to understand whether it has committed violations under the Convention. These processes serve as a means for the CEDAW Committee to make specific recommendations to a State on ways to address structural causes of violations.

²⁷ Communication No. 2/2003.

²⁸ CEDAW/C/39/D/5/2005.

²⁹ CEDAW/C/39/D/6/2005.

Two different interim injunctions were then issued and repeatedly violated without the police or the public prosecutor taking any action. Shortly after filing for divorce, Ms. Yildirim was stabbed to death by the perpetrator. Other cases before the Committee highlight how even when mechanisms are in place, a State's lack of enforcement and/or accountability to the survivor perpetuates persistent or greater harm, while also enforcing gender stereotypes and denying access to justice.³⁰

Regional human rights instruments also set out States' obligation to combat violence against women and provide for protection orders. Article 7(d) of the 1994 Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women calls upon States to adopt necessary legal measures to prevent a perpetrator from "harassing, intimidating or threatening the woman or using any method that harms or endangers her life or integrity, or damages her property".³¹ The Second Hemispheric Report on the Convention demands State enforcement of protection orders, citing the case of *Jessica Lenahan (Gonzales) et al v. the United States* (2011) where the police force in the state of Colorado failed to do so.³² Due to the State's negligence, Lenahan's three daughters were abducted and murdered by her estranged husband. The case was initially heard by the United States Supreme Court in *Castle Rock v. Gonzales*, 545 U.S. 748 (2005), which ultimately ruled that Lenahan had no due process right to enforcement of a civil protection order. IACHR found the United States in violation of international obligations under multiple human rights frameworks within the Inter-American human rights system. The Commission argued that the United States had a State responsibility to address domestic violence, linked to the Inter-American human rights system's requirement that States must prevent, investigate, sanction and provide remedies for violence against women under the due diligence requirement.

Within the European system, framed by the 1950 European Convention on Human Rights, *Opuz v. Turkey* (2009) served as a landmark case on a State's due diligence to adequately protect individuals from domestic violence and enforce protection orders.³³ Ms. Opuz and her mother were targeted with increasing brutality by her ex-husband, culminating in the death of Ms. Opuz's mother. While protection orders are mandated in Turkey under law No. 4320 of 1998, law enforcement failed to take significant action to investigate claims, provide timely protection and implement and maintain effective protective measures, including a protection order that was withdrawn shortly after the murder of Ms. Opuz's mother. The European Court of Human Rights ruled that State authorities had not only failed to prevent and protect, but also that the failure to address domestic violence constituted gender-based discrimination. Significantly, the Opuz case referenced international and regional human rights instruments, and emphasized the binding nature of CEDAW and State obligations. Since *Opuz v. Turkey*, the European Court of Human Rights has ruled on several cases that highlight State negligence in not providing or appropriately enforcing protective measures, including protection orders. In those cases, it has clarified that the provision and enforcement of such measures should be regarded as part of a larger coordinated response to violence against women, particularly domestic violence.³⁴

IV. MARITAL VIOLENCE PROTECTION ORDERS AND THEIR APPLICATION IN THE ARAB REGION

The due diligence standard obligates States to address violence against women through various means, including the establishment and enforcement of protection orders. The codification of standalone legislation on violence against women that enshrines the provision of protection orders serves as a first step for States to

³⁰ See *V.K. v. Bulgaria* (2008); *Isatou Jallow v. Bulgaria* (2011); and *Angela Gonzalez Carreño v. Spain* (2012).

³¹ <http://www.oas.org/juridico/english/treaties/a-61.html>.

³² <https://www.aclu.org/cases/jessica-gonzales-v-usa>.

³³ <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000168069454a>.

³⁴ Cases include *Kalucza v. Hungary* (2012); *Mudric v. The Republic of Moldova* (2013); *Eremia v. The Republic of Moldova* (2013); *T.M. and C.M. v. The Republic of Moldova* (2014); and *Bălș an v. Romania* (2017).

meet this standard. Given the growing availability of protection orders for survivors of marital violence, it is fair to assert that the provision is an emerging norm within the Arab region. While adoption of protection orders is increasing in the region, few countries collect timely data on their application, issuance or breach, making it difficult to assess their impact.³⁵

ESCWA has reviewed all standalone legislation on violence against women in the Arab region and their provisions for protection orders. The primary objective of a protection order is the safety of survivors, their children and other family members. Of the six States with standalone violence against women legislation, five provide for civil protection orders. The available standalone legislation on violence against women in the Arab region outlines the parameters of each State's protection orders, which generally contain the following provisions:

- Bar perpetrators from contacting or harming survivors, their children and other family members either directly or indirectly (through a third party);
- Require perpetrators to stay a specified distance from survivors and their children, wherever they may be;
- Bar perpetrators from damaging survivors' personal property or property held in common (car, house, furniture);
- Bar perpetrators from accessing assets held jointly with survivors;
- Allow survivors to access the family dwelling or to seek refuge elsewhere, if needed;
- Compel perpetrators to leave the family home for a fixed period;
- Compel perpetrators to provide financial assistance for support and costs incurred from violence, including medical treatment and shelter.

Furthermore, some Arab countries issue emergency orders (*ex parte* orders). For example, the Public Prosecutor in Bahrain can issue a protection order unilaterally or at a survivor's request. Jordan provides emergency orders, which activate a response by the Ministry of Social Development to ensure that survivors receive medical care and shelter. In Saudi Arabia, State authorities are called upon to issue an emergency order if there is an allegation of immediate danger. In Tunisia, a judge can issue a protection order on an emergency basis. In Lebanon, the provision is not explicit but the Public Prosecutor is empowered to keep perpetrators away from survivors, or to incarcerate perpetrators for 48 hours so that survivors can seek out a protection order. While survivors may be empowered to obtain protection orders on their own, most countries note that other entities can assist in the process, namely court staff, the police (including specialized units) and civil society organizations, such as women's organizations or legal aid societies.

In addition to those provisions, some Arab countries with protection order provisions set out the steps necessary for a survivor to secure and maintain an order, and also include one or more of the following provisions: elaborate who is eligible to obtain a protection order in addition to the survivor; the length of the orders; the requirement (or not) of other legal proceedings; mediation mechanisms; child custody concerns; required evidence; the services (social, legal and/or medical) available to the survivor; the rehabilitative services available to the perpetrator; and the State's accountability framework to address violations of the order. In general, there is no cost associated with obtaining a protection order, and orders can be requested outside of normal working hours.

Protection order provisions in the Arab region are generally aligned with international frameworks and best practices, underlining the increasing adoption of global norms that aim to protect and empower survivors of marital violence. Nevertheless, no country has enacted comprehensive protection order legislation that

³⁵ In a survey sent by ESCWA to national women's machineries, only two countries documented the number of protection orders issued during a specified time period. In 2017, Jordan issued three protection orders, while Oman issued 63.

encompasses all the necessary protocols, as outlined in the Handbook for Legislation on Violence against Women. In other instances, some components fall short and should be removed. This includes the provision of mediation mechanisms that, while perceived as beneficial to preserving the integrity of the family, are not survivor-centred. For example, the Handbook warns that mediation “removes cases from judicial scrutiny, presumes that both parties have equal bargaining power, reflects an assumption that both parties are equally at fault for violence, and reduces offender accountability”.³⁶ The option of mediation might be more appealing to family or community members who may then place unwelcomed pressure on survivors to resolve the situation without considering their needs or preferences.

For Arab countries that do not have standalone legislation, many are able to provide protection orders at a judge’s discretion through the State’s code of criminal procedures when instances of marital violence are tried through the criminal justice system. However, while such orders might play a beneficial role in criminal proceedings, their scope is limited to the trial period and they are not likely to prioritize survivors’ needs and preferences.

National strategies have the potential to ensure that all elements of countries’ responses to violence against women are deployed in a comprehensive and holistic manner, which in turn multiplies the efficiency of such interventions. Many national strategies and action plans in the Arab region already call for comprehensive legislation to respond to violence against women, which includes the provision of protection orders, but none elaborate on the harmonization of protection order legislation with other social, legal and medical services.

V. CURRENT ACCOUNTABILITY FRAMEWORKS FOR THE ARAB REGION

To date, there is no binding regional legislation on human rights or violence against women in the Arab region. However, the recently proposed draft Convention for Elimination of Violence Against Women in the Arab States Region³⁷ calls upon States to take necessary steps to protect survivors, including through the provision of protection orders (article 36). According to the proposed convention, protection orders should be made available without delay or financial obligation and should be initiated independent of other legal proceedings (article 36). The convention also calls upon States to ensure that perpetrators are held to account through sanctions if the order is violated (article 27), and introduces a mechanism for monitoring and accountability through the development of a team of experts from the region (articles 47-50). The Arab Charter on Human Rights condemns violence in the family under article 33(2) but does not prescribe any civil or criminal remedies, and does not have an accountability mechanism.³⁸

Engagement with the CEDAW process, as well as other frameworks such as the Beijing Platform for Action, indicates that Arab countries both accept the definition of violence against women and the concept of due diligence set out in the Declaration on the Elimination of Violence Against Women. Those instruments provide the foundational concepts that Arab countries are obligated to uphold, in theory and in practice. They also create an accountability framework where one has yet to be fully developed.

While the CEDAW Committee is committed to ensuring that States meet their due diligence concerning violence against women through the provision of protections orders, there has been limited engagement with

³⁶ http://www.unwomen.org/-/media/headquarters/attachments/sections/library/publications/2012/12/unw_legislation-handbook%20pdf.pdf?la=en&vs=1502, p. 37.

³⁷ The proposed convention is the work of the General Secretariat of the League of Arab States, with support from UN Women, UNFPA Regional Office for Arab States, ESCWA, the Coalition of Women MPs from Arab Countries to Combat Violence against Women, and the Westminster Foundation for Democracy.

³⁸ <http://hrlibrary.umn.edu/instree/loas2005.html>.

Arab countries on this issue.³⁹ For example, in 2010, the Committee requested that Tunisia develop legislation to ensure that “women and girls who are victims of violence have access to immediate means of redress and protection, including protection orders”.⁴⁰ In 2012, the Committee called on Jordan to collect data on the number of protection orders issued and violated, which it has yet to formally complete.⁴¹ In 2017, the Committee lamented that the State of Palestine lacked protection order legislation and subsequently called for a law that “provides for the issuance of protection orders as well as systematic data collection on the number of protection orders issued and violated”.⁴² Within the region, only Libya and Tunisia have acceded to the Optional Protocol; to date, no plaintiffs from those countries have activated the measure, possibly owing to a lack of awareness of its availability.

Other accountability mechanisms have touched upon protection orders in the Arab region. Through the Universal Periodic Review process supported by the Human Rights Council, only Tunisia has been directly questioned about the provision of protection orders. In May 2017, three months before the ratification of organic law No. 2017-58 on eliminating violence against women, it was recommended that Tunisia include “comprehensive protection orders that are part of the Code of Civil Procedure, instead of being integrated into the Criminal Code”.⁴³ In 2017, the Committee against Torture advised Bahrain to develop violence against women legislation and to ensure that survivors of marital violence benefited from protection orders.⁴⁴

VI. CONCLUSION AND RECOMMENDATIONS

The present policy brief outlines how protection orders have been increasingly recognized as part of a State’s due diligence obligation to address violence against women, and how this has been incorporated into customary international law. It highlights that several international and regional conventions, frameworks and special procedures call upon States to exercise due diligence through prevention, protection against, prosecution, punishment and reparations for acts of violence against women, particularly marital violence.

Recent policy and legislative reform adopted by Arab countries, including the passage of standalone marital violence or violence against women laws or penal code provisions, the repeal of so-called ‘marry your rapist’ laws, and the greater provision of services such as shelters and medical and legal services, have sent a message that States do engage with the due diligence standard on paper. The provision of protection orders is part of this response and must remain so. However, such interventions must be strengthened to ensure a comprehensive and coordinated response that is also empowering and survivor-centred. In addition, the explicit acknowledgement of a due diligence standard in the region would ensure that the provision of protection orders provides a framework for greater accessibility, implementation and enforcement mechanisms. Moreover, a binding regional mechanism would further compel States to honour their due diligence obligation and create a culture that challenges impunity for marital violence.

The present policy brief makes the following recommendations to Arab countries.

Develop comprehensive and compliant regional legislation: As Arab countries adopt standalone legislation on violence against women, a coordinated regional response on the provision of protection orders is needed. Regionally, member States must ensure that the final draft of the Convention for Elimination of Violence against Women in the Arab States Region includes a provision for protection orders and outlines

³⁹ Somalia and the Sudan are the only Arab countries to not have ratified CEDAW.

⁴⁰ CEDAW/C/TUN/CO/6. Tunisian organic law No. 2017-58 on eliminating violence against women was ratified in August 2017.

⁴¹ CEDAW/C/JOR/CO/6.

⁴² CEDAW/C/PSE/CO/1.

⁴³ [A/HRC/36/5](#).

⁴⁴ CAT/C/BHR/CO/2-3.

their prescription and enforcement (including punitive measures for when they are breached), while also ensuring cross-border recognition and enforcement for survivors moving between Arab countries.⁴⁵ Furthermore, the Arab Charter on Human Rights must be augmented so that it is clear on States' obligations concerning violence against women, particularly marital violence, including the provision and enforcement of protection orders. Lastly, the development of a regional accountability mechanism for both documents would ensure that States are held to account and that survivors have access to justice.

Cultivate State adoption of international norms and practices: To further comply with international norms and best practices, all Arab countries must ensure the full implementation of CEDAW without reservation. However, ratification is not enough; States must publish the treaty in the Official Gazette and work to ensure that it is harmonized within domestic legislation. Implementing CEDAW (including the Committee's general recommendations) at the national level is the only way to ensure that the due diligence standard is fully realized. Engagement in the CEDAW process, including timely reporting and participation in the Committee's constructive dialogue and the adoption of Concluding Observations is an important element in building a stronger response to violence against women. Moreover, accession to the Optional Protocol must be part and parcel of this compliance.

Develop comprehensive national legislation and policy frameworks on violence against women: At the national level, member States must develop violence against women legislation with clear provisions for protection orders that are comprehensive and survivor-centred. Such legislation should address various forms of violence against women as outlined in article 2 of the Declaration on the Elimination of Violence Against Women, in addition to marital violence. Legislation must be aligned with international frameworks, such as the Beijing Platform for Action, the 2030 Agenda for Sustainable Development and the Sustainable Development Goals (particularly Goals 5.1 and 5.2), and CEDAW. In addition to implementing the full scope of CEDAW, States must also utilize the CEDAW Committee's general recommendations No. 19 and 35 to ensure that violence against women legislation is in line with international norms and best practice. Furthermore, States must better engage with the Special Rapporteur on violence against women.

For countries with legislation that provides for protection orders or those currently debating such legislation, provisions must be amended or augmented in line with international best practice. Those without protection order legislation or where there is no provision for civil protection orders, specific legislation must be drafted. In the interim, requirements must be made within the procedural guidelines of the criminal code to always provide for protection orders in instances of marital violence. Such legislation should be harmonized across courts.

Furthermore, countries must develop or update strategies and national action plans to articulate the need for civil protection orders through standalone violence against women legislation. For countries that have yet to adopt or update such strategies, the incorporation of protection orders should be a priority. Those policy documents must also outline the coordinated response that complements protection orders, including social, legal and medical services provided by State and non-State actors.

Develop comprehensive data collection systems: Timely and comprehensive data informs policy, which in turn translates into action. To better develop policies to combat violence against women, responsive legislation and improve service provision, countries should systematically collect data on the number of civil and criminal protection orders applied for, issued and breached. This information should be collected in conjunction with other data on violence against women. In addition to improving State response, the collection of timely data on violence against women, including protection orders, contributes to the monitoring of progress towards the achievement of the 2030 Agenda 2030 and Goal 5.2, contributes to reporting on progress

⁴⁵ Currently, such agreements exist between countries within the European Union and within Latin America, between Canada and the United States, and between Australia and New Zealand. This is also known as 'full faith and credit'.

under the Beijing Platform for Action, and is recommended under the CEDAW Committee's general recommendations No. 19 and 35.

Develop a comprehensive and coordinated response to violence against women with relevant non-State actors, particularly civil society: While States are obligated to comply with the due diligence standard, a comprehensive and coordinated response on behalf of the State means that non-State actors, particularly civil society, have an important role to play in any response to violence against women. Civil society has valuable insights to offer on the needs of women at the local level; furthermore, it might facilitate a more appropriate State response for survivors to bridge the gap between the public and private spheres.

Arab countries already allow civil society to assist in the application process for protection orders, and many provide vital services to survivors, including hotlines to activate such services. However, given concerns over the shrinking space of civil society globally and regionally, it is important that States empower civil society to provide the required services to survivors of violence. The responsibility to prevent, protect, prosecute, punish and provide reparations remains that of the State; however, to fully realize the due diligence standard, States must partner with civil society to better reach survivors, provide the most appropriate services and facilitate their access to justice.