

**Mandates from the Special Rapporteur on violence against women, its causes and consequences, and the Working Group on discrimination against women and girls**

REFERENCE:  
AL ESP 3/2020

25 September 2020

Your Excellency

We are honoured to address you in our positions as Special Rapporteur on violence against women, its causes and consequences, and the Working Group on discrimination against women and girls, in accordance with resolutions 41/17 and 41/6 of the Human Rights Council.

In this context, we wish to draw to the urgent attention of Your Excellency's Government the information we have received in relation to Mrs Irune Costumero Estévez and her eight year old daughter. We also wish to refer to letters previously sent regarding cases of sex discrimination in women and girls' access to justice (AL ESP 5/2019, AL ESP 9/2019 and AL ESP 11/2019).

According to the information we have received:

In October 2013 Mrs Costumero's daughter was snatched from her buggy by the girl's father while she was out with her maternal grandparents in Bilbao. The father kept the little girl in an unknown location from October to December 2013. In accordance with a court judgment in November 2013, alternate weekly custody was arranged and the girl lived with her father.

Then, on 4 August 2017, the little girl was forcibly removed for a second time by three police officers; three private security guards from the Regional Government of Bizkaia and by employees of Children's Services, under Regional Order no. 37781/2017. The father had reported Mrs Costumero to the local authority's Children's Services for influencing his daughter to resist spending time with him, and the local authority took action. The local authority took over guardianship and the girl, who is now eight years old, currently lives with her father and paternal grandparents.

We are informed that the girl is allowed to see her mother twice a week. Every week she suffers a traumatic separation from her mother, from whom she does not want to be separated. This arrangement has led to the girl displaying social withdrawal; fear of strangers; she suffers nightmares and displays a range of behaviours typical of children and teenagers who are suffering similar trauma. Furthermore, we are informed of three referrals for abuse made to the Cruces hospital in Bizcaia for injuries inflicted by her father. Mrs Costumero herself had also reported the girl's father for an episode of domestic abuse, which was not proven.

We are informed that Mrs Costumero has been labeled with so-called "parental alienation" (PA) and that she has been forced to submit to psychological, social and

educational procedures and treatment in order to “cure” her. Mrs Costumero is permitted to see her daughter two days per week for a total of four hours, except for the possibility of seeing her on weekends or taking her on holiday, and always in the presence of a contact supervisor.

The mother and daughter are currently awaiting an urgent judicial intervention (under article 158 of the Spanish Civil Code), lodged on 2 October 2019, with a hearing set for 17 December 2019. However, the hearing had to be adjourned because Children’s Services presented its documents, which amounted to more than two hundred binders, just twelve hours before the court hearing.

We are informed that these facts have led to four members of the local authority’s Children’s Services being charged by the Sixth Section of the Provincial Court with the crime of malfeasance, for having acted without the judge’s authorisation, and for having deprived a child from seeing her mother, who had legal shared custody of her daughter.

Without pre-judging the outcome of the above facts, we wish to express our profound concern over the physical and mental wellbeing of Mrs Costumero and her daughter. We wish to call Your Excellency’s Government to the international standards and norms which protect the rights of the aforementioned victims, which are being violated, such as the fundamental right to physical and psychological wellbeing, the best interests of the child, and the right of every woman to a life free from violence.

We are concerned that many administrative and judicial decisions reflect a discriminatory interpretation of national legislation by judges but also by social workers, based on prejudices and gender stereotypes. We wish to point out that a lack of gender awareness among judges can be reflected in processes which attribute less value to the testimony or statements of women as parties or witnesses; the adoption by judges of ideas or rigid expectations about what is considered appropriate behaviour or reaction by female victims; erroneous interpretation and defective application of the law. Therefore, we are concerned that gender stereotypes and prejudices and the lack of a gender perspective and an intersectional analysis of discrimination against women pose an obstacle to access to justice for women and girl victims, preventing them from obtaining effective legal recourse (see the letter sent in June 2019 (AL ESP 5/2019) in relation to the application of criminal sentences in the country, which are based on gender stereotypes and prejudices).

Furthermore, we are concerned about the use of so-called parental alienation (PA) against mothers and the lack of credibility which some courts give to the testimony of children when the mother reports child abuse by the father. Current and future legislative mechanisms do not adequately address the level of examination required to determine whether domestic abuse is involved when child custody is being decided.

In relation to the allegations listed above, please find attached the **Annex of references of international law on human rights**, which summarises the relevant international instruments and principles.

It is our duty, in accordance with the mandates granted to us by the Human Rights Council, to try to clarify the allegations brought to our attention. Therefore, we would be very grateful to have your cooperation and your responses to the following issues:

1. Please provide any additional information or comments relating to the aforementioned allegations.
2. Please inform us of any measures taken by the courts or social services to ensure that the girl can be reunited with her mother, in accordance with human rights standards which emphasise the best interests of the child.
3. Please provide detailed information, and the outcomes if available of any investigation, examination or other form of enquiry that may have been completed in relation to the alleged acts of violence against the victims mentioned in this letter.
4. Please provide detailed information about the measures adopted by the State to protect human rights, in particular the physical and mental wellbeing of Mrs Costumero and her daughter.
5. Please provide information about the measures adopted by the Government to guarantee legal support to the victim and her family members, and health care, and psychological support necessary to deal with the consequences of the alleged abuse.
6. Please provide information about the measures adopted by the Government to guarantee due diligence in cases of violence against women and girls, as well as measures to prevent and combat sexual violence against women and girls. Please provide information and any comments you may have about the aforementioned allegations.

We would be grateful to receive a response within sixty days. If we do not receive a response within this time frame, this letter and any response received from Your Excellency's Government will be published on the public website. These will also be available subsequently in the regular report which will be presented to the Human Rights Council.

In anticipation of your response, we would urge your Excellency's Government to adopt all necessary measures to protect the rights and freedoms of the aforementioned individuals and to investigate, prosecute and impose appropriate sanctions on any person found to be responsible for the alleged violations. We also urge the Government to take effective measures to avoid such events from being repeated in the future.

Please accept, Your Excellency, the expression of our most distinguished consideration.

Dubravka Šimonović  
Special Rapporteur on violence against women, its causes and consequences

Elizabeth Broderick  
President/Rapporteur of the Working Group on discrimination against women and girls

## **Annex**

### **References to international law on human rights**

We wish to draw the attention of your Excellency's Government to the Convention on the Elimination of all forms of Discrimination Against Women, in particular the right to equality and freedom from discrimination (article 2) which includes the right to a life free from violence, in accordance with the Committee's conclusion in its recommendations 19 and 35. The right to be protected from discrimination by the justice system (article 2, paragraph c) and the right to equality and freedom from discrimination by authorities and institutions (article 2, paragraph d).

In particular, General Recommendation No. 35 of the Committee for the Elimination of all forms of Discrimination Against Women (henceforth the CEDAW Committee) on gender-based violence against women emphasises that member States must develop an effective and accessible legal framework and judicial services in order to counter all forms of gender based violence against women. They must protect victims and survivors of gender based violence against women and ensure that they have access to justice and effective remedy. Furthermore, States must ensure access to financial support, either free low cost, high quality legal support, medical, psychosocial and guidance services, education, affordable housing and property, childcare, training and employment for female victims and survivors and their families. Legal remedy, protection and support measures and services for victims should be accessible for all women, particularly those affected by intersectional forms of discrimination, and must take into account the material needs of their children and other dependants, and must be available in the whole of the party State and be available independently of their residence status.

In its General Recommendation no. 33 on women's access to justice, the Committee recognises that gender stereotypes and prejudices in the judicial system impede access to justice in all areas of law and can particularly affect female victims and survivors of violence. The Committee believes that judges frequently adopt rigid norms about what constitutes appropriate female behaviour and punish those who do not adhere to these stereotypes, for example in criminal law, the Committee recognizes the serious consequences of such attitudes, where a failure to hold perpetrators legally accountable violates women's human rights and perpetuates a culture of impunity.

The experts remind Your Excellency's Government of a similar case, that of "Angela González C/España", CEDAW judgment published on 15 August 2014, which resulted in a fine for Spain, for the killing of a young girl. "The Committee observes that the overriding objective of the court, social services and expert psychologists during the Court ordered visitation schedule was to normalize the relationship between father and daughter, despite the reservations expressed by these services about F.R.C's behaviour. Their decisions failed to reveal any interest in evaluating the benefits or risks to the child of the visitation schedule which was imposed upon her. We also observe that the decision to proceed to a schedule of unsupervised visitation was taken without prior consultation with the mother and her daughter, and that F.R.C's continuing failure to pay child support was not taken into account in this framework. All these elements reflect a pattern of behaviour conforming to a stereotyped notion of visitation rights based on formal equality which, in this case, gave clear advantages to the father despite his abusive behaviour and minimised the situation of the mother and daughter as victims of violence, placing them in danger. In this respect, the Committee reiterates that in affairs of child custody and

visitation rights, the best interests of the child must be an essential consideration, and that when national authorities make decisions they must take into account any context of domestic violence. 9.5 The Committee believes that initially the authorities of the party State acted to protect the child within a context of domestic violence. “The Committee emphasizes that stereotypes affect a woman’s right to an impartial judicial process and that the judiciary should not apply inflexible standards on the basis of preconceived notions about what constitutes domestic violence. In this particular case, the Committee believes that the authorities of the State, when deciding to impose a schedule of unsupervised visitation, applied stereotyped and therefore discriminatory notions within a context of domestic violence, and failed in their obligation to exercise due care and attention, breaching their obligations in relation to Articles 2a), d), e) and f); 5 a); and 16, paragraph 1d of the Convention. General recommendation no. 19 on violence against women, paragraphs 6 and 7, *Ibid*, paragraph 9.7...”

In the report of their official visit to Spain in 2014 (A/HRC/29/40/Add.3), the Working Group on the question of discrimination against women and girls expressed its concern about the case of “Ángela González C/ España and that the Government has not implemented the clear recommendations put forward by the Committee. In fact, its response to the Committee appeared to indicate that it had not understood the State’s responsibility to exercise due diligence. Furthermore, various concerned parties informed the Working Group during its visit that public officials responsible for enforcing the law, including social workers, police and judges, continued failing to pay the necessary attention to evidence presented by women showing a risk of violence against them and their children because of persistent negative stereotypes about women and ineffectiveness of training programmes with a gender perspective. Women victims continue to be disbelieved and labelled as manipulators and are often accused of making false allegations. This can adversely affect the issuing of protection orders.

Various interested parties also informed the Working Group that the best interests of the child is often interpreted as requiring the normalization of their relationship with the father, and visitation and custody is frequently awarded to fathers despite evidence that they have committed acts of domestic violence. Furthermore, so-called “parental alienation” continues to be used to remove custody of children from the mother and transfer it to the father accused of domestic violence who seeks custody for this reason, very often with the support of a fathers’ rights group. “Parental alienation” continues to be recognised in the justice system, despite an order made in 2013 by the General Council of Judicial Power, which, in its Legal Guide, rejects the validity of this pseudoscientific theory and firmly opposes its use in cases of gender based violence. The Working Group cannot express strongly enough its concern that the lessons of the aforementioned case presented before CEDAW have not been fully incorporated into legislation and practice. It emphasises the need for all the recommendations of the Committee for the Elimination of Discrimination against Women to be applied fully and immediately.

Furthermore, the Judgment of the Interamerican Court of Human Rights in the case of *Rosendo Cantú & other v Mexico* states: “201. The obligation to protect the best interests of children during any process which involves them can imply, *inter alia*, the following: i) supply information and implement appropriate procedures, adapting them to individual needs, ensuring they always have access to qualified support and so on, according to their needs; ii) take particular care in cases where children have been victims of crimes such as sexual abuse or other forms of abuse, to ensure that their right to be listened to is exercised while ensuring their full protection, being careful to ensure that professionals have the appropriate training and that interview rooms are welcoming rather than

intimidating, hostile, insensitive or inadequate, and iii) ensure that children are not questioned any more times than necessary to avoid, as far as possible, revictimization or trauma to the child.

The Committee of Experts of the Mechanism for the Implementation of the Interamerican Convention for Preventing, Punishing and Eradicating Violence Against Women (MESECVI) recommended in its 2014 Declaration on Violence against Women, Girls and their Sexual and Reproductive Rights, that “early and exhaustive investigations should be undertaken to establish the existence of violence, taking into account the context of coercion, using skilled investigators and explicitly prohibiting evidence based on the victim’s conduct in order to infer consent, such as failure to resist, sexual history or withdrawal of allegations during the process or the devaluing of testimony based on so called Parental Alienation (PA), in order to combat abusers’ impunity.

The Convention on the Rights of the Child, ratified by Spain in 1990, states at Article 3 that in all actions concerning children, whether taken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration. It also includes the right of the child to not be discriminated against because of their status as a child (article 2), the right to be heard and the right for their opinion to be taken into account (article 12), the right to protection and care (article 3.2), the right to development (article 6) the right not to be arbitrarily separated from their mother (article 9), the right to be protected against all forms of abuse, including familial child sexual abuse (article 19). It should also be emphasised that article 9 of the Convention on the Rights of the Child, which enshrines the right of children not to be separated from their parents, expressly excludes situations of violence, neglect and abuse.

The Council of Europe Convention on the prevention and fight against violence against women and domestic violence ratified by Spain establishes measures for prevention, protection and redress for gender based violence. Girls aged under 18 years fall under the definition of woman in this Convention (article 3). Article 7 part 2 establishes that “Parties shall ensure that policies referred to in paragraph 1 place the rights of the victim at the centre of all measures and are implemented by way of effective co-operation among all relevant agencies, institutions and organisations.” Article 12 part 3 establishes that “Any measures taken pursuant to this chapter shall take into account and address the specific needs of persons made vulnerable by particular circumstances and shall place the human rights of all victims at their centre.” Article 26 of the Convention establishes States’ obligation to protect and support child witnesses of violence. “1 Parties shall take the necessary legislative or other measures to ensure that in the provision of protection and support services to victims, due account is taken of the rights and needs of child witnesses of all forms of violence covered by the scope of this Convention. 2. Measures taken pursuant to this article shall include age-appropriate psychosocial counselling for child witnesses of all forms of violence covered by the scope of this Convention and shall give due regard to the best interests of the child.”

In a joint declaration in May 2019 ([https://www.ohchr.org/Documents/Issues/Women/SR/StatementVAW\\_Custody.pdf](https://www.ohchr.org/Documents/Issues/Women/SR/StatementVAW_Custody.pdf)), the experts also discouraged the abusive use of “parental alienation” and similar concepts and terms invoked to remove custody of children from the mother and award it to the father accused of domestic violence, completely ignoring the possible risks to the child. In the same spirit, the Committee of Experts of the Mechanism for the Application of the Convention of Belém do Pará (MESECVI), in its 2014 Declaration on violence against women and girls and their sexual and reproductive rights,

recommended explicitly prohibiting “evidence based on testimony which has been discredited on the grounds of so-called parental alienation” when investigating the existence of violence. The experts also expressed their concern over the inclusion of “parental alienation” in the World Health Organization’s Diagnostic and Statistical Manual of Mental Disorders (CIE-110 as a “relational problem between the caregiver and child” which could be used inappropriately if applied without taking into account the aforementioned international norms which require that violence against the woman is taken into account and without ensuring that whatever visitation rights or custody awarded did not put the rights and safety of the victim or her children in jeopardy. Accusations of alienation by abusive fathers against mothers should be viewed as a continuation of power and control through state organisations and agents, including those which decide on child custody.

Furthermore on 15 February 2021 the World Health Organization removed parental alienation from its classification index. The WHO declared that it had removed this pseudoscientific term from its classification index ICD 11 “as it is a judicial term and issue. Its inclusion for coding purposes in the ICD-11 will not contribute to valid or meaningful health statistics.”