THE LONDON SCHOOL OF ECONOMICS AND POLITICAL SCIENCE

LSE CENTRE FOR WOMEN, PEACE + SECURITY

Reflection on Recent Developments in International Law on Violence Against Women and Girls

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With support from the Joseph Rowntree Charitable Trust, Lisa Gormley, a Policy Fellow in the LSE Centre for Women, Peace and Security has been able to undertake a comprehensive review of developments in international human rights law relating to violence against women.

The following legal updater centres on two significant cases in international human rights law relating to violence against women and girls – the case of *Linda Loaiza López Soto v Venezuela* and *Volodina v Russia*.

Part I of the updater focuses on the specifics of these two cases and how they have developed legal understanding and recognition of violence against women as a form of torture and cruel, inhuman or degrading treatment (also known as ill-treatment).

Part II focuses in on the key trends in the legal responsibility of states for the actions of non-state actors.

Part III focuses on key trends in recommendations to states on how to address violence against women centring the key outcomes of the *López Soto* and *Volodina* cases.

Content warning: This case deals with topics that are especially grave and may cause trauma invoked by memories of past abuse. If you have experienced violence and need assistance, please refer to this **list of country help lines provided by UN Women**.

Contents

PART I

Introduction

The summer of 2019 was a significant moment to end a period of taking stock on developments in human rights law. In two cases on violence against women by non-state actors in the Inter-American Court on Human Rights (*Linda Loaiza López Soto v Venezuela*) and the European Court of Human Rights (*Volodina v Russia*), some long-running discussions on aspects of human rights law have received compelling and definitive answers.

These cases both cited among the authorities underpinning their judgments the relatively new General Recommendation 35 on violence against women by the Committee on the Elimination of Discrimination Against Women (CEDAW Committee), which was published in 2017. Hence these three authorities together confirm in more specific detail the content of women's and girls' human rights, particularly the rights not to be subjected to torture and ill-treatment and the right to equality before the law. These three authorities give clear and detailed States' obligations to prevent, investigate, prosecute and provide reparation for crimes of violence against women.

As with any jurisprudence, the two judgments, *López Soto* and *Volodina*, are a complex interweaving of facts and legal principles.

A. The case of Linda Loaiza López Soto v Venezuela (16 November 2018)

Linda Loaiza López Soto, a young woman aged 18, was abducted and held captive, mostly handcuffed, and subjected to severe physical, psychological and sexual violence, control and coercion amounting to slavery for several months. During this time, she was raped repeatedly and subjected to severe physical assaults. Even though the name and mobile phone number of her kidnapper was provided to police on the day that she disappeared, police failed to follow up effectively with the investigation or to take steps to find her.

The perpetrator alleged to police and concerned bystanders that this was "a relationship" which was having "problems" and this explanation was accepted. The alarm was raised only when she managed to escape from the room to the balcony and shout to get the attention of neighbours. There were significant shortcomings with the rescue of Linda, and during the investigation and prosecution of the perpetrator state prosecutors re- victimised Linda through traumatic and discriminatory court proceedings.

B. The case of *Ms Volodina* v *Russia*

Ms Volodina was subjected to violence over three years by her former partner, referred to in the case as S. He assaulted, kidnapped, stalked, threatened, stole from, and intimidated her. When she was pregnant, he assaulted her so severely that the pregnancy was compromised and on medical advice, she had an abortion. Her complaints to the police were treated in a desultory manner – for example, S's tampering with her car brakes was treated as a minor criminal damage matter, rather than an attempt to cause serious injury or death. S was not convicted of any of the crimes she reported, and no protective measures were used. Eventually Ms Volodina legally changed her identity in order to stop S from finding her.

C. General Recommendation 35

On 14 July 2017, the CEDAW Committee adopted General Recommendation 35 (GR35) on gender-based violence, an update to General Recommendation 19 (GR19). Although GR35 pre-dates *López Soto* and *Volodina*, it is timely to look at GR35 alongside *López Soto* and *Volodina* because in these cases, both courts recognised GR35 among the other legal authorities which informed their decision, thus bringing consistency across international and regional human rights systems. This is particularly significant because in GR35, the CEDAW Committee recognised that the prohibition of violence against women in international human rights law had become a principle of customary international law, therefore binding on all states, irrespective of their treaty obligations.

Together, these three detailed statements of international human rights law endorse and confirm absolutely the legal principle that states can be responsible under human rights law for the actions of non-state actors. In many ways, no new principles have been developed, rather, what we have is a clearer view of the detail of the factual situations which show a violation of human rights – how and why women and girls have been failed by states. This close factual analysis of the situations when states bear legal

responsibility provides a clear and practical indication of what states need to do better in order to abide by their legal responsibilities to prevent, investigate, prosecute and remedy acts of violence against women. GR35, *López Soto and Volodina* confirm that states are also legally responsible for their failures to transform social norms in order to make gender-based violence unacceptable and therefore address its root causes.

D. The basic principle of state responsibility for the actions of non-state actors in international human rights law

The principle that states can be legally responsible for the criminal acts of non-state actors was first elaborated in the case of *Velásquez Rodríguez v Honduras* (Inter-American Court, 29 July, 1988) that stated that authorities must create "a State apparatus capable of ensuring rights." Angel Manfredo Velásquez Rodríguez, a student, was arrested without a warrant, tortured and subjected to enforced disappearance, and his ultimate fate is unknown. The Court found that the state was responsible for failing to investigate what had happened to this person effectively.

Until the *Velásquez Rodríguez* case, international human rights law only concerned itself with the actions of state officials abusing their power to violate human rights. The importance of this case was that the state was found responsible under human rights law, irrespective of whether those who perpetrated the enforced disappearance were state officials or paramilitaries – the state's responsibility is to undertake an effective investigation, prosecution and provide remedies when human rights violations are committed. This principle was applied by the Inter American Commission in 2001 in the domestic violence case *Maria da Penha Maia Fernandes v Brazil*.

E. Controversies and vexed questions: is violence against women a form of torture or ill-treatment, even when committed by a private citizen?

This is a complex area of law. The principle of state responsibility for the actions of non-state actors has clarified that states are responsible for failing to prevent torture or ill-treatment when they fail to intervene to protect women and girls known to be at risk of gender-based violence, or to investigate and prosecute an act that has occurred. However, the definition of torture in international criminal law has not kept pace with this interpretation – police officials who fail in their duties to prevent violence against women known to be at risk, or public prosecutors who fail to investigate and prosecute crimes of violence against women, are not considered to be guilty of the crime of torture. Nor are the non-state actors who inflict severe pain and suffering on women and girls – they might be prosecuted for crimes of assault, sexual crimes, or murder, but not the crime of torture.

Since the 1990s, feminist legal scholars and human rights advocates have identified various types of violence against women as torture and ill-treatment. This recognition of violence against women has been and continues to be important for the following:

- to emphasise that violence against women is a serious crime;
- to recognise the severity of pain and suffering caused to women and girls. Torture has been defined as a more severe form of cruel, inhuman and degrading treatment, illegal under international human rights law and international criminal law;
- to stigmatise the perpetrator and his crimes: torturers are seen, like those who commit genocide or slavery as "enemies of all humanity" [1]
- to recognise the gendered nature of violence, that men exercise power over women in patriarchal societies (i.e all societies).

Identification of a crime as torture also has consequences in terms of universal jurisdiction under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Crimes of torture (but not cruel, inhuman and degrading treatment – also known as ill-treatment) are subject to universal jurisdiction, that is, any state can investigate and prosecute this crime, no matter where it was committed, and irrespective of whether one of its nationals was the perpetrator or the victim. This is an important expression of the gravity of the crime, as well as providing the legal basis for the possibility for all states to take action to investigate and prosecute all individual perpetrators of crimes of violence against women.

Although gender-based violence, in the form of rape by a state official, had been recognised as a form of torture

[1] Paragraph 147, Prosecutor v. Anto Furundzija, Trial Chamber Judgment, 10 December 1998, (IT-95-17/1-T).

in the case of *Aydin v Turkey* in the European Court of Human Rights (ECHR) in 1995, domestic violence was recognised as a form of cruel, inhuman and degrading treatment - a violation of human rights but not as severe as torture - in the case of *Opuz v Turkey* (paragraph 161) in 2009. In this case, the court drew attention to the "consensus and common values emerging from the practices of European States and specialised international instruments, such as the CEDAW Convention, as well as giving heed to the evolution of norms and principles in international law through other developments such as the Belém do Pará Convention, which specifically sets out States' duties relating to the eradication of gender-based violence."(para 164)

In *López Soto*, the court referred to "the subordination and domination between men and women" [paragraph 181] and that violence against women is committed for the "patriarchal purpose" of enforcing men's gendered authority over women. In GR35, the CEDAW Committee made the same points:

> "The Committee regards gender based violence against women as being rooted in gender-related factors, such as the ideology of men's entitlement and privilege over women, social norms regarding masculinity, and the need to assert male control or power, enforce gender roles or prevent, discourage or punish what is considered to be unacceptable female behaviour. Those factors also contribute to the explicit or implicit social acceptance of gender-based violence against women, often still considered a private matter, and to the widespread impunity in that regard."[2]

The Inter-American Court also recognised in *López Soto* that the experience of severity should be assessed according to the victim's experience, and therefore, in the present case, that these successive acts of violence by a non-state actor should be prosecuted as torture.

Regrettably, in *Volodina*, the ECHR did not make the same recommendation, although Judge Paulo Pinto de Albuquerque made a separate opinion in which he recommended that domestic violence, including in Ms Volodina's case, be considered as an act of torture:

> Taking into account all of the circumstances of the case, which display an accumulation of aggravating factors of harmful masculinity leading to the grave infringement of the applicant's dignity and physical and psychological integrity, as well as the purposive conduct of the perpetrator, I wonder what more is needed to reach a finding of torture under Article 3.[3]

The approach of the Inter-American Court and Judge Pinto de Albuquerque is consistent with the Committee against Torture's General Comment 2 (paragraph 18) and the provisions of the CEDAW Committee's GR35: universal adherence to this approach would strengthen understanding of all forms of violence against women as profoundly illegal in all contexts, particularly, to stigmatise perpetrators as torturers in criminal law.

F. Threats of violence: a form of ill-treatment and a trigger to investigate

In both *López Soto* and *Volodina*, acts of physical violence were accompanied by threats. In *Volodina*, the resulting fear, anxiety and feeling of powerlessness was sufficiently serious to count as inhuman treatment in the majority judgment, and Judge Pinto de Albuquerque recognised the threats as a form of torture in his separate opinion. Judge Pinto de Albuquerque also recognised that the State's failure to take any meaningful action to investigate, prosecute or otherwise prevent violence in itself exacerbated the severity of threats – because the perpetrator was able to show clearly that he was able to act with impunity, threats were likely to become reality, and this increases the harmful impact of threats on the psychological well-being of the woman who is targeted.

In *Volodina*, threats were considered as the prompt which should trigger the authorities to investigate, as there is a close correlation between threats being made and violence being committed. In *López Soto*, the court noted that a woman or girl being reported missing should be the prompt for diligent searching for the missing person and full investigations to begin urgently.

[2] General Recommendation 35, paragraph 19.

[3] Paragraph 10, separate opinion of Judge Paulo Pinto de Albuquerque

PART II

Key trends in understanding of the legal responsibility of states for the actions of non-state actors

The basic principle that states can be legally responsible for the acts of non-state actors has been developed and refined over time and has been confirmed and developed further in the cases of *Volodina*, *López Soto,* and also in GR35.

These developments are:

- the impunity of perpetrators for crimes of violence against women acts as state encouragement for more violence;
- the impact of violence against women on individuals and societies is well known – there is no excuse for states to continue to fail to act to eradicate it; indeed, the more that is known about the practice of violence against women, the greater the responsibility is on states to take effective action to eradicate it.

A. States' failure to act is encouragement to perpetrators

In 2009, in the case of *Opuz v Turkey*, the European Court of Human Rights said very briefly that persistently inadequate responses of the police, prosecutors and judges to a perpetrator of domestic violence indicated "a certain degree of tolerance, and had no noticeable preventive or deterrent effect on the conduct of the perpetrator." (paragraph 170)

In his 2016 report as UN Special Rapporteur on torture, Juan Méndez developed this principle. He said that when states permit impunity for acts of violence against women, it acts as a form of permission by the state, which encourages perpetrators to persist in committing crimes of violence against women:

> Indifference or inaction by the State provides a form of encouragement and/or de facto permission. This principle applies to States' failure to prevent and eradicate gender-based violence.[4]

That encouragement and *de facto* permission is given, not only when states fail to take action on individual perpetrators, but also, when states fail to take effective action to transform social attitudes which are the root causes of violence against women:

> Societal indifference to or even support for the subordinate status of women, together with the existence of discriminatory laws and patterns of State failure to punish perpetrators and protect victims, create conditions under which women may be subjected to systematic physical and mental suffering, despite their apparent freedom to resist. In this context, State acquiescence in domestic violence can take many forms, some of which may be subtly disguised. States' condoning of and tolerant attitude towards domestic violence, as evidenced by discriminatory judicial ineffectiveness, notably a failure to investigate, prosecute and punish perpetrators, can create a climate that is conducive to domestic violence and constitutes an ongoing denial of justice to victims amounting to a continuous human rights violation by the State. In cases where States are or ought to be aware of patterns of continuous and serious abuse in a particular region or community, due diligence obligations require taking reasonable measures to alter outcomes and mitigate harms, ranging from the strengthening of domestic laws and their implementation to effective criminal proceedings and other protective and deterrent measures in individual cases. Domestic violence legislation and community support systems must in turn be matched by adequate enforcement. Special attention must be paid to religious or customary law courts that

[4] Report of the Special Rapporteur on torture, UN Doc A/HRC/31/57, 5 January 2016, paragraph 11.

> may tend to downplay and inadequately address domestic violence.[5]

After this analysis by the Special Rapporteur on torture in 2016, the Committee on the Elimination of Discrimination against Women confirmed his approach: this principle is a key feature of CEDAW's GR35 (paragraph 24(b) in 2017:

> The failure of a State party to take all appropriate measures to prevent acts of gender-based violence against women in cases in which its authorities are aware or should be aware of the risk of such violence, or the failure to investigate, to prosecute and punish perpetrators and to provide reparations to victims/survivors of such acts, provides tacit permission or encouragement to perpetrate acts of gender-based violence against women. Such failures or omissions constitute human rights violations.

In 2019, the *López Soto* and *Volodina* judgments both referred to Juan Méndez' report on gendered aspects of torture, as an authority which guided their judgment. This is significant because the reports of UN Special Rapporteurs tend to be considered as "soft law" – not binding in themselves on states. However, reports of Special Rapporteurs are valuable because they provide a detailed analysis of human rights topics, in a level of complexity that is not present in jurisprudence or the general comments of treaty bodies. The fact that the *López Soto and Volodina* judgments take the Special Rapporteur's report as an authority makes its analysis more persuasive and compelling legally.

B. States know well that violence against women is happening and is a very serious problem: the more state officials know, the heavier the legal duty is to act

A second development in the understanding of state responsibility for the actions of non-state actors is the idea that, as time goes on, there is more awareness of the prevalence of violence against women, and the persistent risk of violence escalating if effective action is not taken: as this knowledge increases, there is a heightened duty on state officials to prevent violence.

The case of *Volodina* is instructive. In its listing of relevant international material on the issue of violence against women in Russia, the ECHR elaborates on successive studies by non-governmental organisations, including the Human Rights Watch report *"I Could Kill You and No One Would Stop Me": Weak State Response to Domestic Violence in Russia*. The ECHR also lists the report published by the Special Rapporteur on violence against women following her mission to Russia in 2004 and repeated recommendations by the Committee on Economic, Social and Cultural Rights and the CEDAW Committee to the Russian Federation over a period of years on how to address gender-based violence. Finally, the ECHR refers to a case that the CEDAW Committee ruled on in 2017, brought by Ms O.G., a Russian woman[6] about the domestic violence that she was subjected to, and the State's failure to prevent, investigate and prosecute.[7]

In its decision on its application of the law, the ECHR took stock of this accumulation of information, and said:

> In the Court's opinion, the continued failure to adopt legislation to combat domestic violence and the absence of any form of restraining or protection orders clearly demonstrate that the authorities' actions in the present case were not a simple failure or delay in dealing with violence against the applicant, but flowed from their reluctance to acknowledge the seriousness and extent of the problem of domestic violence in Russia and its discriminatory effect on women. By tolerating for many years a climate which was conducive to domestic violence, the Russian authorities failed to create conditions for substantive gender equality that would enable women to live free from fear of ill-treatment or attacks on their physical integrity and to benefit from the equal protection of the law. (paragraph 132)

Reading this section of the ECHR judgement, there is a strong impression of united and authoritative, informed and insightful voices indicating the shortcomings in the State response, and how to remedy that response, again and again, giving rise to the question: what does it take for states to step up to their obligations?

States have been told consistently since the early 1990s about these obligations under international human rights law to eradicate violence against women,

[5] Report of the Special Rapporteur on torture, UN Doc A/HRC/31/57, 5 January 2016, paragraph 56.

[6] *O.G. v. the Russian Federation* (Communication No. 91/2015, 6 November 2017)

[7] Volodina para 61-66.

as well as the costs in terms of pain and suffering of women and girls, but also to society as a whole - to the well-being of children, families, communities, the burden on health services, the loss of economic and human potential.[8]

> Violence against women impoverishes individual women and their families, as well as their communities, societies and nations at many levels. It reduces the capacity of victims/survivors to contribute productively to the family, the economy and public life; drains resources from social services, the justice system, health-care agencies and employers; and lowers the overall educational attainment, mobility and innovative potential of the victims/survivors, their children and even the perpetrators of such violence.[9]

However, political and economic investment in prevention and effective response by states has been negligible in comparison with these costs, as *Volodina* and *López Soto* show.

PART III

Key trends in recommendations to states on how to address violence against women

Given the reinforcement of the principles of state responsibility for preventing, investigating, prosecuting and providing remedy for all forms of violence against women, and the recognition of crimes of violence against women as acts of torture or ill-treatment, the detail of what states must do in practice to discharge their obligations under international human rights law is becoming increasingly clear and specific. It is all the more important to publicise these recommendations, so that states can be held to account for their failures to ensure women's and girls' rights not to be subjected to torture or ill-treatment, and their right to equality before the law.

A. All forms of domestic violence must be defined as crimes

The general principle that states should establish a criminal law framework was recognised in GR19 and the UN General Assembly Declaration on Violence against Women. The ECHR in *Volodina* confirmed this, and further specified that domestic violence law should be specifically drafted to make it clear that domestic violence is a crime. The ECHR noted that amendments to the general criminal law on assault in Russia were not sufficient – they required at least two episodes of assault in which "minor bodily harm" was caused within a 12-month period to be actionable.

The ECHR specified that one single incident should be prosecutable as domestic violence, and that crimes of domestic violence are not only physical assaults - "domestic violence may take many forms, some of which do not result in physical injury – such as psychological or economic abuse or controlling or coercive behaviour."[10] Russian domestic law also requires the victim to initiate the case, rather than the public prosecutor: the ECHR repeated the principles from existing jurisprudence that it is in the public interest for state prosecutors to investigate violence against women, and that it should not be considered "a private matter."

B. Clear criminal law on rape and sexual violence

GR 35 requires that states:

> Ensure that sexual assault, including rape, is characterized as a crime against the right to personal security and physical, sexual and psychological integrity and that the definition of sexual crimes, including marital and acquaintance or date rape, is based on the lack of freely given consent and takes into account coercive circumstances.[11]

This paragraph cites *Vertido v Philippines* and *R.P.B. v Philippines*, but another case, *S.V.P. v Bulgaria*, is also significant. In this case, a rapist penetrated the child victim's anus using his finger and attempted to rape the

[8] See "the Economic Costs of Violence Against Women: An Evaluation of the Literature Expert brief compiled in preparation for the Secretary-General's in- depth study on all forms of violence against women by: Tanis Day, PhD Katherine McKenna, PhD Audra Bowlus PhD." 2005: https://www.un.org/womenwatch/daw/vaw/expert%20brief%20costs.pdf

[9] UN Secretary-General's in-depth report on violence against women, 2006, UN Doc A/61/122/Add.1, 6 July 2006, paragraph 171

[10] Volodina, para 81

[11] General Recommendation 35, para 29(e)

child vaginally using his penis. The CEDAW Committee said that this crime of penetration using a finger should have been prosecuted as rape, and that it was a form of judicial stereotyping to permit a plea bargain to a less serious criminal charge of "molestation." The CEDAW Committee also criticised plea-bargains where acts of attempted rape are dealt with by the criminal justice process as "debauchery" – the mother of the child bringing the application to the CEDAW Committee complained that:

> the whole attitude of the State towards the severe violations of women's rights that sexual violence represents, is conditioned by the deep ideological stereotyping of sexual crimes as acts of "debauchery", as crimes against honour. That stereotyping approach also marks the mild punishment for the perpetrator in her daughter's case and the lack of an effective remedy for ensuring compensation for the consequence of the grave violation of her rights.[12]

C. Requirements of effective investigation: survivors' rights to protection from harassment and choice of service providers

In both *Volodina* and *Lopez Soto*, the applicants were subjected to threats and harassment because they had made reports of the violence they experienced to the authorities. In both cases, the courts found that this constituted a further form of violence, as well as a violation of the right to an effective investigation - that the states should have ensured protection from these threats. In the case of *López Soto*, the threats were extended to Linda López Soto's family members.

After her rescue, Linda required many months of medical and psychological care, as well as an investigation of her case. She asked for female medical and police professionals to do this work, as she found men intrinsically frightening. The Venezuelan authorities did not comply with this request, the Inter-American Court found that it was part of the victim's right to a remedy to be attended by professionals of the gender of her choosing.

D. What constitutes an effective prosecution?

In cases where a woman or girl is killed, the duty on the state to ensure an effective prosecution is not satisfied by conducting an investigation and prosecution which fails to bring a perpetrator to justice. In *Trujillo Reyes v Mexico*, an alleged perpetrator was investigated and prosecuted, but the trial verdict found to be unsafe due to procedural irregularities and the defendant was therefore acquitted. Although noting that the duty of due diligence in investigating crimes is one of conduct and not result, the CEDAW Committee noted that after this acquittal the State party did "not appear to have carried out any activity with a view to clarifying the circumstances of the crime or identifying the perpetrator, such as opening new lines of investigation" and therefore breached the duty to investigate.[13]

E. Transformative remedies to deal with root causes of gender-based violence

GR35 draws on previous jurisprudence, particularly *Gonzalez, Monreal and Monarrez v Mexico,* known as the Cottonfield case, in requiring that reparations be transformative, that is, that reparations deal with the root causes of the violence, particularly the gendered inequalities that allowed the crime of violence to take place. Reparations should also be victim-centred, that is, take the wishes and preferences of the victim into account.

> 33. The Committee recommends that States parties implement the following measures with regard to reparations:
>
> (a) Provide effective reparations to victims/survivors of gender-based violence against women. Reparations should include different measures, such as monetary compensation, the provision of legal, social and health services, including sexual, reproductive and mental health services for a complete recovery, and satisfaction and guarantees of non-repetition, in line with general recommendation No. 28, general recommendation No. 30 and general recommendation No. 33. Such reparations should be adequate, promptly attributed,

[12] SVP v Bulgaria, CEDAW/C/53/D/31/2011, 24 November 2012 Para 3.7

[13] Trujillo Reyes v Mexico, 29 August 2017, CEDAW/C/67/D/75/2014, para 9.3

> holistic and proportionate to the gravity of the harm suffered;
>
> (b) Establish specific funds for reparations or include allocations in the budgets of existing funds, including under transitional justice mechanisms, for reparations to victims of gender-based violence against women. States parties should implement administrative reparations schemes without prejudice to the rights of victims/survivors to seek judicial remedies, design transformative reparations programmes that help to address the underlying discrimination or disadvantaged position that caused or significantly contributed to the violation, taking into account the individual, institutional and structural aspects. Priority should be given to the agency, wishes, decisions, safety, dignity and integrity of victims/survivors.

In the same vein, the Inter-American Court of Human Rights specified detailed reparations to Linda López Soto – but also to her family members, her parents and siblings, for the stress and anxiety caused by her disappearance, rescue and long recovery period. Her parents left their farm in the countryside to accompany Linda during her recovery in Caracas, leaving her youngest siblings in the care of Linda's teenage sister. The Inter-American Court awarded educational grants to all the siblings given the disruption that Linda's situation had brought to all their education and development. The Inter-American Court awarded a particular grant to Linda for her to be able to complete her studies in law abroad.

The Inter-American Court also required that Venezuela design and initiate a module for education for gender equality, based on international human rights law principles, to promote a new culture in society to eradicate violence against women. This module should be named the "Linda Loiaza program" and implemented in all schools, and should be a permanent part of the curriculum, at all levels of education. This recommendation shows the level of ambition that states should have in transforming their societies and making links between the experience of survivors with changes in society as a whole.

F. Stereotyping and access to justice and reparation for violence against women

States parties to the CEDAW Convention are required to eradicate stereotyping by Article 5.

General Recommendation 35 identifies gender stereotypes as both a root cause and a consequence of violence against women (paragraph 26). It emphasises the importance of eradicating stereotyping in a variety of contexts including in education (paragraph 30(b)) and in the media (paragraph 30(d)). It also contains detail about gender stereotyping in laws (paragraph 26(a)) and in the judiciary:

> According to articles 2 (d) and (f) and 5 (a), all judicial bodies are required to refrain from engaging in any act or practice of discrimination or gender-based violence against women and to strictly apply all criminal law provisions punishing such violence, ensuring that all legal procedures in cases involving allegations of gender-based violence against women are impartial, fair and unaffected by gender stereotypes or the discriminatory interpretation of legal provisions, including international law. The application of preconceived and stereotypical notions of what constitutes gender-based violence against women, what women's responses to such violence should be and the standard of proof required to substantiate its occurrence can affect women's rights to equality before the law, a fair trial and effective remedy, as established in articles 2 and 15 of the Convention. (GR 35, paragraph 26(c))

The detail of how judicial stereotypes contribute to violations of women's right to equality before the law are demonstrated in individual communications such as *Angela González Carreño v Spain*, *Isatou Jallow v Bulgaria* and *J.I. v Finland* are also significant for this reason – again, long-term legal cases relating to domestic violence, as a criminal and family law issue. These individual communications follow the detail of how decisions are made in the context of domestic legal proceedings, which often last several years, the patterns of judicial stereotyping are thrown into bright detail.

The key case is *Angela González Carreño v Spain*. Angela González Carreño wanted to protect herself

and her child Andrea from the violence and harassment of her ex-husband F.R.C., the father of Andrea. The marriage ended when Andrea was three years old. F.R.C. used contact visits with his daughter as opportunities to physically attack his ex-wife Angela. He also used his contact with Andrea to insult Angela, to ask demanding and inappropriate questions about Angela's new life – something which was confusing and upsetting for Andrea.

When Angela tried to stop the contact because of the effect it was having on herself and Andrea, very little action was taken about the on-going violence perpetrated by F.R.C. Despite Angela making more than 30 reports of violence to the authorities, he was only investigated, convicted, and fined 45 Euros on only one occasion. The family court also took no action to ensure that child support was paid, even though several thousand Euros were owed.

Andrea told the family court that she was afraid of her father, and that he tore up her paintings, and she no longer wanted to see him. Despite this, the family court required contact to continue, and eventually, F.R.C. killed Andrea during a contact visit and then killed himself. Andrea was seven years old when she was killed. The CEDAW Committee found that:

> All of these elements reflect a pattern of action which responds to a stereotyped conception of visiting rights based on formal equality which, in the present case, gave clear advantages to the father despite his abusive conduct and minimized the situation of mother and daughter as victims of violence, placing them in a vulnerable position. In this connection, the Committee recalls that in matters of child custody and visiting rights, the best interests of the child must be a central concern and that when national authorities adopt decisions in that regard they must take into account the existence of a context of domestic violence.

The CEDAW Committee also emphasised the child's right to be heard in legal processes. This heart-breaking case shows that stereotypes need to be comprehensively addressed, so that a clear view of violent behaviour is taken, to prosecute crimes, to intervene with civil law protective measures when women and children are at risk, and to ensure that family law operates to protect the well-being of individuals.

PART IV

Conclusion: close-knitted and consistent legal approaches across the world to eradicate violence against women

With the judgments in *Lopez Soto* and *Volodina*, the Inter-American Court of Human Rights and the European Court of Human Rights incorporate GR 35 of the CEDAW Committee into their practice, providing a close-knitted and consistent legal approach across the world; a more detailed set of recommendations to draw on as binding international human rights law; a more compelling call to action to accelerate measures to eradicate violence against women; and a renewed analysis of survivor-centred justice and reparation.

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