

*Is domestic violence a violation of the right to housing?  
The Dutch case*

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**Abstract:** Domestic violence is a phenomenon that affects women disproportionately and it is nowadays considered as a form of gender-based violence and a violation of women's human rights. Domestic violence is however not recognized as a violation of socio-economic rights, such as the right to housing. The present essay argues that domestic violence should be seen as a violation of women's right to adequate housing. The second purpose of this study is to analyse the status of compliance of the Netherlands with the implementation of the right to housing for female victims of domestic violence. Due to a limited literature on this particular topic, a qualitative field research was carried out in the Netherlands in 2019 in order to grasp the socio-economic implications of domestic violence, so as to employ a reconceiving of housing rights for female victims of domestic violence. After a review of the current international law in relation to both domestic violence and the right to housing (Paragraphs 2 and 2.1), the link between domestic violence and the right to housing will be tackled (Paragraph 3). The Dutch legislation as well as the results of the field research concerning housing rights of female victims of domestic violence will be then summarized and discussed (Paragraphs 4, 5 and 5.1).

[**Keywords:** domestic violence; gender-based violence; socio-economic rights; right to adequate housing; social housing]

## 1. Introduction

Domestic violence is the most widespread phenomenon of gender-based violence (GBV). It targets individuals on the basis of their gender and is exclusively or primarily directed at women as a result of power inequalities between women and men<sup>1</sup>. GBV is a form of violence “that is directed against a woman because she is a woman or that affects women disproportionately”<sup>2</sup> and is a discrimination which inhibits women to enjoy freedoms and rights on a basis of equality with men<sup>3</sup>. GBV is one of the crucial “social

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<sup>1</sup> UN Declaration on the Elimination of Violence Against Women, Resolution 48/104, 20 December 1993 (hereinafter DEVAW).

<sup>2</sup> UN Convention on the Eliminations of Discriminations Against Women General Recommendation No.19, 11<sup>th</sup> session, 30 January 1992, General Comments paragraph 6.

<sup>3</sup> *Ibid.*, Background paragraph 1.



mechanisms by which women are forced into a subordinate position compared with men<sup>4</sup> and is an universal phenomenon affecting women irrespective of class, ethnicity, race, social background, income and sexual orientation. According to UN 2015 statistic, one in three women have experienced physical or sexual violence at some point in their lives and two in three victims of intimate partner or family related homicide are women<sup>5</sup>. The World Health Organization (WHO) has described GBV as a global public health problem of epidemic proportions and has estimated that overall 35% of women worldwide have experienced either physical and/or sexual intimate partner violence and globally, as many as 38% of all murders of women are committed by intimate partners<sup>6</sup>. Those numbers of victims exceed those of war and the most brutal dictatorship of our time<sup>7</sup>. The 2014 EU Agency for Fundamental Rights (FRA) data survey showed that at the EU level just over one in five women has experienced physical and/or sexual violence from either a current or previous partner, whilst 43% of women have experienced some form of psychologically abusive and/or controlling behaviour when in a relationship<sup>8</sup>. Unfortunately, the actual scale of GBV and domestic violence cases against women cannot be fully reflected in the official figures. Collecting reliable and comparable data on violence against women at national and European level is difficult due to the problem

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<sup>4</sup> DEVAW, Preamble.

<sup>5</sup> UN, “The World’s Women 2015”, chapter 6, “Violence Against Women”, available at <https://unstats.un.org/unsd/gender/chapter6/chapter6.html>, consulted on 10 May 2020.

<sup>6</sup> Global and regional estimates of violence against women, prevalence and health effects of intimate partner violence, available at [https://apps.who.int/iris/bitstream/handle/10665/85239/9789241564625\\_eng.pdf;jsessionid=6854695A26A02D50EDF06AEB9E818692?sequence=1](https://apps.who.int/iris/bitstream/handle/10665/85239/9789241564625_eng.pdf;jsessionid=6854695A26A02D50EDF06AEB9E818692?sequence=1), consulted on 10 May 2020.

<sup>7</sup> R. Copelon, “Recognizing the Egregious in the Everyday: Domestic Violence as Torture”, *Columbia Human Rights Law Review*, 25 (1994), p. 292.

<sup>8</sup> European Union Agency for Fundamental Rights (FRA), “Violence against women: an EU-wide survey. Main results report”, 5 March 2014, available at <https://fra.europa.eu/en/publication/2014/violence-against-women-eu-wide-survey-main-results-report>, consulted on 24 November 2021. The FRA survey is the first ever and only, for the time being, EU-wide survey on women's experiences of violence across the Member States of the European Union. It was based on interviews with 42,000 women across the EU, who were asked about their experiences of physical, sexual and psychological violence, including incidents of domestic violence. One of the main key findings of the FRA survey on violence against women is that, for all types of violence, the majority of women do not report their experiences to the authorities.



of under-reporting<sup>9</sup> and differences in the way data are collected at national level<sup>10</sup>. The phenomenon of under-reporting to the police is particularly alarming as it is estimated that only 30% of victims actually report to the police, and only for the most serious incidents of violence<sup>11</sup>.

GBV is often tolerated and accepted, and the phenomenon of victim blaming is common. Although nowadays most legal systems formally punish acts of violence against women, in practice violations against women's human rights are often tolerated and clothed in the protective cloak of tradition or religion. Moreover, States' inactivity - or complicity- not to prosecute cases of domestic violence is displayed by the law-enforcing apparatus and the abuse is effectively condoned by States<sup>12</sup>: often cases are not prosecuted or when they are, they are punished with light sentences<sup>13</sup>.

Until relatively recently, GBV and domestic violence have been matched only by their absence from the human rights agenda as the international legal framework did not address GBV and domestic violence as a human rights violation. However, nowadays domestic violence is understood as a form of discrimination and a violation of women's human rights to bodily integrity, dignity, security, privacy and, in some instances, life.

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<sup>9</sup> E. Gracia, "Unreported Cases of Domestic Violence against Women: Towards an Epidemiology of Social Silence, Tolerance, and Inhibition", *J Epidemiol Community Health*, 58 (2004), p.536.

<sup>10</sup> FRA, "Violence against women: an EU-wide survey. Main results report", 2014. Victims had reported their most serious incidents of partner violence to the police in only 14 % of cases and the most serious incidents of non-partner violence in only 13% of cases. Together with fear, shame, lack of confidence in the authorities' public attitudes towards violence against women, including victim blaming, may deter women from reporting.

<sup>11</sup> V. Jourová Commissioner for Justice, Consumers and Gender Equality, "Istanbul Convention: combatting violence against women, Serious underreporting", Fact sheet, March 2016, available at [https://ec.europa.eu/info/sites/info/files/factsheet-istanbul-convention-16032016\\_en.pdf](https://ec.europa.eu/info/sites/info/files/factsheet-istanbul-convention-16032016_en.pdf), consulted on 21 October 2021.

<sup>12</sup> UNICEF Innocenti Research Centre, "Domestic violence against women and girls", Editorial No. 6, May 2000, Florence, available at <http://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.462.9408&rep=rep1&type=pdf>, consulted on 30 October 2021. Case-law which highlights the phenomenon of State complicity in domestic violence cases: *Talpis v. Italy*, *Maria Fernandes v. Brazil*, *Opuz v. Turkey*. The three States have been condemned on the basis of their passivity and failure to display an appropriate degree of due diligence to prevent, protect and prosecute the incidents of domestic violence. These States displayed negligence and inefficiency to act accordingly to the degree of the offences, therefore showing a tolerant attitude towards acts of violence against women and denying justice to the detriment of the victims. See *Talpis v. Italy* § 141, *Maria Maia de Penha Fernandes v. Brazil* § 44, *Opuz v. Turkey* § 191.

<sup>13</sup> G. Paglione, "Domestic violence and Housing Rights: A Reinterpretation of the Right to Housing", *Human Rights Quarterly*, 28 (2006), 1, p. 120.



Under current international human rights law, domestic violence is defined as including any acts of physical, sexual, psychological or economic violence, including threats of such acts, occurring within the domestic sphere and committed by persons who are related by blood or intimacy with the victims<sup>14</sup>. *Home* and its related human right to housing constitutes one of the main components in the definition of domestic violence. Besides being a severe violation of victims' physical and mental integrity, domestic violence constitutes also a violation of safety, tranquillity and peace of the home. However, while a lot of attention has been paid to domestic violence as a violation of civil and political rights of women, the link to “socio-economic conditions surrounding and leading to the violence”<sup>15</sup> is still not sufficiently addressed.

The recent spreading of the COVID-19 pandemic has highlighted the importance to protect and ensure housing rights to female victims of domestic violence. Indeed, at the onset of the COVID-19 pandemic many governments across the world have adopted *stay at home* policies with the aim to flatten the curve and decrease rates of contagion. Such policies were implemented on the assumption that being at home would equal being safe. Nevertheless, for many women *home* is a place of violence and fear rather than a safe haven. With COVID-19's lockdown restrictions many women have been forced to stay at home with their perpetrators and an increase of domestic violence cases has been registered since the beginning of the lockdown<sup>16</sup>. Due to social distancing policies and lockdown restrictions, reporting acts of domestic violence has become harder. Furthermore, public services such as police, justice and social services were disrupted or inaccessible and limitations on access to phones and helplines, left many women without support and help<sup>17</sup>. The impact of violence on women during the pandemic has been

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<sup>14</sup> Convention on preventing and combating violence against women and domestic violence, Council of Europe, Istanbul 11 May 2011, Article 3, [hereinafter Istanbul Convention].

<sup>15</sup> Paglione, *op.cit.*

<sup>16</sup> UN Women, “How COVID-19 impacts women and girls”, available at <https://interactive.unwomen.org/multimedia/explainer/covid19/en/index.html>, consulted on 25 November 2021.

<sup>17</sup> UN, “Policy Brief: The Impact of COVID-19 on Women”, Section IV, Gender-based Violence, 9 April 2020.



named as a “shadow pandemic”<sup>18</sup> to highlight the immediate repercussions that the lockdown restrictions had on women’s lives in terms of exposition to further intensification of domestic violence.

It is the aim of this study to demonstrate why the right to be free from violence at home should fall under the scope of the right to adequate housing. Recognizing domestic violence as a breach of the right to housing under international human rights law would permit to set upon States Parties positive obligations to recognize, respect, protect and fulfil housing rights of domestic violence victims. Hereinafter a possible reconceiving of the right to adequate housing in order to introduce the right to live free from violence in the domestic sphere will be outlined. Furthermore, a case study on the Netherlands will be presented, also reporting the results of a field research on this issue that I carried out in the country in the year 2019.

The present essay is structured as follows. Paragraphs 2 and 2.1 are dedicated to the international legal framework regarding both domestic violence and the right to housing. Paragraph 3 demonstrates why domestic violence should be interpreted as a violation of the right to housing. Paragraph 4 illustrates the Dutch legislation while in Paragraphs 5 and 5.1 the results of the field research concerning housing rights of female victims of domestic violence in the Netherlands will be summarized and discussed.

## 2. Gender-based violence in international law

During the 1970s feminist movements and women’s groups worldwide played a fundamental role in drawing increasing attention to women’s issues such as economic, sexual and physical abuse. Human rights advocates forced the international debate to recognize the role of “individual acts of male domination over women and institutionalized patriarchy in the human rights violations suffered by women”<sup>19</sup>. In 1988 the case *Velasquez Rodriguez v. Honduras* affirmed the new principle of States’

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<sup>18</sup> UN Women, “The Shadow Pandemic: Violence against women during COVID-19”, 2020 available at <https://www.unwomen.org/en/news/stories/2020/4/statement-ed-phumzile-violence-against-women-during-pandemic>, consulted on 31 October 2021.

<sup>19</sup> R. Copelon, *op. cit.*



accountability for non-State actors' illegal acts, thanks to which States have positive obligations to investigate, prosecute and punish human rights violations committed by public and private actors alike<sup>20</sup>. A violation committed by non-State actors, although not directly imputable to a State, can lead to the international responsibility of the State for its failure to adequately display due diligence in preventing, prosecuting and punishing illegal acts in a proper manner<sup>21</sup>. The principle of States' accountability and the display of due diligence are nowadays applied also to domestic violence cases and enshrined in many legal texts devoted to the issue. The Convention on the Elimination of All forms of Discrimination Against Women (CEDAW), adopted by the UN General Assembly in 1979, is an international anti-discrimination bill of rights for women focused on the "empowerment of women through equality, effective protection of and elimination of any act of discrimination against women"<sup>22</sup>. CEDAW acknowledged GBV and domestic violence not in the main text but in General Recommendations (GR) No.12 and 19, respectively adopted in 1989 and 1992. GR No.12 notes that States Parties ought to protect women against violence occurring within the family, workplace or in any other area of social life<sup>23</sup> while GR No.19 affirms that "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"<sup>24</sup>. GR No. 12 and 19 are particularly relevant as they made GBV and domestic violence fall within the scope of CEDAW by enunciating the principle of States' accountability for private acts of violence<sup>25</sup>.

The landmark event in the public recognition of violence against women as a violation of human rights was the Vienna World Conference on Human Rights, held in 1993, as it acknowledged for the first time in history the exclusion of women's rights from the UN mainstream human rights system. The 171 States participating at the World

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<sup>20</sup> L. Hasselbacher, "State Obligations Regarding Domestic Violence: The European Court of Human Rights, Due Diligence, And International Legal Minimums of Protection", *Northwestern Journal of International Human Rights*, 8 (2010), 2, paras.12 and 13.

<sup>21</sup> *Velásquez Rodríguez v. Honduras*, Merits, Judgment, Inter-Am. Ct. H.R. (ser. C) No.4, para.172 (July 29, 1988).

<sup>22</sup> Convention on the Elimination of All Forms of Discrimination against Women, Resolution General Assembly 34/180, 18 December 1979 [hereinafter CEDAW].

<sup>23</sup> UN CEDAW, General Recommendation No. 12 on Violence Against Women, 1989.

<sup>24</sup> UN CEDAW, General Recommendation No. 19 on Violence Against Women, para.9, [emphasis added].

<sup>25</sup> *Ibid.*, Specific recommendation.



Conference adopted a final declaration and programme for action officially recognizing that “the human rights of women and of the girl-child are inalienable, integral and indivisible part of universal human rights” and they defined violence against women as a breach of human rights<sup>26</sup>. The Vienna World Conference called upon the UN General Assembly to draft a declaration on violence against women which was adopted the next year, in 1994, addressing GBV as a *per se* human rights violation<sup>27</sup>. The 1994 Declaration, adopted under the name of Declaration on the Elimination of Violence against Women (DEVAW), recognizes violence as an impediment to achieve gender equality and a “manifestation of historically unequal power relations between men and women”<sup>28</sup> and asserts not only that States ought to refrain from engaging in violence against women, but they also have to display a due diligence standard to prevent, investigate, punish and remedy consequences and harms caused by acts of violence against women, committed by public and private actors alike<sup>29</sup>.

In 1995 the UN World Conference on Women adopted the Beijing Declaration and Beijing Platform for Action with the main focus to tackle the issue of violence against women, including domestic violence. The Beijing Declaration represented a decisive event towards enhancing human rights of women, as the *gender mainstreaming* system was created. The important principle of “women’s rights are human rights” was for the first time articulated in Beijing and violence against women was linked to policies aimed at realizing gender equality in all spheres of life<sup>30</sup>.

At the European level, the main legal instrument set by European States is the Council of Europe Convention on Combating Violence against Women and Domestic Violence, so-called Istanbul Convention, adopted in 2011 and entered into force in 2014. The Istanbul Convention constitutes a landmark step in providing a unique and advanced

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<sup>26</sup> Vienna Declaration and Programme of Action, World Conference on Human Rights Vienna, 25 June 1993, Section I, para.18.

<sup>27</sup> L.A. Crooms, “Using a Multi-Tiered Analysis to Reconceptualise Gender-Based Violence against Women as a Matter of International Human Rights”, *New England Review*, 33 (1999), 4, p. 883.

<sup>28</sup> DEVAW, Preamble.

<sup>29</sup> *Ibid.*, Article 4.

<sup>30</sup> L. Re, “Combating Violence Against Women: a political and cultural challenge”, *Gênero & direito. Periódico do Núcleo de Estudos e Pesquisas sobre Gênero e Direito Centro de Ciências Jurídicas*, 9 (2020), 4, p. 1106.



legal framework aimed at the protection of women and girls from GBV and any individual from domestic violence<sup>31</sup>. The Istanbul Convention is the first European instrument to set legally binding standards for the European states in order to prevent, tackle and protect victims of GBV and domestic violence, and to punish perpetrators<sup>32</sup>. Its purpose is to protect women, to design comprehensive policies and measures for protection and assistance to victims and combating domestic violence<sup>33</sup>. The Convention prevents violence by obliging State Parties to invest in education, awareness-raising campaigns and treatment programmes for perpetrators. The Istanbul Convention protects victims also by obliging States to offer appropriate support and services, such as free hotline and shelters<sup>34</sup>. Article 23 obliges Parties to take the necessary legislative measures to provide for easily accessible shelters in sufficient numbers so as to offer safe accommodation for and to reach out pro-actively to victims, especially women and their children. Moreover, in order to ensure the safety of the victims, Article 52 of the Convention provides that the competent authorities are granted power to order a perpetrator of domestic violence to leave the house<sup>35</sup>. Parties should also ensure that the investigations or prosecutions of domestic violence cases do not depend upon a report or complaint of the victims and that proceedings may continue also if the victim withdraws the complaint. The Istanbul Convention requests parties to collect data on GBV crimes and introduces a different definition of gender, as “the socially constructed roles, behaviours, activities and attributes that a given society considers appropriate for women and men as opposed to the usual definition based on the sex of the person”<sup>36</sup>. The Convention is particularly

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<sup>31</sup> S. De Vido, “The ratification of the Council of Europe Istanbul Convention by the EU: a step forward in the protection of women from violence in the European legal system”, *European Journal of Legal Studies*, 9 (2017), 2, p. 69.

<sup>32</sup> U. Jurviste, R. Shreeves, “The Istanbul Convention: A tool to tackle violence against women and girls, European Parliament, updated edition of an EPRS ‘at a glance’”, November 2017, available at [http://www.europarl.europa.eu/RegData/etudes/ATAG/2018/630297/EPRS\\_ATA\(2018\)630297\\_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/ATAG/2018/630297/EPRS_ATA(2018)630297_EN.pdf), consulted on 25 November 2021.

<sup>33</sup> Istanbul Convention Article 1.

<sup>34</sup> *Ibid.*, Articles 23 and 24.

<sup>35</sup> *Ibid.*, article 52.

<sup>36</sup> *Ibid.*, Article 3 Definitions.





effective as it establishes policies for governmental and national bodies involved in prevention, prosecution and protection activities<sup>37</sup>.

## 2.1. The right to housing in international law

As pertaining to the right to housing, after the Second World War UN bodies, concerned by the worldwide homelessness, decided to include housing rights in the human rights framework<sup>38</sup>. The right to housing is an universal basic need which includes a safe and secure place to live for human dignity, physical and mental health and overall quality of life<sup>39</sup>. As important as the right to housing is to everyone, more than 1.8 billion people worldwide are ill housed, while approximately 150 million people are homeless<sup>40</sup>. The right to housing is integrally linked and connected to other human rights and fundamental freedoms such as access to food, to drinking water and adequate sanitation facilities.

In the last decades, the right to housing developed into an autonomous and independent human right. The first international document recognizing housing rights as a part of the human rights framework is the Universal Declaration of Human Rights (UDHR) adopted in 1948. Even though the UDHR is not *per se* legally binding for States, it contains values and principles that were later shared by UN binding treaties<sup>41</sup>. Article 25(1) of the UDHR reads as follows:

Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control<sup>42</sup>.

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<sup>37</sup> U. Jurviste, R. Shreeves, *op.cit.*

<sup>38</sup> I. Westendorp, *Women and Housing: Gender Makes a Difference*, Maastricht, Intersentia, 2007, p. 10.

<sup>39</sup> UN, Fact Sheet No. 21/Rev.1, "The Right to Adequate Housing", 2009, chapter I(a), available at [https://www.ohchr.org/documents/publications/fs21\\_rev\\_1\\_housing\\_en.pdf](https://www.ohchr.org/documents/publications/fs21_rev_1_housing_en.pdf), consulted on 17 November 2021.

<sup>40</sup> UN Special Rapporteur on adequate housing, "Guidelines for the Implementation of the Right to Adequate Housing", A/HRC/43/43, 2019, para. 2.

<sup>41</sup> However, many of the UDHR's provisions are considered customary international law and therefore legally binding for the States.

<sup>42</sup> Universal Declaration on Human Rights, 10 December 1948, Article 25.1.



Although the UDHR does not reserve a specific article to housing rights, it recognizes the right to housing, along with nutrition, clothing, medical care and adequate standards of livelihood, as basic human needs for people. These rights are all part of the right to an adequate standard of living and they should be guaranteed to everyone regardless of status, gender and financial circumstances, on a basis of non-discrimination. Adopting a women's human rights perspective, Article 14(2) CEDAW obliges:

States Parties [to] take appropriate measures to eliminate discrimination against women in rural areas in order to ensure, on a basis of equality of men and women, that they participate in and benefit from rural development and, in particular, shall ensure to such women the right: [...]

(h) To enjoy adequate living conditions, particularly in relation to housing, sanitation, electricity and water supply, transport and communications.<sup>43</sup>

The article deals specifically with rural women, ensuring them an adequate living situation, in which housing is explicitly listed.

Article 14(2) CEDAW mentions the right to housing in correlation with the right to land and the access to sanitary facilities, water and electricity. The weakness of this Article is that it does not dedicate a separate section to housing rights and it does not make any distinction between urban and rural women<sup>44</sup>. In 2011 the Committee on the Elimination on Discrimination against Women (CEDAW Committee) adopted the Concluding Observations on Israel making explicit the reference to women's right to adequate housing. Such Concluding Observations are of extreme relevance as they help to conceptually link the General Comment No.4 on the right to adequate housing of the Committee on Economic, Social and Cultural Rights (CESCR) to the non-discrimination and equality protections principles. Moreover, if the Concluding Observations are read in conjunction with Article 14(2) CEDAW, they address the right to adequate housing in a broad sense. However, in order to ensure the right to housing to *all women* the CEDAW Committee should adopt in the near future a General Recommendation specifically devoted to the women's right to adequate housing without discerning between rural and urban women.

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<sup>43</sup> CEDAW, Article 14(2).

<sup>44</sup> UN CEDAW Committee, "Concluding Observations of the Committee on the Elimination of Discrimination Against Women on Israel", CEDAW/C/ISR/CO/5, 2011, paras. 28-29.



Article 15(2) CEDAW guarantees women “equal rights to conclude contracts and to administer property” and Article 15(3) obliges States Parties to “accord to men and women the same rights with regard to [...] the freedom to choose their residence and domicile”<sup>45</sup>.

The most comprehensive legal definition and protection of the right to housing, for the time being, is enshrined in the International Covenant on Economic, Social and Cultural Rights (ICESCR)<sup>46</sup> which, together with UDHR and the International Covenant on Civil and Political Rights, forms the Bill of Rights of the United Nations<sup>47</sup>. Article 11(1) of ICESCR “recognize[s] the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions”<sup>48</sup>.

The CESCR specified later on in General Comment No.4:

The right to housing applies to everyone. While reference to ‘himself and his family’ reflects assumptions as to gender roles and economic activity patterns commonly accepted in 1966 when the Covenant was adopted, the phrase cannot be read today as implying any limitations upon the applicability of the right to individuals or to female-headed households or other such groups. Thus, the concept of ‘family’ must be understood in a wide sense.<sup>49</sup>

Nowadays, Article 11(1) is considered as a landmark in the international framework pertaining to housing rights and it is not meant to apply solely to men since

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<sup>45</sup> CEDAW, Article 15(2) and (3).

<sup>46</sup> Committee on Economic, Social and Cultural Rights, “General Comment No.4: The Right to Adequate Housing (Art. 11(1) of the Covenant)”, E/1992/23, 13 December 1991, para. 3 declares: “Article 11(1) of the Covenant is the most comprehensive and perhaps the most important of the relevant provisions”. [hereinafter General Comment No.4].

<sup>47</sup> The Bill of Rights represents the foundation of international human rights and fundamental freedoms. By ratifying these legal international instruments, States Parties bind themselves to comply with the international Bill of Rights and they are accountable to their citizens, to the other States Parties and to the international community by committing themselves to guarantee and respect freedoms and rights contained in these conventions. ICESCR addresses States and not directly individuals, which means that the Covenant does not recognize rights to persons but asks States Parties to actively take action in order to fulfil all the rights enshrined in the treaty. States need to guarantee a dignified existence, including adequate standard of living, employment and education, to everyone. States Parties are free to choose the means through which fulfil the rights articulated in ICESCR. In the framework of the Bill of Rights, the right to housing can be found in both UDHR and ICESCR, amongst many other international instruments mentioned above.

<sup>48</sup> International Covenant on Economic, Social and Cultural Rights, 16 December 1966, Article 11(1).

<sup>49</sup> General Comment No.4, para. 6.



such interpretation would be against the principle of non-discrimination articulated in Article 2 ICESCR:

[...] individuals, as well as families, are entitled to adequate housing regardless of age, economic status, group or other affiliation or status and other such factors. In particular, enjoyment of this right must, in accordance with article 2.2 of the Covenant, not to be subjected to any form of discrimination.<sup>50</sup>

Moreover, Article 11 must be read together with Article 3 ICESCR which affirms that all the rights mentioned in the ICESCR must be applied according to the principle of formal equality between men and women. As specified in General Comment No.16:

The essence of article 3 of the ICESCR is that the rights set forth in the Covenant are to be enjoyed by men and women on a basis of equality, a concept that carries substantive meaning. [...] Article 3 also mandates the equal enjoyment of the rights in the Covenant for men and women in practice<sup>51</sup>. [...] The enjoyment of human rights on the basis of equality between men and women must be understood comprehensively. Guarantees of non-discrimination and equality in international human rights treaties mandate both de facto and de jure equality. [...] Substantive equality for men and women will not be achieved simply through the enactment of laws or the adoption of policies that are gender-neutral on their face. In implementing Article 3, States parties should take into account that such laws, policies and practice can fail to address or even perpetuate inequality between men and women, because they do not take account of existing economic, social and cultural inequalities, particularly those experienced by women.<sup>52</sup>

General Comment No.4, albeit not binding for the States Parties, is particularly significant as it is the only and most authoritative interpretation of the right to adequate housing that exists today. General Comment No.4 states that the right to housing should not be seen as merely “having a roof over one’s head”<sup>53</sup>, rather it ought to be interpreted as “the right to live somewhere in security, peace and dignity”<sup>54</sup>. Article 11(1) refers not just to the right to housing but to the right of *adequate* housing. The concept of adequacy is the core concept of the right to housing and underlines factors that should be taken into consideration when determining whether particular forms of shelters can be considered in compliance with the human right to housing. As affirmed by the Committee, the adequacy is partly determined by economic, social, cultural, climatic and ecological

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<sup>50</sup> *Ibid.*

<sup>51</sup> Committee on Economic, Social and Cultural Rights General Comment General Comment No.16, 2005, para. 6.

<sup>52</sup> *Ibid.*, para. 8.

<sup>53</sup> General Comment No.4, para.7.

<sup>54</sup> *Ibid.*



factors. Nevertheless, it is possible to identify seven constituent elements of the right to adequate housing in any particular context: (a) legally security of tenure, (b) availability, (c) affordability, (d) habitability, (e) accessibility, (f) location, (g) cultural adequacy<sup>55</sup>.

The CESCR asks States Parties to take effective and concrete measures to achieve the full realization of the right to adequate housing. For this right to be effectively ensured, concrete actions and active involvement of the States are necessary. States have positive obligations and duties towards their own citizens to *respect*, to *protect* and to *fulfil* their right to housing<sup>56</sup>. The duty “to respect” implies that the authorities must refrain from interfering with the right to housing of the citizens and should not impede the way people realize their right to adequate housing. The obligation “to protect” entails that living conditions of the population should not worsen under any circumstances. States should ensure the right to housing to the most disadvantaged groups of the society. Protecting the right to housing means also ensuring the affordability of accommodations within reasonable boundaries and guaranteeing legal security of tenure to all. This includes the obligation of States to prevent non-State actors from violating housing rights of other individuals. In fact, States can be held accountable if they fail to exercise a sufficient degree of due diligence in preventing non-State actors from violating the right to housing of other individuals. Eventually, the duty “to fulfil” entails the right to housing to everyone. However, how and when ensuring the right for everyone is left to the State’s discretion. If a State fails to take appropriate and necessary actions, it can be held responsible for violating its duty to fulfil. Irrespective of the economic situation and the stage of development, States need to uphold their duty to fulfil the right to housing. An example of States’ failure of realizing the duty to fulfil is the lack of legislations on gender equality and non-discrimination which do not ensure women not be discriminated against concerning their housing rights. On this regard, the role of the CESCR is particularly crucial as it monitors the effective implementation of the ICESCR by States Parties and

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<sup>55</sup> General Comment No.4, para. 8.

<sup>56</sup> Recommendation of the Commissioner for Human Rights on the Implementation of the Right to Housing, CommDH(2009)5, Strasbourg 30 June 2009.



it evaluates the implementation of States' duties to respect, protect and fulfil housing rights<sup>57</sup>.

### 3. How domestic violence and the right to housing are interconnected

It is the claim of this study to assert that the standard of adequacy of the right to housing should include an eighth component: the right to live free from violence at home. Explicitly recognizing domestic violence as a violation of the right to housing would permit the inclusion of the right to live free from domestic violence within the scope of the right to housing. Such recognition would bind States Parties to the *positive obligation* of ensuring adequate housing rights to victims of domestic violence.

There are at least three components of adequacy standard of the right to housing that are violated whenever incidents of domestic violence occur<sup>58</sup>. These are: legal security of tenure, habitability and accessibility.

Legal security of tenure is the cornerstone of the right to housing and the main element which ensures the effective implementation of the right itself. General Comment No. 4 affirms that “notwithstanding the type of tenure, all persons possess a degree of security of tenure which guarantees legal protection against forced eviction, harassment and other threats”<sup>59</sup>. The reference to “harassment and threats” is commonly interpreted as external interferences of third parties in the private sphere of individuals, such as forced evictions. The possibility that threats could happen within the home and be committed by

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<sup>57</sup> All States Parties have to submit periodic reports, outlining the legislative, judicial and policy system and other measures taken to ensure the enjoyment of the rights. States Parties are also requested to provide detailed data on the degree to which the rights are implemented and areas where particular difficulties have been faced in this respect. After examining each report, the Committee addresses its concerns and recommendations in the concluding observations. Moreover, since the adoption of the Optional Protocol in 2008, the Committee can receive communications from individuals who think that their rights have been violated. Pertaining to Art.11 ICESCR, States must provide detailed information about the full extent of homelessness within their jurisdiction and they must communicate data about the housing situation of vulnerable and disadvantaged groups who, according to the CESCR, families, homeless, those inadequately housed and without ready access to basic amenities or living in illegal settlements and those subject to forced evictions and low-income groups are included. Significantly, women are not addressed as a disadvantaged and unprivileged group.

<sup>58</sup> L. Farha, “Is There a Woman in the House? Re/conceiving the Human Right to Housing”, *Canadian Journal of Women and the Law*, 14 (2002), pp. 545-546.

<sup>59</sup> General Comment No. 4, para. 8 (a).



private persons is not taken into consideration. Yet, threats occur also therein, between relatives or intimate partners, as in domestic violence cases. States should take positive actions against domestic violence by firstly ensuring actual and effective legal security of tenure to women. Not ensuring legal security of tenure to women on a basis of equality with men, means not ensuring them a safe space to live in. The lack of security of tenure endangers women's enjoyment of the right to housing and forces them to stay in abusive relations. Many women facing domestic violence are in fact unable to remove the perpetrators from the home, due to the lack of family, community and State support<sup>60</sup>. Since women lack legal security of tenure more than other groups in the society, when they are victims of domestic violence they have few possibilities left: they withstand the violence; they seek shelter for themselves and their children or they escape, becoming homeless.

Withstanding the violence presupposes accepting the risk of being exposed to further violence and living in constant fear, since rarely violence happens only once.

Leaving home to go to a shelter is not always possible for a variety of reasons: shelters may be too far or not existing in a specific area, or at their full capacity with no possibility to take in one more person. Moreover, women are often rejected from shelters, especially if undocumented.

Ultimately, becoming homeless is not a tempting alternative, not only for the precarious conditions of homelessness but also because homeless women are exposed to even more violence on the streets. Hence, many women accept the violence at home so as not to face homelessness. For all these reasons, the way to actually respect the human right to adequate housing for female victims of domestic violence is to ensure legal security of tenure for women. Only when women possess legal security of tenure, would they no longer be forced to endure domestic violence to prevent becoming homeless. States' failure to ensure legal security of tenure to women indirectly contributes to the perpetuation of violence within the domestic sphere. If States were to effectively tackle

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<sup>60</sup> M. Kothari UN Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, "Women and adequate housing", E/CN.4/2005/43, 2005, para. 43.



domestic violence and grant housing rights to all, they should take positive steps to ensure women's possession of a legal security of tenure.

Domestic violence also has an impact on the habitability component of housing.

General Comment No.4 affirms that:

adequate housing must be habitable, in terms of providing the inhabitants with adequate space and protecting them from cold, damp, heat, rain, wind or other threats to health, structural hazards, and disease vectors. The physical safety of occupants must be guaranteed as well.<sup>61</sup>

Housing is adequate only if habitable. In order to be habitable, the occupants must be protected from diverse dangers and threats. The threats listed are only external factors such as atmospheric agents, humidity or structural risks. As a result of the gender-neutral approach no reference has been made pertaining to domestic violence threats. Without doubt a place exposed to heat, cold, damp or structural hazards should be called inadequate and inhabitable. Notwithstanding, inadequate is also a place where women are physically and psychologically abused. The codification of the habitability component disregards the suffering caused to victims of domestic violence<sup>62</sup>. The gender-blind approach ignores the experiences of victims of domestic violence and it does not address the threats to physical and mental health that happen within the home. Women facing domestic abuse inherently live in inadequate and inhabitable housing.

Lastly, the component of accessibility implies that:

Adequate housing must be accessible to those entitled to it. Disadvantaged groups must be accorded full and sustainable access to adequate housing resources. Thus, such disadvantaged groups as the elderly, children, the physically disabled, the terminally ill, HIV-positive individuals, persons with persistent medical problems, the mentally ill, victims of natural disasters, people living in disaster-prone areas and other groups should be ensured some degree of priority consideration in the housing sphere. Both housing law and policy should take fully into account the special housing needs of these groups. [...] Discernible governmental obligations need to be developed aiming to substantiate the right of all to a secure place to live in peace and dignity.<sup>63</sup>

When identifying disadvantaged groups of people, the CESCR did not mention women. However, women constitute the single most disadvantaged group worldwide<sup>64</sup>.

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<sup>61</sup> General Comment No.4, para. 8 (d).

<sup>62</sup> L. Farha, *op. cit.*, p. 547.

<sup>63</sup> General Comment No. 4, para. 8 (e).

<sup>64</sup> L. Farha, *op. cit.*, p. 548.





Women have to face very particular barriers to accommodation due to worldwide women's poverty and discrimination against women implicit in laws, policies, customs and traditions<sup>65</sup>. Women are particularly disadvantaged considering the widespread gender pay gap which renders housing as more difficult to access. Women who suffer from intersectional discrimination, on the basis of their gender together with status, race, sexual orientation, age or disability, are a particularly vulnerable group who often struggle with keeping their homes and have even more difficulties in accessing adequate housing in the first place<sup>66</sup>. It is precisely because of the difficulties in accessing alternative housing that many women are often forced to go back to their perpetrators or end up on the streets. Women fleeing domestic violence need special protection and have specific needs regarding their housing situation. Since women are disadvantaged in terms of accessing housing or economic support, States Parties should adopt specific measures to eliminate the barriers encountered by women and should give high priority to female victims of violence. Thus, the standard of accessibility should be rewritten in a way to include women in the list of the disadvantaged groups, who require specific housing needs. The exclusion of women and victims of domestic violence from this list of disadvantaged people in General Comment No.4 disregards women's material condition of discrimination and substantive inequality as to access to adequate housing.

In light of the above, the standard of adequacy of the right to housing is, as of today, incomplete. The general struggle of women to possess a legal security of tenure protecting them from internal as well as external threats and harassments, the internal and external threats to their physical and mental safety that makes housing inhabitable and the *de facto* barriers women face to access adequate housing are all material conditions that should be addressed. Therefore, in order to substantially fulfill the rights of female victims of domestic violence, a reconceiving of the right to housing so as to include the right to live free from violence at home would be necessary.

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<sup>65</sup> *Ibid.*, p. 550.

<sup>66</sup> UN Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context, A/HRC/19/53, 2011, para. 51.



#### 4. The Dutch legislation

The Dutch Criminal Code regulates numerous forms of violence and violations of the physical integrity of the individual. However, the types of violence are covered irrespective of whether they take place in the public or in the private sphere. Domestic violence is not a separate crime of itself, rather it is classified under different *nomina iuris*<sup>67</sup>. There is no specific offence that defines the course of conduct typical of domestic violence cases, namely, the dependency of victims on their perpetrators and the repeated nature of the violence. This approach undermines the root causes and the nature of domestic violence. Moreover, the lack of existence of a separate crime has the consequence of not adequately covering all forms of domestic violence against women.

Furthermore, since 2015 the Dutch government deliberately adopted a gender-neutral approach in the legislation and policies concerning domestic violence. The reason for this choice was motivated with the need to treat all forms of violence alike irrespective of the victims' gender, in light of the principle of equality before the law<sup>68</sup>. However, in being gender-neutral, the Dutch legislation on domestic violence ignores the fact that most victims are women and that the target group of such legislation should indeed be women<sup>69</sup>. This approach obfuscates the inherent gender discrimination component to domestic violence which is control over and oppression against women. The gender-neutral approach to domestic violence may render it harder to demolish the patriarchal and harmful gender stereotypes that surround and lead to domestic violence against women.

In 2009 the adoption of the Domestic Exclusion Order Act made it possible to promptly intervene in order to prevent escalations of domestic violence incidents. When the police encounter threats of domestic violence, but no crimes have been committed

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<sup>67</sup> May be common assault causing grievous bodily harm, manslaughter, murder, rape, sexual assault and stalking.

<sup>68</sup> UN Report of the Special Rapporteur on violence against women, its causes and consequences, Yakin Ertürk, "Mission to the Netherlands", A/HRC/4/34/Add.4, 7 February 2007, paras. 41 and 42.

<sup>69</sup> According to the European Institute for Gender Equality (EIGE) data, in 2017 the Dutch score for violence against women was 31,5 % which was higher than the average in Europe. Moreover, in 2017 45% of women have experienced physical and/or sexual violence, at least once since the age of 15. This number, too, was higher than the European average of 33% in 2017 (EIGE Equality Index website). However, as the figures on victims of domestic violence in the Netherlands are not disaggregated by gender, it is difficult to access reliable data on the impact of domestic violence on women in the country.



yet, they are allowed to temporarily exclude perpetrators from their homes, while victims continue to live there. The person removed from their home cannot enter the house for a certain period of time and cannot contact their housemates, whether they be spouses, partners or children. Anyone subject to such order must comply with it. If not, they may be sentenced with up to two years of imprisonment. The order can be extended to a maximum of four weeks. The domestic exclusion order exists in addition to the possibility, in the criminal law process, of imposing a contact ban in case of domestic violence. However, in the first four years of the implementation of such Act, only 11,692 orders have been issued. Statistics show that perpetrators subjected to domestic exclusion orders commit acts of domestic violence again in 29% of the cases, of which 24% are considered serious cases of abuse and 5.8% extremely serious<sup>70</sup>.

The right to housing is enshrined in the Dutch Constitution in Article 22.2, according to which the authorities should provide sufficient living accommodation. The right to housing is also enshrined in the national Housing Act of 1901 which gives municipalities the option, in case of shortage of housing, to work out an emergency system, in which victims of domestic violence must be given priority. However, only half of the central municipalities apply this priority policy. Often the urgency statement issued for giving priority to female victims of violence is of limited duration or determines extra requirements that women cannot meet.

Shelters are places with a 24/7 vigilance and rarely offer private places. All in all, shelters are a temporary solution for women who face a situation of extreme danger and need to flee from home because of the domestic violence suffered. Being in a women's shelter is not always a pleasant stay and that is why victims who can afford a place or rely on a network of people, will choose a private solution rather than seeking help in a shelter. Shelters constitute the single most important social service offered in the Netherlands for women fleeing domestic violence. However, the adoption in 2015 of the Social Support Act (WMO 2015)<sup>71</sup> shifted some responsibilities from national to local municipalities,

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<sup>70</sup> CEDAW, "Concluding observations of the Committee on the Elimination of Discrimination against Women, The Netherlands", CEDAW/C/NLD/CO/55 February 2010, paras. 26-27.

<sup>71</sup> Dutch Social Support Act, "Wet maatschappelijke ondersteuning (Wmo)", available at <https://www.rijksoverheid.nl/onderwerpen/zorg-en-ondersteuning-thuis/wmo-2015>, consulted on 8 July 2021.



worsening the quality and quantity of social services and causing a grand inhomogeneity from region to region. The amendment law also reunited child abuse and domestic violence centres under one organization called *Veilig Thuis* (Safe at Home). It is reported that women facing domestic violence often hesitate to contact *Veilig Thuis* for fear of being accused of child abuse and the potential risk of having their children being taken away<sup>72</sup>. The decentralization process has also caused constant lack of funds to shelters which consequently resulted in a general shortage of shelters in the whole country. The overall shortage made the criteria for entering shelters stricter.

In 2017 the National Ombudsman conducted a ground-breaking study about the problems women face in women's shelters. The study reported the financial adversities and difficulties women are experiencing when entering shelters. The Ombudsman's inquiry noted that the regulations and procedures for women who stay in shelters do not match well with their needs. It is almost impossible for women to independently find their way in this "paper reality". Arranging a personal income for women is extremely complex and often when they are at shelters their debts increase and it takes a long time before they can get social assistance benefits - the same goes for obtaining child benefits. Despite the fact that the Dutch legislation grants victims of domestic violence in outflow from women's shelters the priority to access housing, the National Ombudsman denounced that this is not guaranteed in practice. In fact, the major crisis and shortage of affordable housing prevent a significant number of women in outflow from shelters from accessing social housing<sup>73</sup>. The Ombudsman report shows that the outflow from women's shelters is not always that simple. Delays are caused in part by the fact that women often have no network or home and, despite national agreements, they cannot register and move to the municipality they would like to live in. When women are ready to leave the shelter, they often struggle to find suitable housing, not only due to the general shortage of affordable housing but also because they may not be eligible for social housing due to outstanding debts and/or because the municipality fails to issue an emergency declaration, even when

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<sup>72</sup> Dutch CEDAW Network NGO Shadow Report, "Joining forces to break the circle of violence against women", October 2018, para. 27.

<sup>73</sup> Report of the Dutch National Ombudsman, "Vrouwen in de Knel", <https://www.nationaleombudsman.nl/nieuws/onderzoeken/2019022-vrouwen-uit-de-knel-het-vervolg>, consulted on 14 July 2021.



women are entitled to it. Moreover, as it takes a long time before the Tax and Customs Administration pays the housing benefits, women have to pay rent in advance so they get once again into financial trouble. Women can only apply for the housing benefit once registered at the new address and the procedure takes up to eight weeks before the housing benefit is paid by the Tax and Customs Administration. Furthermore, women who apply to social housing do so because they cannot pay a normal full rent but in order to get social housing women must pay in advance the full rent for the first two months, before the housing benefit is paid retroactively by the administration<sup>74</sup>.

## 5. Qualitative research

The qualitative on field research that I carried out in the Netherlands in 2019 allowed me to interview professionals in the domestic violence and housing sector. I purposely did not interview female victims of domestic violence as the main emphasis of this study was to better understand the point of view of institutional and NGOs actors.

It was not easy to involve such actors. Many associations and shelters were unresponsive, others refused to do interviews. A contact person reported that it is plausible that some may have refused to be interviewed because of their reluctance towards speaking with researchers, since, in the past years, researchers financed by governmental organizations interviewed professionals with the intent to gather information on undocumented people and consequently to make the legal requirements to enter the Netherlands even stricter.

In total seven professionals were interviewed: two volunteers for an organization dealing with undocumented migrants; two lobbyists working for a national organization of shelters; one policy-maker working for a helpline and report centre; two directors of women's shelters: one disclosed and one secret. The interview was a semi-structured, guided-expert interview. The interviews have been carried out in English and Italian. They were recorded, transcribed and coded according to the sociological methodology known as "Grounded Theory".

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<sup>74</sup> Report of the Dutch National Ombudsman, "Vrouwen in de Knel".



## 5.1 Housing for female victims of domestic violence in the Netherlands

This sub-paragraph examines the current availability and accessibility to housing for female victims of domestic violence in the Netherlands through the interviews of the professionals.

The policy-maker interviewed specified that shelters are only a temporary solution and after their stay, women apply for social housing. She affirmed:

women's shelters [...] provide for a couple of months housing and after that women who are going to divorce or break up with their partners go to their own house. There were some sorts of contract between social housing organizations and the women's shelters. For instance, in my time, I think 32 houses were available per year for the women who first went to the women's shelter. A lot of these women were going through divorce or got separated, so they needed new houses. Women's shelters or the housing corporations provided housing for women.

The policy-maker had previously worked for women's shelters. She refers that it was customary that housing corporations and women's shelters collaborated in order to effectively guarantee a housing solution to women. Women who seek the help of shelters are in need of access to housing as soon as possible. That is why it is necessary that the legislation regarding the distribution of social housing gives high priority to women exiting the shelters. However, the collaboration system between housing corporations and women's shelters does not seem to be that effective anymore. One of the lobbyists explained that the concrete possibility for women to access social housing radically changed in the past years because of the shortage of social affordable housing:

I: Can you tell me something about how the right to housing is implemented for women who experience domestic violence in the Netherlands?

K.B: There is no real right to housing for nobody in the Netherlands. Our Constitution says that the government and the governmental bodies should ensure that there is no lack of housing. There should be sufficient and adequate housing, however, it is a soft and a not so individual right. For women, who are in the shelter, because there is an enormous shortage of affordable housing, it can be really difficult to make the transition from the shelter to a new house. Unless they go back to their partner, but usually that is not the case. It is quite difficult for women to find a house after, when they wish to leave the shelter. Usually after half a year many women are ready to move on but, due to the lack of housing, of availability of housing, they stay up to a year, sometimes longer in the shelter, which is of course not the best situation.



The main objective of the Dutch legislation, theoretically, is to give women access to social housing, after they move out from the shelter. The practical problem is the shortage of affordable housing in the Netherlands. Shelters are conceived for being only an in-between and temporary solution. However, this idea behind the existence of shelters only works if it is effectively possible to offer and guarantee women access to social housing. If not, women are in the position of choosing whether to live in an unpleasant situation such as the one in a shelter (and occupying spots that could go to other women in danger), going back home to their perpetrators or becoming homeless.

The lobbyist specified that:

The objective is that they move as soon as possible; the objective is to stop the violence, to make sure that the situation becomes safe again for the women and children. But when the safety is there, when there is a safe situation to move on and the crisis has calmed down, then she can move on, theoretically. Since we do not have enough housing, they stay way too long in the shelter at this point of time.

The other lobbyist interviewed confirmed the current situation of shortage of social housing:

I: About the right to housing, does the Netherlands regulate it in the Constitution or in any law?

Z.R: It depends how a city has organized the distribution of cheap housing. There is one group of cities which have an official housing regulation. If such regulation is present in the city, then women of the women's shelters have the priority. They have a right to cheap housing and they're on the top list. But there is a shortage of cheap housing in this country. There are cities that do not have such a regulation, it is just a free market. In those cases, the government can do nothing. The Housing Act is only applicable to those cities who have such a ground of regulation. So for one part of the cities it is helpful that the Housing Act has this provision, for the other part it is not. That is one of our issues, convincing the government that there should be a change in legislation, that all victims of violence should have priority when distributing cheap housing.

Nowadays, there is the problem of a shortage of affordable housing, therefore women do not have easy access to it after their experience in the shelter. Accessibility is one of the seven components of the standard of adequacy of the right to housing. As a temporary solution, it is possible to remove the perpetrators from the homes with restraining orders, so that women and children are not taken away from their network, job, house, schools. In 2009 the adoption of the Domestic Exclusion Order Act made it possible to temporarily exclude perpetrators from their homes, while victims continue to live there.



About this matter, one of the lobbyists said:

The main objective is trying as long as possible that the woman and the children stay inside the home, if the man is the problem, the man should leave or trying to find a solution between man and the woman. Talking about why this violence came, if there is a problem of high risk and there is no discussion then you have to take them out. It's a last resource more or less, the women's shelter. If no other solution is possible. Because if you take the woman and the children out of the social network she loses a lot as well. You can't return easily if you are out.

Also the shelter's director addressed the current possibility in the Netherlands of removing the man with a temporary restraining order. As this is only a temporary solution, it does not solve the problem of the right to housing of the victims on the long run:

In the Netherlands there is the law according to which if there is domestic violence, the man is removed from the home. Theoretically it is like this. If there is domestic violence, the police intervene and the woman reports in that moment. The mayor can say "Mr. X you cannot access your home for 10 days". So that in the following 10 days, it is investigated, together with the woman and the children, if it was an accident, whether it happened because dad got fired or because he needs help. If so, what kind of help? Then there is intervention in the family, either together or separate.

A similar position was expressed by the policy-maker:

There is also another possibility, when domestic violence occurs it can be that the woman is staying at home, while the husband or partner leaves and the women's shelter can also have some talk with the couple about what they need to do to prevent one of them seeking refuge in a shelter or ending up in a divorce. That's more preventive, if you try to prevent somebody from fleeing away from the house. There are also here in Leiden specialized forensic institutions for perpetrators of domestic violence. We also refer to that and we hope that perpetrators, either the woman or the man, will go for counselling there.

The problematic aspect of these restraining orders is that they are only a temporary solution and their implementation is up to the discretion of the mayor. In the end, the restraining orders can help as an in-between and temporary solution to allow women to stay inside the house, but they cannot be the only solution for guaranteeing the right to adequate housing.

All in all, the focus on the post-domestic violence phase, when women would need to become economically independent, apply for social benefits and housing, recovering from the physical and psychological trauma, is overlooked. The importance given to the right to housing as a women's human right to be free from violence is still minimal and not very present in the spectrum of the Dutch legislation on domestic violence.





## 6. Conclusion

Domestic violence is perhaps one of the few phenomena that unites every country of this globe. Domestic violence is a form of GBV as it affects women disproportionately and it is defined as a form of violence which happens within the domestic sphere between individuals who are related by blood or relationship. Although *home* is one of the necessary components in the definition of domestic violence, the link between the two is often ignored and disregarded.

The right to housing as understood nowadays needs to meet, at minimum, the criteria of adequacy for being respected and enabling people to lead a dignified life. For the fact that adequacy is the most important component of the right to housing, it is however quite incomplete, under a women's rights perspective. The de-gendered definition of the standard of adequacy and its seven components, missed the opportunity to address women in general and, particularly, the reality of female victims of domestic violence. The general struggle for women to: possess legal security of tenure which protects them from internal and external harassments, to face the inhabitability caused by internal and external threats to women's physical safety and the de facto barriers they face when accessing adequate housing, are all material conditions needing a legal recognition. Hence, it is necessary to interpret and implement the right to housing in a way to include a new component: the right to live free from violence in the domestic sphere. Ignoring this effective inequality experienced by women and using a gender-neutral approach renders victims of domestic violence invisible and, ultimately, perpetuates gender hierarchies within the society. Only by correctly interpreting and implementing the right to adequate housing as a universal, justiciable human right, including the right to live free from violence, it is possible to substantially meet the needs of battered women<sup>75</sup>.

As pertaining to the Dutch case, primarily, the lack of gender sensitivity in domestic violence law and policies disregards the gender component of such violence. Eliminating the gender component of domestic violence may result in overlooking the

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<sup>75</sup>A. Kucs, Z. Sedlova, L. Pierhurovica, "The Right to Housing: International, European and National Perspectives", University of Latvia, 2008, available at <https://www.semanticscholar.org/paper/The-right-to-housing%3A-International%2C-European%2C-and-Ku%C4%8Ds-Sedlova/de10a04fc4a02e92d5d34955ea8ae4d7889de415>, consulted on 2 November 2021.



inherent trait of domestic violence which is discrimination against women as well as oppression and control. Secondly, the decentralization process started in 2015, shifting some responsibilities to local municipalities and worsening the quality and quantity of the offer of social services. As a result of this, it is difficult for women to enter shelters since the criteria for entering shelters became stricter. The Dutch legislation contemplates the provision of access to social housing to victims of domestic violence. However, this disposition is practically not applied and women who move out from shelters face numerous difficulties in accessing social housing.

The process of the qualitative field research, based on interviews with relevant professionals in the field, revealed that the provision of shelters is extremely crucial for all the situations of emergency, but it does not ensure the respect of the right to housing to the victims. The right to housing to women in outflow form shelters, as analysed in the report of the National Ombudsman, and confirmed through the interviews, is only guaranteed theoretically but not practically. In this regard, looking at the laws, policies and the data deduced from the interviews, there is only a theoretical recognition of the right to housing for victims of violence after they leave the shelters, since, in practice, they rarely have access to it. Not only the recognition of domestic violence as a violation of the right to housing is not legally existent, but also an effective access to social housing is not guaranteed to women, after their stay in the shelters.

In light of the above, although the Dutch legislation regulates some aspects of the right to housing for female victims of domestic violence, such as restraining orders and women's shelters, this right is far from being effectively ensured to the victims.

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