



# Convention on the Elimination of All Forms of Discrimination against Women

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## Committee on the Elimination of Discrimination against Women

### Views adopted by the Committee under article 7 (3) of the Optional Protocol, concerning communication No. 99/2016<sup>\*,\*\*,\*\*</sup>

<i>Communication submitted by:</i>	S.L. (represented by counsel, Milena Kadieva and Zhaneta Borisova)
<i>Alleged victim:</i>	The author
<i>State party:</i>	Bulgaria
<i>Date of communication:</i>	23 February 2016 (initial submission)
<i>References:</i>	Transmitted to the State party on 24 February 2016 (not issued in document form)
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\* Adopted by the Committee at its seventy-third session (1–19 July 2019).

\*\* The following members of the Committee participated in the examination of the present communication: Gladys Acosta Vargas, Hiroko Akizuki, Tamader Al-Rammah, Nicole Ameline, Gunnar Bergby, Marion Bethel, Louiza Chalal, Esther Eghobamien-Mshelia, Naéla Mohamed Gabr, Hilary Gbedemah, Nahla Haidar, Dalia Leinarte, Rosario G. Manalo, Lia Nadaraia, Aruna Devi Narain, Ana Pelaez Narvaez, Bandana Rana, Rhoda Reddock, Elgun Safarov, Wenyan Song and Aicha Vall Verges.

\*\*\* Under rule 61, Genoveva Tisheva did not take part in the examination of the communication.



**Background**

1. The author of the communication is S.L., a Bulgarian national born in 1982. She claims that Bulgaria has violated her rights under article 2 (a)–(c) and (e)–(g), article 5 (a) and article 16 (1) (c), (g) and (h) of the Convention, read in conjunction with article 1 thereof and the Committee’s general recommendation No. 19 (1992) on violence against women, on account of the authorities’ failure to prevent and effectively investigate the severe physical and psychological violence committed by her former husband against her. The Convention and the Optional Protocol thereto entered into force for the State party on 10 March 1982 and 20 December 2006, respectively. The author is represented by counsel, Milena Kadieva and Zhaneta Borisova.

**Facts as submitted by the author**

2.1 The author married M on 4 June 2000, when she was a 17-year-old schoolgirl. They moved into the house of M’s parents, where they lived together with their son H, born on 31 October 2000.

2.2 The author claims that, for years, she has been a victim of domestic violence perpetrated by M and subjected to psychological, emotional and physical violence. In January 2001, M smacked the author three times because she refused to wear a certain outfit. Since then, his violence against the author has become frequent. Whenever the author expressed a differing opinion from that of M, he responded violently and aggressively, shouting at her and pushing and shoving her. He also threw and hit objects and broke doors. In March 2002, M beat the author, inflicting multiple blows to the head, because she turned off the television at 11 p.m. so that she and their son could sleep. As a consequence, she suffered from headaches for months. In October 2006, M beat the author again in the presence of their son. The author was not allowed to visit her parents and was locked up and isolated in the house.

2.3 In March 2007, the spouses split up, but they resumed their marital life after a month, when the author found out that she was pregnant. Despite her pregnancy, the husband continued to abuse the author, pushing her down the stairs in the house, alleging that the author “annoyed” him. M also accused his son of being lazy, not cleaning up and not helping his mother. He once beat his son because his arm had gotten stuck under the couch. M also became aggressive towards their old dog; he kicked the dog in the presence of the child and lifted the dog into the air and threw it to the ground just because the pet had started eating without permission. The dog became ill and could hardly stand on its legs.

2.4 In September 2007, the author discovered that M had a mistress. On 7 September 2007, M left home, leaving the pregnant author with their 7-year-old child. When the author tried to talk to M and his mistress, he pushed her down the stairs and tried to hit his mother, who was accompanying the author. On 26 November 2007, their second son, A, was born.

2.5 In January 2008, the spouses filed a divorce application with the Plovdiv Regional Court and were divorced by mutual consent under the conditions set by the author, namely, that M would pay 100 leva per month for each child as child support.<sup>1</sup> They also agreed upon a limited schedule of personal contact between the father and the children.

2.6 After the divorce, M did not maintain any contact with his sons and did not pay the child support on time. The author filed a complaint with the Plovdiv Regional Court for enforcement proceedings for unpaid child support over the preceding five

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<sup>1</sup> The lev is the currency of Bulgaria; 100 leva is equal to about 58 United States dollars.

months. When her former husband appeared in front of the author and their children, he was aggressive and violent. He kicked stools and shattered the phone against the floor in the children's presence. H was so traumatized that he had to be seen by a psychologist. M refused to take part in the therapy process and has not seen H since 2009.

2.7 In May 2010, M filed a claim with the Plovdiv Regional Court for a reduction of the amount of the child support from 100 leva to 60 leva and broader visitation rights. The Court decided to leave the amount of child support and visitation rights unchanged as defined in its decision in 2008. M lodged an appeal with the Plovdiv District Court.

2.8 In August 2011, M took A, in disregard of the visitation schedule, and abandoned the child alone at 8 p.m. in the parking lot close to the house of the author's parents, instead of bringing him to the author's home.

2.9 On 31 August 2011, the author lodged a complaint with the Child Protection Department of Plovdiv about M's abusive behaviour towards his children. The Department assigned a social worker, M.P., to the case. The Department indicated that there was no violation of the child's rights because the author and M had given contradictory information.

2.10 On 20 September 2011, the author submitted a complaint to the State Agency for Child Protection in Sofia against the Child Protection Department of Plovdiv. It found that M was not informed of the regulations concerning family law and that the social worker working on the case, M.P., had reported that the children were at risk owing to the strained relations between the parents. From that date, the attitude of the social worker towards the author became hostile and aggressive, and her former husband started to come and shout and insult the author in front of her house. The author filed a harassment complaint with the police, which issued a warning to M on 26 October 2011.

2.11 On 23 February 2012, the Plovdiv District Court delivered a judgment establishing broader visitation rights for M, to be carried out in the presence of the social worker. The author lodged an appeal against the District Court's decision to the Supreme Court of Cassation, which considered the District Court's decision to be not appealable.

2.12 Later in 2012, the author lodged another complaint against the Child Protection Department, because M had discontinued A's medical treatment and had set off firecrackers in the hands of the 4-year-old child. In response to the complaint, M.P. stated that she could not sit all the time by the father's side and observe what he was doing with the child. The author filed a complaint with the police, and M was warned for the second time not to endanger A's life and health.

2.13 In January 2013, during M's visit set by the Court, the author called A and found that he was crying because he had begged his father to take him back home but the father had refused to do so. Against A's will, the father forced the child to spend the night at his house. The author filed a complaint with the police, and a third warning was issued to M.

2.14 In February 2013, the author filed a complaint with the Child Protection Department to seek help once again about M, who was trying to establish forced contact with the children without taking into consideration their emotions and the fact that he had not built any relationship with them over the years. On 15 February 2013, the parents attended a "reconciliation" meeting at the Department, along with two social workers. During the meeting, M.P. forced H to explain in his father's presence why he was not willing to have contact with him. When H did not manage to explain clearly enough, M.P., addressing the child directly, stated that the most probable

reason for him to have refused contact with his father was that his mother spoke ill of his father every day. She then forced the author and her other son to leave the room, which left H alone with his father and the social workers. Moments later, H came out of the room in tears indicating that, despite his attempts to explain the abusive and violent behaviour of his father, the adults present in the room explained that, whether he wanted to or not, he would be forced to visit his father. In that regard, the social workers strongly suggested that the author should let the child visit his father even if he did not want to do so.

2.15 As a result of the traumatizing meeting at the Child Protection Department, H refused to go back there. The author complained to the State Agency for Child Protection about M.P.'s "inappropriate behaviour" towards a child who had suffered violence and nervous breakdowns owing to the traumatizing aggression of his father.

2.16 On 1 March 2013, the author took H to see a psychologist, who concluded that H felt deeply hurt as a result of his father's violence towards his mother and that a coercive approach would be counterproductive. She recommended that the parents pay attention to H's emotions and that they all undergo family therapy, which M declined to do.

2.17 In June 2013, the State Agency for Child Protection acknowledged the violation of the rights of the children and the risk posed by the relationship between the father and his sons, but did not pursue the case any further.

2.18 From June to November 2013, M disappeared from his children's lives. In September 2013, M.P. called the author to encourage her to use social services. After that call, the author transmitted to the Child Protection Department the psychologist's report about her children's emotional state, noting also the recent abandonment by their father.

2.19 On 15 February 2014, M met A at his own parents' residence, in accordance with the court-scheduled visitation schedule. M called the author, insulted her in A's hearing and blamed her for the behaviour of their son, who spent the duration of the visitation crying.

2.20 On 1 March 2014, during a visitation, M took a mobile phone away from A and did not allow him to attend his friend's birthday party. M also shouted at H over the phone, accusing him of turning his brother against him. When the grandmother saw that A was limping and asked M whether he had taken the child to a doctor, M lost his temper and started yelling that A was overacting and pretending to be injured and that everybody was nagging him on purpose.

2.21 On 4 March 2014, the author had a long conversation with her former husband over the phone, suggesting that he should see a psychologist in order to facilitate effective communication. M agreed but did not go to the appointment.

2.22 On 19 April 2014, M forced A to stay overnight and did not allow H to talk to A over the phone. He threatened to sue H for turning A against his father. In the presence of A, M also insulted the author, saying that she was "sexually unsatisfied" and that she "should find 10 other men". H was very angry at M and was upset and shaking.

2.23 Worried about her sons' condition, the author took them to a therapeutic centre on 25 April and 8 May 2014. The father was invited but refused to attend. The psychologist's opinion was that A was willing to have contact with his father, but it would be traumatizing for the child to be forced to spend nights at the father's home, and that it would take time to build a fully functioning relationship with the father. The opinion regarding H was that there was a parental alienation towards the father, and that he had a secure attachment bond with the mother. The psychologist did not find any signs indicating that the mother had influenced her child in that regard.

2.24 On 30 April 2014, A cried hysterically and had difficulty breathing, because he did not want to meet with his father. During the visitation with A, M again, in his child's presence, insulted the author and her mother, calling them "stupid fool", "bitch" and "insane". M filed a harassment complaint with the police, alleging that the author was turning A against him and was bothering him over the phone. When A came back from the visit with his father, he said that he witnessed his father shouting at and insulting his grandmother as "bitch" and "stupid gull". The author filed a complaint with the police. On 9 May 2014, she was summoned to the Third Plovdiv Police District, along with the two children, who were questioned about the circumstances related to the two complaints, namely, the father's and the mother's.

2.25 On 14 May 2014, the author, in her personal capacity and on behalf of her two children, lodged a complaint with the Plovdiv Regional Court, requesting the Court to issue an emergency protection order applying the measures under article 5 (1) (1), (3) and (4) of the Protection against Domestic Violence Act of March 2005 (amended in 2009), with a view to protecting her and her children from M's violence.<sup>2</sup> The Court issued a writ to suspend the procedure and requested the author to specify the exact violence, because article 10 (1) of the Act set a one-month time limit on filing an application for a protection order and the description of the accidents should have been specifically factual rather than portraying the overall strained relations between the parties.<sup>3</sup> The author submitted additional information, also citing the applicable judicial standards on domestic violence, related cases of the United Nations treaty bodies and the European Court of Human Rights and the Child Protection Act. The Court issued an emergency protection order on 15 May 2014, on the basis of article 18 of the Protection against Domestic Violence Act. On 17 May 2014, a copy of the emergency protection order was served on M, and a fourth police warning was issued to him.

2.26 On 19 May 2014, M lodged a complaint with the police against the author. On 24 May 2014, the police issued a fifth warning against M to refrain from engaging in unlawful acts towards the author and the minor children and to observe strictly the Plovdiv Regional Court's emergency protection order. On 2 June 2014, the Plovdiv Regional Prosecutor's office ordered a complementary inquiry. H and the author provided explanations at the police station regarding the father's complaint. The psychologist warned that the children became visibly anxious when they talked about their father. On 26 June 2014, the police delivered an opinion on M's complaint, indicating that no pretrial proceedings were to be instituted.

2.27 On 25 June 2014, the Court did not allow the author's witnesses to discuss any acts of violence that had occurred more than one month prior to the allegation, as prescribed under article 10 of the Protection against Domestic Violence Act. The author's attorney raised an objection that, according to the international standards that had already been presented to the Court, the one-month period was not to be taken into account, which was not considered by the Court. Throughout the proceedings,

<sup>2</sup> Protection against Domestic Violence Act, article 5 (1): Protection against domestic violence shall be implemented through any of the following: 1. Placing the respondent under an obligation to refrain from applying domestic violence; ... 3. Prohibiting the respondent from getting in the vicinity of the home, the place of work, and the places where the victim has his or her social contacts or recreation, on such terms and conditions and for such a period as is specified by the court; 4. Temporarily relocating the residence of the child with the parent who is the victim or with the parent who has not carried out the violent act at stake, on such terms and conditions and for such a period as is specified by the court, provided that this is not inconsistent with the best interests of the child. Available through the Global Database on Violence against Women of the United Nations Entity for Gender Equality and the Empowerment of Women, at <https://bit.ly/2UPxCFa>. The case was registered as civil case No. 7444/2014.

<sup>3</sup> Ibid., article 10 (1): The application or request shall be filed within one month as from the date on which the act of domestic violence occurred. See Global Database on Violence against Women.

the Court was more lenient towards M's witnesses. On 1 July 2014, the author's attorney filed an application for the judge to recuse himself, which was refused.

2.28 On 28 August 2014, the Plovdiv Regional Court delivered a judgment rejecting the author's application for a protection order to be issued against M on the basis of the psychological and emotional violence. In its decision, the Court indicated that, in her application, the author had described circumstances that had happened outside the one-month time period set under article 10 (1) of the Protection against Domestic Violence Act and had expected the Court to take into account acts of violence that had taken place outside of that period. The Court also indicated that article 10 (1) was based on the principle of specificity, which would require that a particular act of domestic violence occur in a specified time frame, place and form or manifestation, rather than general and abstract allegations, and that the Court did not take into consideration violence that had occurred outside the time limit. In breach of the rules set out in the Civil Procedure Code, the Court refused to consider or to comment on the testimony given by the author's friend and did not recognize it as having evidentiary value because it was not coming from direct observation. Regarding the psychologist's opinions, the Court noted that the children were psychologically traumatized as a result of the strained relationship between their parents. Those opinions did not contain information about the father's aggression or any other form of domestic violence. The Court accepted the social worker's standpoint that the mother had influenced the children, burdening them with her own negative attitude towards the father. The Court also noted that the evidence showed an interpersonal conflict that had seriously damaged the relationship between the parents and that had had an impact on the children. The Court concluded that the author did not succeed in proving her claim of domestic violence beyond reasonable doubt. The Court found that the parental alienation seen in H towards his father was caused by the mother, who should have maintained a positive attitude towards the father, given that there was no reason for a minor child to become hostile against his father without having been subjected to aggression or other negative behaviour from him. The Court found, however, that such allegations were neither brought nor proven in the case before it. The Court considered that M's violent acts were a defensive reaction provoked by the behaviour of the author, who constantly called A on the phone and turned her sons against their father.

2.29 On 12 September 2014, the author lodged an appeal before the Plovdiv District Court against the Plovdiv Regional Court's decision, with a detailed analysis of all the proceedings. On 20 November 2014, the Plovdiv District Court dismissed the author's appeal, upholding the decision by which the District Court had refused to issue a permanent protection order under article 5 of the Protection against Domestic Violence Act.

### **Complaint**

3.1 The author claims a violation of article 2 (a)–(c) and (e)–(g), article 5 (a) and article 16 (1) (c), (g) and (h) of the Convention, read in conjunction with article 1 thereof and the Committee's general recommendation No. 19,<sup>4</sup> on account of the State party's failure to effectively respond to the domestic violence committed against her by her former husband.

3.2 The author claims that the State party neglected its positive obligations under the Convention and supported the continuation of a situation of domestic violence against her, contrary to its obligations under the Convention. The author alleges that

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<sup>4</sup> The Committee's general recommendation No.19 stipulates 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.

Bulgarian women are disproportionately negatively affected by the failure of the courts to take domestic violence seriously as a threat to their lives and health and as a factor that hampers the realization of their human rights. She also alleges that Bulgarian women are disproportionately affected by the practice of not appropriately prosecuting or punishing perpetrators of domestic violence. She further alleges that women are disproportionately affected by the failure to educate law enforcement officers, judicial personnel and all relevant professionals about domestic violence and by the failure to collect data and maintain statistics on domestic violence.

3.3 Concerning the violation of article 2 (a) and (b) of the Convention, the author submits that there is a lack of: (a) a special law on equality between women and men; (b) recognition of violence against women as a form of discrimination; and (c) positive measures in favour of women who are victims of domestic violence, all of which results in inequality in practice and the denial of the enjoyment by women of their human rights.

3.4 The author recalls the Committee's concluding observations on the combined second and third periodic reports of Bulgaria, in which the Committee urged the Government to develop an array of medical, psychological and other measures to assist women who are victims of violence and to change prevailing attitudes to domestic violence, which view it as a private problem, and to encourage women to seek redress ([A/53/38/Rev.1](#), part one, para. 255).

3.5 The author also recalls the Committee's concluding observations on the combined fourth to seventh periodic reports of Bulgaria ([CEDAW/C/BGR/CO/4-7](#), paras. 11–16), in which the Committee expressed concern about the State party's failure to specifically prohibit discrimination against women and to incorporate the principle of gender equality in all areas covered by the Convention and about the fact that a gender equality law had not yet been adopted. It called upon the State party to adopt a gender equality law prohibiting all forms of discrimination on the grounds of sex and gender, to ensure sanctions in cases of violations of the law and to embody the principle of equality between women and men. The Committee urged the State party to strengthen its legal complaint mechanisms to ensure that all women had effective access to justice. It also recommended that the State party expeditiously strengthen the national machinery for the advancement of women by increasing its authority and visibility.

3.6 The author further recalls the Committee's general recommendation No. 19, establishing that gender-based violence, which impairs or nullifies the enjoyment by women of their human rights, constitutes discrimination against women within the meaning of article 1 of the Convention. The author notes that the Committee has observed that States parties can be held responsible for private acts if they fail to act with due diligence to prevent violations of women's rights or to investigate and punish acts of violence against women. The Committee had made it clear that the obligations of States parties to implement the Convention effectively require them to eradicate violence against women, including domestic violence, through a set of preventive, protective, rehabilitative and punitive measures, which are outlined in the text of the general recommendation. The author also notes that the Committee has stated that, if States parties fail to act with due diligence to prevent violations of women's rights or to investigate and punish those responsible for committing violence in the private sphere, they may be held responsible. The Committee has advanced the principle of State responsibility for domestic violence in numerous concluding observations. In particular, it has reiterated that States parties must develop the capacity to understand the meaning of substantive equality and non-

discrimination, that domestic violence is gender-based violence that constitutes discrimination against women and that it is therefore a human rights violation.<sup>5</sup>

3.7 The author recalls that, in its general recommendation No. 21 (1994) on equality in marriage and family relations, the Committee observed that custom, tradition and failure to enforce laws ensuring equality and protection against violence contravene the Convention.<sup>6</sup>

3.8 The author alleges that there is no law on the equality of men and women and that the Protection against Domestic Violence Act does not recognize domestic violence as gender-based violence that constitutes discrimination against women. She also alleges that the law does not recognize that domestic violence in Bulgaria disproportionately affects women and lessens and nullifies the enjoyment by women of their human rights. Some of the procedures and norms of the Act contribute in practice to the perpetuation of the phenomenon by not treating it according to its specificity and according to the requirements of international law. In order for an individual woman who is a victim of domestic violence to enjoy the practical realization of the principle of the equality of men and women and of her human rights and fundamental freedoms, the political will that is expressed in a State's system must be supported by State actors that adhere to the State party's due diligence obligations. Taking into consideration all the information provided in the present communication, Bulgaria should therefore be held responsible for the violation of article 2 (a) and (b) of the Convention.

3.9 As regards the violation of article 2 (c) and (e) of the Convention, the author asserts the State party's lack of protection from domestic violence owing to a series of failures, namely: (a) the lack of criminalization of domestic violence; (b) the lack of effective implementation of the Protection against Domestic Violence Act, including the lack of clarity as to which acts of domestic violence should be assessed during judicial proceedings and the lack of clarity under the Act as to which party bears the burden of proof; (c) the lack of coordination among law enforcement and judicial officials; (d) the failure to educate law enforcement personnel, judicial personnel and social workers about domestic violence; and (e) the failure to collect data and maintain statistics on incidents of domestic violence. Consequently, the author was exposed to long-lasting physical, psychological and emotional domestic violence and to assault, battery, coercion and threats to her life. Her two sons were emotionally abused by their father and institutionally abused by the social services, which are aimed at protecting children and their rights, as well as by the court, which is required to implement the international and European human rights standards for the protection of the rights of victims of domestic violence.

3.10 The author notes with concern that the Plovdiv courts did not take into account the long history of physical and psychological abuse suffered by her and her children. The Plovdiv Regional Court did not allow the author to present all the acts of domestic violence that took place during her marital relationship or those occurring after her divorce, despite the fact that she had listed them in her application for an order of protection against domestic violence. During the proceedings, the Court did not consider the evidence of emotional and psychological violence presented with the application and mistreated the oral evidence presented by the witnesses. In deciding the case, the Court took into account only events that had taken place in the 30 days

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<sup>5</sup> See the Committee's concluding observations on the periodic reports, inter alia, of Italy (see [A/52/38/Rev.1](#), part two, chap. IV, sect. B), Algeria (see [A/54/38/Rev.1](#), part one, chap. IV, sect. B), Belarus (see [A/55/38](#), part one, chap. IV, sect. B), Burkina Faso (*ibid.*), Germany (*ibid.*), Cameroon (*ibid.*, part two, chap. IV, sect. B), Egypt (see [A/56/38](#), part one, chap. IV, sect. B), Guinea (*ibid.*, part two, chap. IV, sect. B) and Viet Nam (*ibid.*).

<sup>6</sup> General recommendation No. 21, para. 15; see also paras. 13, 14, 16 and 17 thereof.



preceding the initiation of the proceedings under article 10 (1) of the Protection against Domestic Violence Act. The entire history of domestic violence perpetrated against the author and her children was therefore completely neglected and underestimated. The Court converted a pattern of domestic violence and abuse into a series of scandals between the parties on the basis that their relationship was violent owing to the author's "provocative behaviour". Such an assessment displays a total misunderstanding of the situation and disregard for the suffering of the author.

3.11 The author recalls that the Committee has noted that the Bulgarian courts have applied an overly restrictive definition of domestic violence that was not warranted by the Protection against Domestic Violence Act and deprived themselves of the opportunity to take into account the history of domestic violence by interpreting the purely procedural requirement of article 10 (1) of the Act in a very strict manner.<sup>7</sup> The Committee has recommended that the State party amend article 10 (1) of the Act so as to remove the one-month time limit and ensure that protection orders are available without placing undue administrative and legal burden on applicants.<sup>8</sup> The lack of clarity in the Protection against Domestic Violence Act as to which acts of domestic violence should be taken into account during judicial proceedings is therefore incompatible with the State's duty to provide protection against domestic violence and is discriminatory in that the shortcomings of the Act have a disproportionate impact on women. Bulgarian law is deficient in that it treats domestic violence as a mostly family-related matter that does not warrant great public attention or criminal prosecution and therefore does not ensure that the victims are able to institute proceedings that would effectively protect them.

3.12 The author alleges a lack of effective implementation of the Protection against Domestic Violence Act owing to the lack of clarity as to which of the parties bears the burden of proof in judicial proceedings and the role of the evidence presented. The author argues that the lack of clarity in the Act as to the burden of proof is incompatible with the duty of the State party to protect against domestic violence and is discriminatory because the shortcomings of the Act have a disproportionate impact on women, who are typically the victims of domestic violence. Although the Act provides for a shift of the burden of proof in domestic violence cases, it is not sufficiently clear on that point. Instead, it defers to the rules of evidence of the Civil Procedure Code. As a result of inadequate legal training, many judges have continued to apply a "beyond reasonable doubt" standard in cases involving requests for protection orders and required the author to prove her case beyond reasonable doubt before the courts. The author asserts that, by interpreting and applying the Act in a way that disregards any evidence of domestic violence suffered prior to the beginning of the one-month period, the courts failed to shift the burden of proof in her favour, thereby depriving her of effective judicial protection. The author explains that the aim of the Act is to ensure the effective protection of victims of domestic violence by taking into account the entire history of violence, whereas the 30-day time limit in article 10 of the Act is a purely procedural time frame for filing complaints. She recalls the jurisprudence of the Committee, in which it has indicated that the Bulgarian courts applied a very high standard of proof by requiring that the act of domestic violence must be proven beyond reasonable doubt, thereby placing the burden of proof entirely on the victim.<sup>9</sup> Such a standard of proof is excessively high

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<sup>7</sup> See *V.K. v. Bulgaria* (CEDAW/C/49/D/20/2008), *Jallow v. Bulgaria* (CEDAW/C/52/D/32/2011) and the Committee's concluding observations on the combined fourth to seventh periodic reports of Bulgaria (CEDAW/C/BGR/CO/4-7). See also European Court of Human Rights, *Bevacqua and S. v. Bulgaria* (application no. 71127/01), judgment of 12 June 2008, in which the Court found the State to be in violation of article 8 of the European Convention on Human Rights, in a domestic violence case.

<sup>8</sup> See *V.K. v. Bulgaria* and CEDAW/C/BGR/CO/4-7.

<sup>9</sup> See *V.K. v. Bulgaria*.

and is not in line with the Convention or with current non-discrimination standards, which ease the burden of proof in favour of the victim in civil proceedings relating to domestic violence complaints. Accordingly, the Committee recommended to the State party that it amend the Act to ease the burden of proof in favour of the victim.

3.13 Regarding the violation of article 2 (f) and (g), the author reiterates that, under the Protection against Domestic Violence Act, domestic violence is not recognized as a crime or as a form of gender-based discrimination. It contains elements of criminal procedure but remains within the framework of the civil procedure. The main challenge for its effective implementation is the lack of understanding of the specificity of domestic violence as a form of gender-based discrimination, of its roots, causes and effects being harmful to women and children or of the cost to society as a whole. The lack of adequate training of those involved with the enforcement of the Act is hampering its practical realization and the enjoyment by women of their human rights. In addition, the penal laws in Bulgaria still exempt from State prosecution certain types of assault if committed by a family member, although the State prosecutes the same act if committed by a stranger (article 161 of the Penal Code). The State does not assist in prosecuting domestic assault unless the woman has been killed or permanently injured. Furthermore, the State has failed to adopt and implement national legislation emphasizing the prevention of violence and the prosecution of offenders or to periodically review and analyse its legislation to ensure its effectiveness in eliminating violence against women. In addition, the lack of State-funded and State-supported research on the prevalence, causes and consequences of violence indirectly perpetuates the negative phenomenon of domestic violence owing to the lack of information on the number of such cases and on the prevalence and pervasiveness of the phenomenon and, therefore, neither the State nor society perceive it as being a serious human rights violation affecting a wide group of people, mainly women and children, including the author and her children. The lack of official statistics affirms the State's neglect and underestimation of the problem and is an illustration of one of the State's violations of its international legal obligations in the sphere of violence against women.

3.14 As for the violation of article 5 (a) and article 16 (1) (c), (g) and (h), read in conjunction with article 1, of the Convention, the author claims that the lack of a State-adopted comprehensive approach to overcoming traditional stereotypes regarding the role of women in the family and in society, including political, legal and awareness-raising measures involving State officials, civil society and the media, contributes to violence against women and, in reality, violates the author's right to equality.

3.15 The author requests that the State party: (a) take immediate and effective measures to protect her physical and mental integrity and that of her children; (b) ensure the safety of her home and that she receives adequate child maintenance and legal assistance; and (c) provide her with adequate compensation for the physical and mental harm suffered, proportionate to the gravity of the violations of her rights under the Convention.

3.16 The author also claims that the State party should adopt general measures in favour of women who are victims of domestic violence, including: amending the Protection against Domestic Violence Act in order to criminalize acts of domestic violence and breaches of protection orders and to provide for the issuance of protection orders for acts of violence committed prior to the one-month period referred to in article 10 of the Act; detaining perpetrators according to the gravity of the offence; amending criminal laws to allow *ex officio* prosecution in cases of low- and medium-level assaults when the victim and the perpetrator are relatives; clarifying on whom the burden of proof is placed in domestic violence proceedings by explicitly stating that the Act requires that the burden of proof be shifted in favour of the victim;

continuously training public officials responsible for the application of the Act; providing adequate support to non-governmental organizations working to combat domestic violence; and raising public awareness of the negative impact of domestic violence on women and children, as well as of its financial consequences for society.

3.17 The author submits that she has exhausted all available domestic remedies and that the same matter has not been examined under another procedure of international investigation or settlement.

### **State party's observations on admissibility and the merits**

4.1 On 10 March 2015, the State party submitted its observations on the admissibility and merits of the communication.

4.2 On the admissibility of the communication, the State party concedes that, after the confirmation of the judgment by the appellate court dismissing, on 20 November 2014, the author's allegation of domestic violence against her former husband, the author could not further appeal to another court in Bulgaria. However, the State party claims that the author did not take any steps to seek protection or assistance under the Protection against Discrimination Act or under the State and Municipal Liability for Damage Act.

4.3 Concerning the merits of the communication, the State party provided information on its efforts to combat violence against women, including the action plan adopted in July 2013 to implement the Committee's concluding observations on the combined fourth to seventh periodic reports of Bulgaria (CEDAW/C/BGR/CO/4-7) and the adoption of the Gender Equality Act in April 2016 to better align national legislation and policy with European Union standards and international legal instruments on gender equality.

4.4 The State party also introduced a project funded by Norway from 2009 to 2014 in which the Ministry of Labour and Social Policy implemented a number of activities aimed at improving the capacity of institutions and the professional qualifications of experts that address domestic violence cases, including the development of training materials and training workshops for social workers.

4.5 The State party contends that it is implementing the Child Protection Act, in line with the Convention on the Rights of the Child, which stipulates that each child has the right to protection against educational methods that are degrading to their dignity, against physical and psychological or other violence and against any forms of influence running counter to the child's interests. The State party refers to the Child Benefits Act and the Social Assistance Act, which are aimed at providing social protection measures for and community social services to children. Protective measures for women and children who are vulnerable to domestic violence were also introduced, such as crisis centres, mother and baby units, social support centres and social rehabilitation and integration centres. Coordination of the agencies is managed under a cooperation agreement, signed in 2010, applicable to the work of territorial structures of child protection bodies in cases of children who are victims of violence or at risk of violence and in cases of crisis intervention.

4.6 The State party notes that the report by the Social Assistance Agency enclosed with the complaint was prepared in line with a uniform procedure, drawn up on the recommendation of the Ombudsman, for the conduct of social inquiries and the preparation of social reports required by judicial institutions in relation to legal proceedings involving children. The State party also notes in that context that regional and territorial units of the Agency do not deliver a final opinion on custody rights, which is exclusively within the competence of the relevant court.

4.7 The State party asserts that the Plovdiv Social Assistance Directorate, which is in charge of the implementation of measures for protection against domestic violence, was aware of the situation of the author and her children on the basis of the multiple reports submitted by the author. Through inquiries into those reports, it was found that the arrangement of personal contacts between the father and the two children as ordered by the court were not always respected. The State party indicates that the competent child protection body did not find any risks to the children and therefore no cases relating to a child being at risk were opened under the Child Protection Act. The State party also notes that the parents were advised of their rights and obligations under the provisions of the Child Protection Act and the Family Code. Furthermore, after M submitted the application to use social services to improve his relationship with his sons, the case was referred to the Plovdiv child and family social services complex.

4.8 The State party notes that the author has been receiving benefits for her two children under article 4 of the Child Benefits Act since 2013. She currently receives 85 leva per month and was granted aid on the grounds of the Child Benefits Act, amounting to 250 leva.

**Author's comments on the State party's observations on admissibility and the merits**

5.1 On 7 July 2017, the author submitted comments on the State party's observations on admissibility and the merits.

5.2 The author considers that the State party does not contest the admissibility of the communication. Regarding the comments on the protection and assistance provided for under the Protection against Discrimination Act, the author alleges that that Act is not effective or applicable to her case because: (a) there is a special law on protection against domestic violence, which the author invoked in her case; (b) the understanding of the Commission on Protection against Discrimination is that domestic violence is not a form of discrimination against women; and (c) the Act does not offer any measures for protection against domestic violence except for the levying of a fine of between 250 and 2,000 leva on the perpetrator. As to the State and Municipal Liability for Damages Act, the author alleges that it is not applicable in the current case.

5.3 On the merits of the communication, the author claims that the institutional action plan adopted in July 2013 and referred to by the State party has not been implemented, four years after its adoption. With regard to the Gender Equality Act of 2016, the author alleges that the law is ineffective, because it only confirms the existing State structure and does not create a body that would design and implement the State policy on gender equality and does not enumerate sanctions to be imposed for lack of implementation of the legislation; moreover, there is no financial framework for the implementation of the legislation.

5.4 The author claims that the project funded by Norway from 2009 to 2014 was of limited duration and that no financial measures were taken to ensure the continuation of the activities implemented or the sustainability of the project.

5.5 The author asserts that, since the adoption of the Protection against Domestic Violence Act, despite her numerous requests as a mother of two children and a victim of domestic violence, no effective measures to protect her and her sons were taken by the Social Assistance Directorate in Plovdiv.

5.6 The author concludes that the State party focused on the legal framework that is in place, without responding to the factual claims she raised. She therefore reiterates her complaint under article 2 (a)–(c) and (e)–(g), article 5 and article 16 (1) (c),

(g) and (h) of the Convention, read in conjunction with article 1 thereof and the Committee's general recommendation No. 19, regarding the State party's failure to provide her with effective protection against domestic violence.

### **Issues and proceedings before the Committee**

#### *Consideration of admissibility*

6.1 In accordance with rule 64 of its rules of procedure, the Committee must decide whether the communication is admissible under the Optional Protocol. Pursuant to rule 66 of the rules of procedure, the Committee may decide to examine the admissibility of the communication together with its merits. Pursuant to rule 72 (4), it is to do so before considering the merits of the communication.

6.2 In accordance with article 4 (2) (a) of the Optional Protocol, the Committee is satisfied that the matter has not already been and is not being examined under another procedure of international investigation or settlement.

6.3 The Committee recalls that, under article 4 (1) of the Optional Protocol, it is precluded from considering a communication unless it has ascertained that all available domestic remedies have been exhausted or that the application of such remedies is unreasonably prolonged or unlikely to bring effective relief.<sup>10</sup> In that connection, the Committee notes the State party's argument that the author did not take any steps to seek protection and assistance under the Protection against Discrimination Act or the State and Municipal Liability for Damage Act. Nevertheless, the Committee notes the author's submission that she has exhausted all available domestic remedies that would have been likely to bring sufficient relief and the application of which would not have been unreasonably prolonged. As conceded by the State party, she appealed to the court and, in its judgment, the appellate court dismissed the author's appeal on the basis that the judgment of the Plovdiv District Court was not appealable. The Committee also notes the author's assertion that proceedings under the Protection against Discrimination Act and under the State and Municipal Liability for Damage Act are unlikely to provide adequate effective relief in the present gender-based violence and domestic violence case.

6.4 The Committee further notes that the State party provides no explanation or details as to how the proceedings under those laws would have been effective in securing the rights of the author. The Committee, therefore, considers, in the present case, that it cannot conclude that the domestic remedies referred to by the State party would bring effective relief to the author; it also considers that such remedies would amount to an additional unreasonable delay in the proceedings. Accordingly, the Committee is not precluded, by virtue of the requirements of article 4 (1) of the Optional Protocol, from considering the present communication. The committee also considers that it has no reason to find the communication inadmissible on any other grounds and accordingly finds it admissible.

6.5 Having found no impediment to the admissibility of the communication, the Committee proceeds to its consideration of the merits.

#### *Consideration of the merits*

7.1 The Committee has considered the present communication in the light of all the information made available to it by the author and by the State party, as provided for in article 7 (1) of the Optional Protocol.

<sup>10</sup> *E.S. and S.C. v. United Republic of Tanzania* (CEDAW/C/60/D/48/2013), para. 6.3; and *L.R. v. Republic of Moldova* (CEDAW/C/66/D/58/2013), para. 12.2.

7.2 The Committee considers that, at the heart of the present communication, lies the author's allegation that the State party has failed to provide her with effective protection against domestic violence, in violation of article 2 (a)–(c) and (e)–(g), article 5 (a) and article 16 (1) (c), (g) and (h), read in conjunction with article 1, of the Convention.

7.3 The Committee recalls its general recommendation No. 19 and general recommendation No. 35 (2017) on gender-based violence against women, updating general recommendation No. 19, according to which gender-based violence and domestic violence, which impair or nullify the enjoyment by women of human rights and fundamental freedoms under general international law or under human rights conventions, constitute discrimination within the meaning of article 1 of the Convention. Under the obligation of due diligence, in particular in the private sphere, States parties must adopt and implement constitutional and legislative measures to tackle gender-based violence against women committed by non-State actors, also in the private sphere, in particular when it relates to domestic violence, including having laws, institutions and a system in place to address such violence and ensuring that they function effectively in practice and are supported by all State agents and bodies, which must diligently enforce the laws. 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, prosecute and punish perpetrators and provide reparations to victims and 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.<sup>11</sup> Failing to effectively address gender-based violence and domestic violence is detrimental to society and, in particular, to women and children.

7.4 The Committee addressed articles 5 and 16 together in its general recommendations No. 19, No. 21 and No. 35; the Committee stressed that the provisions of general recommendations No. 19 and No. 35 concerning violence against women have great significance for women's abilities to enjoy rights and freedoms on an equal basis with men. It has indicated on many occasions that traditional attitudes by which women are regarded as subordinate to men contribute to violence against them. The Committee emphasizes that the full implementation of the Convention requires States parties not only to take steps to eliminate direct and indirect discrimination and improve the de facto position of women, but also to modify and transform gender stereotypes, which constitute both a root cause and a consequence of discrimination against women.<sup>12</sup> Gender stereotypes are perpetuated through various means and institutions, including laws and legal systems, and can be perpetuated by State actors in all branches and at all levels of government and by private actors.<sup>13</sup>

7.5 The Committee notes that, under article 2 and article 5, the State party has an obligation to take appropriate measures to modify or abolish not only existing laws and regulations, but also customs and practices that constitute discrimination against women, whereas, under article 16 (1), the State party must take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations. In that regard, the Committee stresses that stereotyping affects women's right to a fair trial and that the judiciary must be careful not to create inflexible standards on the basis of preconceived notions of what constitutes domestic

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<sup>11</sup> General recommendation No. 35, para. 24 (2) (b).

<sup>12</sup> *Belousova v. Kazakhstan* (CEDAW/C/61/D/45/2012), para. 10.10.

<sup>13</sup> *R.K.B. v. Turkey* (CEDAW/C/51/D/28/2010), para. 8.8.

or gender-based violence, as noted in its general recommendation No. 33 (2015) on women's access to justice.<sup>14</sup>

7.6 In the present case, the compliance of the State party with its obligations to banish gender stereotypes under article 2 (a)–(c) and (e)–(g) and article 5 (a) of the Convention, read in conjunction with article 16 (1) (c), (g) and (h), must be assessed in the light of the level of gender sensitivity applied in the handling of the author's case by the authorities. Therefore, with regard to the submission of the author that the decisions of the authorities were based on gender stereotypes, the Committee reaffirms that the Convention places due diligence obligations on all State institutions and that States parties can be held responsible for judicial decisions that violate provisions of the Convention.<sup>15</sup>

7.7 The Committee notes that the State party has taken measures to provide protection against gender-based violence and domestic violence, including under the Protection against Domestic Violence Act. However, in order for the author to enjoy the practical realization of the principle of equality between women and men and of her human rights and fundamental freedoms, the political will that is expressed in such measures and legislation must be supported by all State actors, including the courts, which are bound by the obligations of the State party.

7.8 The Committee notes from the author's submission that the legislation in the State party does not provide effective legal protection against gender-based violence and domestic violence, which resulted in the violation of the State party's obligations under article 2 (a)–(c) and (e)–(g). The Committee recalls its views in *V.K. v. Bulgaria*, in which it requested the State party to amend article 10 (1) of the Protection against Domestic Violence Act, which stipulates that a request for a protection order must be submitted within one month of the date on which the act of domestic violence has occurred and has been interpreted as precluding courts from considering past incidents having occurred prior to the relevant one-month period.<sup>16</sup> The Committee finds that the rationale behind the one-month period within which, under the article, a victim must apply for a protection order, whereby the order is meant to provide for urgent court interventions rather than policing the cohabitation of partners, lacks gender sensitivity in that it reflects the preconceived notion that gender-based violence and domestic violence is, to a large extent, a private matter falling within the private sphere, which, in principle, should not be subject to State control.<sup>17</sup> In its concluding observations on the combined fourth to seventh period reports of Bulgaria ([CEDAW/C/BGR/CO/4-7](#)), the Committee reiterated its serious concern about the high prevalence of gender-based violence and domestic violence, the absence of specific provisions criminalizing gender-based violence, domestic violence and marital rape, the lack of criminal prosecution of violence within the family and the failure by the judiciary to follow the practice of shifting the burden of proof to favour victims, which is provided for in the Protection against Domestic Violence Act (*ibid.*, para. 25). It recommended that the State party amend its Criminal Code and Criminal Procedure Code in order to specifically criminalize gender-based violence, domestic violence and marital rape and to introduce the possibility of ex officio prosecution for all three offences; amend article 10 (1) of the Act so as to remove the one-month time

<sup>14</sup> General recommendation No. 33, paras. 26 and 27; in para. 26, the Committee notes that judges often adopt rigid standards about what they consider to be appropriate behaviour for women and penalize those who do not conform to those stereotypes, that stereotyping also affects the credibility given to women's voices, arguments and testimony as parties and witnesses and that such stereotyping can cause judges to misinterpret or misapply laws. See also *L.R. v. Republic of Moldova*, para. 13.6; and *J.I. v. Finland* ([CEDAW/C/69/D/103/2016](#)), para. 8.6.

<sup>15</sup> *V.K. v. Bulgaria*, para. 9.11; and *L.R. v. Republic of Moldova*, para. 13.6.

<sup>16</sup> *V.K. v. Bulgaria*, para. 9.9.

<sup>17</sup> *V.K. v. Bulgaria*, para. 9.12.

limit to file a petition for a protection order and to ensure the stringent application by the judiciary of article 13 (3) of the Act so as to ease the burden of proof in favour of the victim; ensure that sufficient State-funded shelters are available to women who are victims of gender-based violence and domestic violence and their children and provide support to non-governmental organizations offering shelter and other forms of support to victims of domestic violence; and provide mandatory training for judges, lawyers and law enforcement personnel on the application of the Act, including on the definition of gender-based violence and domestic violence and on gender stereotypes.

7.9 In the present case, the Committee recalls that the Plovdiv Regional Court and the Plovdiv District Court, in their application of aforementioned article 10 (1) of the Protection against Domestic Violence Act and their assessment, essentially based their decision to refuse a permanent protection order on the assumption that, during the relevant one-month period from the date of the application, there was “no proof of domestic violence” against the author or her children and that M’s aggressive acts had likely been caused by the author’s behaviour. The Courts had therefore concluded that both parents were responsible for the mental status of the children.

7.10 With regard to the court rulings, the Committee reiterates that it is not in a position to review the assessment of facts and evidence by domestic courts and authorities unless such assessment was, in itself, arbitrary or otherwise discriminatory.

7.11 The Committee also notes that the failure by the State party to amend article 10 (1) of the Protection against Domestic Violence Act directly affected the possibility for the author to claim justice and to have access to effective remedies and protection. The Committee notes in the present case that the failure by the State party to amend the article in question led to the courts not giving due consideration to M’s previous record of gender-based violence and domestic violence and to their disregarding the author’s vulnerable position and long-term suffering. The Committee also considers that the case displays a failure by the State party in its duty to take all appropriate measures to modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices that are based on the idea of the inferiority or superiority of either of the sexes, or on their traditional roles.

7.12 The Committee recognizes that the author of the communication has suffered severe physical, psychological and material damage and prejudice. Throughout all the proceedings of the case, the author did not get the legal protection required. Even if the Committee assumes that she was not directly subjected to physical gender-based violence and domestic violence following the final rejection of her claim, for which she had incurred costs, she nonetheless suffered great prejudice owing to the absence of legal and institutional protection and adequate responses to her and her children’s application.

7.13 The Committee also notes that the State party, in its observations with regard to the present case, does not effectively challenge or contest the allegation made by the author.

7.14 Acting under article 7 (3) of the Optional Protocol and in the light of the above considerations, the Committee is of the view that the State party has failed to fulfil its obligations and has thereby violated the author’s rights under article 2 (a)–(c) and (e)–(g), article 5 (a) and article 16 (1) (c), (g) and (h) of the Convention, read in conjunction with article 1 thereof and the Committee’s general recommendations No. 19, No. 21 and No. 35.



7.15 The Committee makes the following recommendations to the State party:

- (a) Concerning the author of the communication:
  - (i) Take immediate and effective measures to guarantee the physical and mental integrity of the author and her children;
  - (ii) Ensure that the author receives appropriate child support and legal assistance, as well as financial reparations proportionate to the physical, psychological and material damage suffered by her and her children and commensurate with the gravity of the violations of their rights;
- (b) In general:
  - (i) Fulfil its obligations to respect, protect, promote and fulfil the human rights of women, in particular the right to be free from all forms of gender-based violence and domestic violence, including intimidation and threats of violence;
  - (ii) Promptly revise its legislation and, if necessary, its constitutional provisions, to bring them into full compliance with the Convention and international human rights standards, including general recommendations No. 19 and No. 35 and the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention); ensure, in particular, that all acts of gender-based violence and domestic violence, including violence in the family sphere, are considered violations of the fundamental rights of women and thus criminalized and subject to sanctions; amend article 10 (1) of the Protection against Domestic Violence Act so as to remove the one-month time limit and thereby ensure that protection orders are available without placing undue administrative and legal burdens on applicants; and ensure that the provisions of the Act ease the burden of proof in favour of the victim;
  - (iii) Complete the process of ratifying the Istanbul Convention, as doing so will reinforce the State party's ability to combat gender-based violence and domestic violence;
  - (iv) Promptly, thoroughly, impartially and seriously investigate all allegations of gender-based violence against women, ensure that criminal proceedings are initiated in all such cases, bring the alleged perpetrators to trial in a fair, impartial, timely and expeditious manner and impose appropriate penalties;
  - (v) Provide victims of gender-based violence with safe and prompt access to justice, including free legal aid where necessary, in order to ensure that they have access to effective and sufficient remedies and rehabilitation, in line with the guidance provided in the Committee's general recommendation No. 33, and ensure that victims of domestic violence and their children are provided with prompt and adequate support, including shelter and psychological support;
  - (vi) Provide offenders with rehabilitation programmes and programmes on non-violent conflict resolution methods;
  - (vii) Provide mandatory training for judges, lawyers and law enforcement personnel, including police and prosecutors, as well as social workers and psychologists, on the Convention, the Optional Protocol thereto and the Committee's jurisprudence and general recommendations, in particular general recommendations No. 19, No. 21, No. 28 (2010) on the core obligations of States parties under article 2 of the Convention, No. 33 and No. 35, as well as the Istanbul Convention;

(viii) Develop and implement effective measures to prevent similar violations from being repeated, with the active participation of all relevant stakeholders, to address the stereotypes, prejudices, customs and practices that condone or promote gender-based violence and domestic violence;

(ix) Expeditiously implement the Committee's recommendations, in particular those regarding combating violence against women, contained in its concluding observations on the combined fourth to seventh periodic reports of Bulgaria ([CEDAW/C/BGR/CO/4-7](#)).

7.16 In accordance with article 7 (4) of the Optional Protocol, the State party shall give due consideration to the views of the Committee, together with its recommendations, and shall submit to the Committee, within six months, a written response, including information on any action taken in the light of the views and recommendations of the Committee. The State party is requested to publish the Committee's views and recommendations and to have them widely disseminated in order to reach all sectors of society.

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