Mandates of the Special Rapporteur on violence against women, its causes and consequences and the Working Group on the issue of discrimination against women in law and in practice

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Excellency,

We have the honour to address you in our capacities as Special Rapporteur on violence against women, its causes and consequences and Working Group on the issue of discrimination against women in law and in practice, pursuant to Human Rights Council resolutions 32/19 and 32/4.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning **potential serious retrogression in the advancement of the rights of women and their protection from domestic and gender-based violence in the city of Rome and throughout Italy**.

The "Pillon Decree", No. 735

On 10 September 2018, the Justice Commission of the Senate presented draft Decree 735 of which the first signatory is Senator Simone Pillon; as a result the decree has become known as the "Pillon Decree".

The Decree would introduce provisions that could entail a serious retrogression fuelling gender inequality and gender based discrimination and depriving survivors of domestic violence of important protections.

In its articles 1-4 and 7-8, the Decree would introduce compulsory mediation in all separation cases where a child is directly or indirectly involved, elevating mediation to a condition in order to access judicial remedies. This provision would be very detrimental if applied to cases of domestic violence. Article 48 of the Council of Europe Convention on preventing and combating violence against women and domestic violence (the Istanbul Convention) requires States to "prohibit mandatory alternative dispute resolution processes, including mediation and conciliation, in relation to all forms of violence" within the scope of the Convention. If adopted, the Decree would seem to be in direct contravention of this article.

Besides being in contravention of the Istanbul Convention, ratified by Italy on 10 September 2013, compulsory mediation would be problematic for a number of reasons:

- it would extend the time-frame for accessing judicial remedies;
- direct access to judicial remedies would be made impossible, even in emergency cases or cases with grave prejudice to the children;

- it would constitute a violation of the right to legal representation as the decree does not require the compulsory presence of a legal counsellor or technical representative during the mediation procedure; and
- it would undermine the Government's ability to fulfill its obligations to investigate and prosecute cases of domestic violence and provide appropriate protection and restitution to victims/survivors of domestic violence, by removing decision making power from the judicial authority, which would only have 15 days to validate the agreement reached during the mediation, rather than exercising independent judgment in the matter, taking into account all of the complexities that may be present in a case involving domestic violence.

In addition the Decree does not provide any indication as to what the tools, modalities and procedures would be for the mediator to prevent or solve situations of violence present in a couple/family, raising concerns that such a mediator would not necessarily be competent to handle situations of real danger for the physical integrity of those involved. In its general recommendation No. 35 on gender based violence, updating general recommendation No. 19, the Committee on the Elimination of Discrimination against Women (CEDAW Committee) recommends that in order to comply with its obligations under the Convention on the Elimination of All Forms of Discrimination against Women (ratified by Italy on 10 June 1985), a State should ensure that all State actors acting in an administrative, judicial or law enforcement capacity receive mandatory training and education on how to respond to sexual and gender based violence.

Article 2 of the Decree provides for an obligation of secrecy, meaning that all documents related to the mediation procedure will remain secret and will not be able to be accessed during judicial proceedings except for the agreement reached during mediation. This provision is of grave concern as it greatly limits the power of the judicial authority to access key information for making a determination in relation to a separation case, limiting the ability of the judiciary to fulfill the State's obligations regarding the protection of victims/survivors of domestic violence.

Articles 5 and 13 provide that in case of refusal to undergo mediation or negative outcome of mediation, the judicial authority may suggest to the parents to nominate a "parental coordinator"(*coordinatore genitoriale*), whose expenses will be borne by the parents on a 50/50 basis. This parental coordinator would be given decision making powers in relation to the situation of conflict. However, the decree does not provide any indication regarding the role of the parental coordinator in cases of violence, nor contain provisions ensuring the impartiality of the parental coordinator or the necessity for the parental coordinator to have specialized competencies for dealing with cases of violence. An essential judicial role of assessing cases of conflict within a family would be delegated to a non-State agent without necessarily specialist knowledge and expertise.

Further, the requirement of equal allocation of the burden of paying for the parental coordinator fails to take into account possible economic inequality between the members of a couple and provides an avenue for potential economic abuse. In its general recommendation No. 19, the CEDAW Committee recognized that lack of economic independence forces many women to stay in violent relationships, and that failure to take this into account can violate States' obligations under Article 16 of the Convention on the Elimination of All Forms of Discrimination against Women, requiring that States take all appropriate measures to eliminate discrimination against women with regard to marriage and family life.

Articles 9, 11, 12, 14, 17 and 18 of the Decree would introduce for the first time in the Italian domestic legal system two legal assumptions, which would have negative consequences on the party in situation of most vulnerability:

- The assumption of the falsity and unfounded basis of reports of abuse and physical and psychological violence; and
- The assumption of the presence of parental alienation syndrome, a highly contested theory, without any need of supporting factual or legal evidence.

These assumptions would appear to be in contravention of Article 31 of the Istanbul Convention, which requires that incidents of violence are taken into account in custody decisions, as well as Articles 15 and 16 of the Convention on the Elimination of All Forms of Discrimination against Women, which require that women be given equal rights as men in all legal processes as well as all matters relating to marriage and to parenting.

According to the Decree, the child, even if a victim of violence, will be required to see/meet (*frequentare*) the violent or abusing parent as the Decree stipulates that the child must be guaranteed a dual parenting arrangement. Such a requirement seems to be in contravention of the requirement in Article 31 of the Istanbul Convention that violence is taken into account in custody and visitation determinations, and that such determinations do not jeopardise the rights or safety of violence victims or children. The requirement of visitation would also seem to be in violation of the obligation to conduct an individualized determination of the best interests of the child, as required by Articles 3 and 9 of the Convention on the Rights of the Child (ratified by Italy on 5 September 1991) and elaborated by the Committee on the Rights of the Child in its General Comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration. Indeed, information received suggests that there have already been cases in Italy of children subjected to violence at the hands of abusive parents as a result of forced visitation.

Article 14 of the Decree renders it impossible for the parent/child victims of violence to escape from the location where violence took place in order to find protection and safety. This article in fact provides that any transfer of the child that is not previously authorized by both parents or the judicial authority, has to be

deemed contrary to the best interest of the child and devoid of any judicial efficacy. No "justified motive" is permitted in order for one parent to escape with the child from the family accommodation nor is any mechanism foreseen for direct and urgent access to the judicial authority to obtain a decision in this regard. In addition law enforcement agencies are required to immediately return the child to their place of residence upon a report from the other parent, without any requirement to investigate further and without any need for an order by the judicial authority.

In addition, Article 11 of the Decree provides for direct maintenance of children, where maintenance is paid directly between the parties, with no state intervention. This solution is currently implemented when the parties agree and there is pre-existing economic parity between the parties. Introducing direct maintenance as compulsory will be not viable considering the widespread inequality between the sexes in labour conditions and women's disproportionate responsibilities with regard to family care. The decree would also repeal article 570 bis of the Criminal Code which sanctions with a fine or imprisonment the failure to pay for maintenance to the children or the former spouse, as determined by the judicial authority, and thus would reduce the incentives to comply with maintainence requirements.

With respect to several of the articles described above, we would like to recall also the CEDAW Committee's ruling in the case of Angela González Carreño v. Spain, a case where State actors' repeated custody and separation rulings in favour of an abusive parent eventually resulted in the death of the complainant's child at the hands of the abuser. The Committee found that the State party, by failing to adequately take into account a history of domestic violence in making separation and custody decisions, had violated its obligations under the Convention on the Elimination of All Forms of Discrimination against Women. The Committee recommended that the State strengthen its legal framework and its training programme for judicial and administrative officers with regard to combating domestic violence.

Spaces for women in Rome

There exist in the city of Rome a number of not-for-profit organizations providing economic, legal, cultural and health services to women, including providing shelter and support to women who have been subject to domestic or gender-based violence, which are operated in buildings owned by the Municipality of Rome, according to rental contracts that stipulate that the spaces are intended to be used for the purposes of providing services to women.

Beginning in April 2017, the municipal government began efforts to collect years of back rent from a number of these organizations, based on rental calculations that failed to take into account their not-for-profit status, their value to the community, or in some cases, significant independent expenditures for the

restoration and maintenance of the buildings in question. These efforts have been ongoing despite the Italian Law n. 117 of 2017, which provides in Article 71 that Government entities may lend their real estate facilities and other property that is not needed for institutional purposes, free of charge to "third sector" organizations that perform a service of public utility.

The efforts by the city to collect significant amounts of money from these organizations risks dislocating them and putting an end to the services that they provide, thus depriving thousands of women in Rome from necessary services that are not being provided by the State.

We wish to express our deep concern that the "Pillon Decree" and the crackdown on women's spaces may be reflections of a trend, also expressed in statements of Government officials and other elements of the platforms of the ruling Government parties, of backlash against the rights of women and attempts to reinstate a social order based on gender stereotypes and unequal power relations and structures between men and women and contrary to Italy's international human rights obligations.

As it is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention, we would be grateful for your observations on the following matters:

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned allegations.

2. Please provide an update on the status of the "Pillon Decree".

3. Please provide information regarding procedures or mechanisms in Parliament to review and ensure the compatibility of draft legislation with human rights obligations.

4. Please provide information regarding any efforts to review, evaluate and amend the "Pillon Decree" to ensure its compatibility with Italy's obligations under regional and international human rights law.

5. Please provide an update on the status of efforts to negotiate with women's organizations currently occupying spaces owned by the municipal government in Rome.

6. Please explain any efforts to ensure that women's organizations will be able to continue to provide the important services that they are currently providing to women in Rome.

7. Please provide information regarding any efforts taken by Governments at the municipal and national levels to provide adequate services and restitution to women who are at risk of or survivors of domestic or gender based violence

or to provide support to non-governmental organizations that provide such services.

We would appreciate receiving a response within 60 days. Your Excellency's Government's response will be made available in a report to be presented to the Human Rights Council for its consideration. We also would like to inform your Excellency's Government that this communication, as other comments on pending or recently adopted legislation, regulations or policies, and any reply received, will be made available to the public and posted on the website page of the mandate of the Working Group on the issue of discrimination against women in law and in practice.

Please accept, Excellency, the assurances of our highest consideration.

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