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**THE DUTY TO PROTECT SURVIVORS OF GENDER-BASED VIOLENCE
IN THE AGE OF COVID-19:
AN EXPANDED HUMAN RIGHTS FRAMEWORK**

*Caroline Bettinger-Lopez, R. Denisse Córdova Montes & Max Zoberman**

Many commentators have referred to domestic violence and other forms of gender-based violence (GBV) in the age of COVID-19 as a “double pandemic.” Based on results of a mixed-methods study on the impact of the COVID-19 pandemic on GBV in South Florida, conducted by the Human Rights Clinic of the University of Miami School of Law, in close collaboration with community-based organizations,¹ this article offers a proposal for an expanded normative human rights framework to address domestic violence and other forms of GBV. The local study sought to elucidate the pathways that link pandemics such as COVID-19 and GBV, highlight linkages with other social and economic factors, seek greater clarity on the conditions and systems that actually lead to safety, and inform intervention and response options. Study results show just how underfunded and unprepared service providers have been to respond to victims’ needs and priorities during this pandemic.² This article’s human rights analysis and recommendations offer approaches that respond to the most affected communities’ needs and priorities and insist on improved policy and government responses during the current crisis and its aftermath.

This study built off the fact-finding work of our Human Rights Clinic’s COURAGE in Policing Initiative (COURAGE = Community

*The following individuals contributed to the research and writing of this report, under the super-vision of Professors Caroline Bettinger-López and Denisse Cordova Montes, Ahjané Billingsley, Amanda Suarez, Ryan Tahiri, Jendayi London, Alexis Schad, Jamila Flomo, Renu Nargund, and Aleeza Shah.

¹ The authors are grateful for the participation and input of community partners and stakeholders like WeCount!, The Domestic Violence and Sexual Assault Council of Greater Miami (DVSAC), Cities for CEDAW, and Women, United in Justice, Education, and Reform (MUJER).

² The authors co-published key recommendations from this study in an opinion piece. *Domestic-violence service providers need help as reports of abuse surge during Covid-19*, MIAMI HERALD (Feb. 3, 2022), <https://www.miamiherald.com/opinion/oped/article258011243.html>.

Oriented and United Responses to Address Gender Violence and Equality), which works with community-based organizations, police departments, and GBV experts locally, nationally, and globally on improving law enforcement responses to GBV. The project aims to increase access to safety and justice for all survivors, with a particular focus on black and brown women, immigrant women, disabled women, indigenous women, LGBTQI individuals, and other underserved populations. In collaboration with partners, the project is developing surveys, model policies, trainings, supervision protocols, reports, online resources, and systems of accountability for improving law enforcement responses to GBV, including research and tools specific to the COVID-19 context. But as the national dialogue transitioned away from law enforcement-centric solutions, and of course, as the pandemic set in in March 2020, the COURAGE project transitioned into a new iteration, which focused on a series of new research questions, namely: **(1) How has the COVID pandemic impacted the service providers that interact with GBV survivors in South Florida?; (2) How have service providers responded to the new challenges?; and (3) What are the evolving needs of survivors and service providers throughout the pandemic?** The ultimate goal of our research was to produce a series of recommendations that could be implemented across Miami-Dade County and nationwide, to address pressing immediate needs and to better prepare for future public health or other massive crises.

Below, we first discuss the “double pandemic” phenomenon of increased domestic violence and other forms of GBV in times of COVID-19. Next, we explore the intersectional impact of the COVID-19 pandemic in the United States, as it relates to GBV survivors of color and from culturally-specific or underserved communities. Then, we offer a synopsis of our study results, and propose an expanded normative framework that broadens our understanding of how GBV survivors should be protected under international human rights law as well as domestic law. Finally, this article offers policy recommendations.

I. INTRODUCTION

Across the globe, billions of people heard a singular message from their governments in 2020 and 2021: stay home to protect yourself and others from the COVID-19 virus. Yet for domestic violence victims—the vast majority of whom are women and children—home is often a very dangerous place.³

Worldwide, rates of domestic violence exploded following lockdowns associated with the COVID-19 pandemic. Domestic violence in times of COVID-19 has been characterized as a “ticking time bomb,” or a perfect storm, and reports from around the world support this characterization.⁴ The UN Secretary General found that **calls to helplines increased five-fold in some countries** as rates of reported intimate partner violence increased because of the COVID-19 pandemic.⁵ In China, police officers in the city of Jingzhou received three times as many domestic violence calls in February 2020 as in the same time in 2019.⁶ In Latin American countries such as Mexico and Brazil, a spike in calls to hotlines in the first two months following lockdown suggested an increase in domestic abuse.⁷ An analysis⁸ by

³ This section focuses primarily on domestic violence, the form of GBV that has been most covered as it concerns the COVID-19 pandemic. Many of the themes and phenomena discussed here concerning the inaccessibility of services and other protections to domestic violence survivors also apply to survivors of sexual assault, stalking, human trafficking, and other forms of GBV.

⁴ Caroline Bettinger-Lopez & Alexandra Bro, *A Double Pandemic: Domestic Violence in the Age of COVID-19*, Council on Foreign Relations (May 13, 2020, 12:55 PM EST), <https://www.cfr.org/in-brief/double-pandemic-domestic-violence-age-covid-19>.

⁵ UN General Assembly, *Intensification of efforts to eliminate all forms of violence against women: Report of the Secretary-General (2020)*, U.N. Women (July 30, 2020), <https://www.unwomen.org/en/digital-library/publications/2020/07/a-75-274-sg-report-ending-violence-against-women-and-girls>.

⁶ Zhang Wanqing, *Domestic Violence Cases Surge during Covid-19 Epidemic*, Sixth Tone (Mar. 2, 2020), <https://www.sixthtone.com/news/1005253/domestic-violence-cases-surge-during-covid-19-epidemic>.

⁷ Lucila Sigal, et al., ‘Another Pandemic’: *In Latin America, Domestic Abuse Rises amid Lockdown*, REUTERS (Apr. 27, 2020, 8:03 AM), <https://www.reuters.com/article/us-health-coronavirus-latam-domesticviol/another-pandemic-in-latin-america-domestic-abuse-rises-amid-lockdown-idUSKCN2291JS>.

⁸ *Covid-19: Gendered Impacts of the Pandemic in Palestine and Implications for Policy and Programming*, U.N. Women (Apr. 2020), <https://www2.unwomen.org/>

UN Women of the gendered impacts of COVID-19 in the Palestinian territories in early 2020 found an increase in gender-based violence, and warned that the pandemic would likely disproportionately affect women, exacerbate preexisting gendered risks and vulnerabilities, and widen inequalities.⁹ According to one nationwide study, domestic violence incidents in the United States rose by approximately 8.1% during pandemic lockdowns.¹⁰ Other high- and middle-income countries, such as Australia, France, Germany, and South Africa, also reported significant increases in reports of domestic violence since the COVID-19 outbreak. Meanwhile, a drop in formal complaints in countries such as Chile and Bolivia was likely due to movement restrictions and the inability or hesitance of women to seek help or report through official channels, according to the United Nations and local prosecutors.¹¹

Since the initial waves of the pandemic, the empirical picture of COVID-19's impact on domestic violence worldwide has come into only sharper focus. Recent retrospective and cross-sectional analyses have revealed that in at least 22 states in the United States, lockdown orders were responsible for an average 5% increase in domestic violence in the period from March 13 to May 24, 2020, when shelter-in-place orders were most robust.¹² The first systematic review and meta-analysis of empirical studies on the subject, conducted between December 2020 and January 2021, confirmed this result worldwide, with the aggregate results of eighteen studies and thirty-seven reliable estimates reporting a modest to significant increase in domestic

/media/field%20office%20palestine/attachments/publications/2020/4/covid%2019%20-%20un%20women%20rapid%20gender%20analysis.pdf?la=en&vs=4626.

⁹ *Press Release: Covid-19 Risks Creating and Exacerbating Women's Vulnerabilities and Gender Inequalities in Palestine, warns UN Women*, U.N. Women Palestine (May 6, 2020), <https://palestine.unwomen.org/en/news-and-events/stories/2019/3/rapid-gender-analysis>.

¹⁰ Alex R. Piquero, et al., *Domestic violence during the COVID-19 pandemic - Evidence from a systematic review and meta-analysis*, 74 J. CRIM. JUSTICE (2021), <https://www.sciencedirect.com/science/article/abs/pii/S004723522100026X>.

¹¹ *Covid-19 and ending violence against women and girls*, U.N. Women (2020), <https://www.unwomen.org/en/digital-library/publications/2020/04/issue-brief-covid-19-and-ending-violence-against-women-and-girls>.

¹² Lin-Chi Hsu & Alexander Henke, *Covid-10, staying at home, and domestic violence*, 19 REV. ECON. HOUSEHOLD 145–155 (2021), <https://doi.org/10.1007/s11150-020-09526-7>.

violence incidents between pre and post-lockdown periods of 2020 worldwide, with even more statistically significant results when the sample was limited to the United States.¹³ In Miami-Dade County, one study identified some evidence of spikes in domestic violence, but more generally no transient nor consistent change in the overall number of domestic violence incidents.¹⁴ This particular finding may be due, in part, to the fact that this study had a larger follow-up window, post-lockdown, than earlier studies were able to include, and therefore, some of the observation window includes a substantial number of months post-lockdown.

Domestic violence was a global pandemic long before the COVID-19 outbreak. According to data collected by UN Women prior to the outbreak of the COVID-19 pandemic, 243 million women and girls (aged 15-49) across the world are subjected each year to an “invisible pandemic”: sexual, physical, psychological, and economic violence by an intimate partner. Put a different way, one in three women has experienced physical or sexual violence at some point in her life.¹⁵ LGBTQ+ individuals experience similarly high levels of violence.¹⁶

Since the beginning of the COVID-19 pandemic, however, rising numbers of sick people, ascending unemployment, increased anxiety and financial stress, and a scarcity of community resources have set the stage for this domestic violence crisis.¹⁷ Many victims have found themselves isolated in unsafe homes, cut off from friends and family networks that may have been previously available to them, and unable to escape violence or to access essential services and resources

¹³ Piquero, *supra* note 11.

¹⁴ Alex R. Piquero, Nicole Leeper Piquero & Justin Kurland, *A case study of domestic violence arrests during the COVID-19 pandemic in Miami-Dade County*, *Victims & Offenders* 16.8 (2021): 1077-1088.

¹⁵ *The World's Women 2015*, U.N., https://unstats.un.org/unsd/gender/downloads/Ch6_VaW_info.pdf.

¹⁶ *Discrimination and violence against individuals based on their sexual orientation and gender identity*, U.N. General Assembly (May 4, 2015), https://www.un.org/en/ga/search/view_doc.asp?symbol=A/HRC/29/23.

¹⁷ Melissa Healy, *Domestic violence rose during lockdown — and injuries are dramatically more severe, study finds*, *L.A. TIMES* (Aug. 18, 2020, 5:00 AM), <https://www.latimes.com/science/story/2020-08-18/intimate-partner-violence-spiked-80-after-pandemic-lockdown-began>.

including food, medical care, and mental health services. Many abusive partners have experienced heightened financial pressures and stress, increased consumption of alcohol and drugs, and purchased or hoarded guns as an emergency measure. Domestic violence organizations have been strained by financial hardships, new protocols, new demands from clients/constituents, and social distancing requirements for both staff and clients. Moreover, many victims have been understandably fearful that living in a shelter or seeking assistance means exposing oneself, and one's children, to the virus.

In the United States, legal protections for victims have been radically altered during the pandemic: courts have reduced working staff, rescheduled hearings and shifted to using technology like video calls and Zoom (which many victims (particularly the poor and elderly) do not have adequate technology or familiarity to access) in order to maintain social distance and limit exposure to the virus. Many court systems have extended civil, criminal, and temporary protection orders that were going to expire during national lockdowns as means of providing protection to survivors and their children. These challenges have especially affected survivors from marginalized communities (e.g. Black, Latinx, immigrant, LGBTQI+, low-income, differently-abled),¹⁸ as well as community-based organizations that serve these communities. As the country emerges from the throes of the COVID pandemic, many of these systems and organizations are slowly returning to "normal," though, as this article illustrates, some aspects and modes of operation may be forever changed.

II. THE INTERSECTIONAL IMPACT OF COVID IN THE UNITED STATES: A SNAPSHOT

Numerous studies of the gendered, racial, and economic impact of the COVID-19 pandemic have underscored how "inequities related to social determinants of health are magnified during a crisis

¹⁸ *Women Face Rising Risk of Violence During Covid-19*, Human Rights Watch (July 3, 2020, 10:10 AM EDT), <https://www.hrw.org/news/2020/07/03/women-face-rising-risk-violence-during-covid-19#> ("reports of increases in gender-based violence mask a larger risk that women in the shadows or margins of society will suffer violence without remedy or reprieve if governments don't act quickly.").

and sheltering in place does not inflict equivalent hardship on all people.”¹⁹ Economic independence is considered one of the most critical factors in violence prevention, and COVID-19 exacerbated already-disparate rates of unemployment for women of color, immigrants, and low-wage workers—contributing to an increased vulnerability to GBV.²⁰ Some data points highlight these stark realities in the United States. From February to May 2020, two million more women than men in the U.S. lost their jobs.²¹ Since the beginning of COVID-19, unemployment increased 19% among immigrant workers compared to 12% among American-born workers.²² Prior to the pandemic, migrant women workers worldwide experienced high levels of uncompensated overtime hours, few days off, and poor social protections. A report by the Centro de los Derechos del Migrante (CDM) indicates that 94% of migrant workers in the H-2A guestworker program surveyed just prior to the COVID-19 pandemic experienced violations of discrimination, sexual harassment, wage theft, and health and safety violations at the hands of their employers.²³ Indeed, in the U.S., as in the rest of the world, “COVID-19 exacerbates women migrant workers’ increased risk of sexual and gender-based violence at all stages of migration, particularly migrant women with irregular migration status or sexual and gender minorities who are least likely to report violence due to discrimination or fear of arrest or deportation.”²⁴

¹⁹ Megan L. Evans, M.D., et al., *A Pandemic within a Pandemic – Intimate Partner Violence During Covid-19*, N. ENGL. J MED. (Dec. 10, 2020), <https://www.nejm.org/doi/full/10.1056/NEJMp2024046>.

²⁰ Rakesh Kochhar, *Hispanic women, immigrants, young adults, those with less education hit hardest by Covid-19 job losses*, Pew Research Center (June 9, 2020), <https://www.pewresearch.org/fact-tank/2020/06/09/hispanic-women-immigrants-young-adults-those-with-less-education-hit-hardest-by-covid-19-job-losses/>.

²¹ *Id.*

²² *Id.*

²³ Mary Bauer et al., *Ripe for Reform: Abuses of Agricultural Workers in the H-2A Visa Program*, Centro De Los Derechos Del Migrante, 17-8, (2020), <https://cdmigrante.org/wp-content/uploads/2020/04/Ripe-for-Reform.pdf>.

²⁴ *Addressing the Impacts of The COVID-19 Pandemic On Women and Migrant Workers*, U.N. Women (2020), <https://reliefweb.int/sites/reliefweb.int/files/resources/guidance-note-impacts-of-the-covid-19-pandemic-on-women-migrant-workers-en.pdf>.

Since the pandemic began, programs in the United States that serve survivors have seen increased and new demands for help regarding basic needs.²⁵ One survey disseminated to 600 programs in the United States by the National Alliance to End Sexual Violence found that 89% of these programs needed emergency stimulus funding to “provide support and emergency assistance to survivors.”²⁶ In Washington D.C., for instance, the city’s largest domestic violence crisis intervention agency reported that traffic on its response line doubled,²⁷ and in New York City, the city’s domestic and sexual violence resource website reported a 250% increase in daily traffic on the website during the first month of the pandemic.²⁸ Similarly, in Miami-Dade County, as businesses and schools transitioned to remote work and learning in December 2020 through June 2021, searches like “report domestic violence” and “women’s shelter with kids” grew steadily over time, according to the online safety firm Moonshot.²⁹ Other organizations have needed to adapt to other realities, especially for survivors who cannot seek resources due to privacy constraints. For example, Sakhi for South Asian Women saw a 76% decrease in the number of people calling its hotline following the start of the pandemic.³⁰ As described later in this article, organizational adaptation in COVID times is a key theme that emerged from our study.

Moreover, the concerns of survivors during the COVID-19 pandemic have been substantially focused on abuse that is specifically related to the pandemic. The National Domestic Violence Hotline’s

²⁵ *Survivors of Domestic and Sexual Violence are at Heightened Risk Now, and Will Remain So Long After the Current Crisis*, Nat’l Task Force to End Domestic and Sexual Violence, <http://www.4vawa.org/ntf-action-alerts-and-news/2020/4/16/survivors-of-domestic-and-sexual-violence-are-at-heightened-risk-now-and-will-remain-so-long-after-the-current-crisis> (last visited Feb. 23, 2020).

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.*

²⁹ *COVID-19 and Domestic Violence in Miami*, Moonshot, <https://moonshotteam.com/wp-content/uploads/2021/09/Moonshot-COVID-19-DV-Miami.pdf>.

³⁰ Yelena Dzhanova, *NY Domestic Violence Programs See Client Numbers Decline As Coronavirus Traps Survivors at Home*, CNBC (Mar. 31, 2020), <https://www.cnbc.com/2020/03/31/new-york-coronavirus-domestic-violence-programs-see-decline-as-disease-spreads.html>.

“call, chat and text volume remains in the average 1,800-2,000 per day range” but survivors calling or texting in communicated that they were afraid for their safety specifically due to COVID-19 concerns, and a fear that their abusers would leverage COVID-19 “to further isolate, coerce, or increase fear in the relationship.”³¹ In fact, COVID-19 has been such a concern for survivors that the National Domestic Violence Hotline reported that “between March 10 and March 26, [2020] [it] had 1,216 contacts who . . . mentioned COVID-19.”

Some U.S. states have taken active efforts to ensure survivors have access to resources by increasing funding for and availability of basic needs, but survivors still struggle to find safety due to various barriers. For example, the governments of California, Illinois, and New Hampshire responded to DV shelters’ lack of funding and capacity by reallocating resources to ensure sufficient funding during the pandemic and undertaking various efforts, such as increasing funding to service providers and offering accommodations and transportation to domestic violence survivors at no cost.³² Chrysalis, a non-profit organization in Arizona that provides support to domestic violence survivors, has reported that their shelters are at maximum capacity, and, like many other service providers nationwide, has been offering therapy services through video conferencing.³³ An increase in technological services can still be a barrier, however, because not all victims have regular access to technology, making it more difficult for them to engage with service providers.

Moreover, many survivors have left or avoided shelters out of fear that these locations could be hotbeds for the spread of COVID-19. In New York, reports have indicated that some survivors left shelters to return home to their abusers, out of fear of contracting COVID-19.³⁴ This trend has been seen in shelters in New Orleans and New Jersey,

³¹ *Id.*

³² Robin Bleiweis & Osub Ahmed, *Ensuring Domestic Violence Survivors’ Safety*, Ctr. for Am. Progress (Aug. 10, 2020), <https://www.americanprogress.org/article/ensuring-domestic-violence-survivors-safety/>.

³³ Kim Quintero, *Help for Arizona domestic violence victims during COVID-19 stay-at-home order*, Arizona’s Fam. (Apr. 6, 2020), https://www.azfamily.com/news/continuing_coverage/coronavirus_coverage/resources/help-for-arizona-domestic-violence-victims-during-covid-19-stay-at-home-order/article_f4d95252-7800-11ea-a1f6-9f36bd2ec0fe.html.

³⁴ Dzhanova, *supra* note 31.

with reports indicating that the decreased use of shelters is due to fear of contracting COVID-19 and not because there is less of an actual need than what previously existed.³⁵

III. COURAGE IN COVID-19: AN EMPIRICAL STUDY TO BETTER UNDERSTAND THE EFFECTS OF COVID-19 ON GBV SURVIVORS AND SERVICE PROVIDERS IN SOUTH FLORIDA

This section elaborates on the results of a mixed-methods study on the impact of the COVID-19 pandemic on GBV in South Florida service providers conducted by the Human Rights Clinic University of Miami School of Law, in close collaboration with community-based organizations.³⁶ This study included 69 service providers and consisted of a crowdsourcing database, in-depth interviews, a focus group discussion, and online surveys. The database provided an interactive platform to allow the study team and providers alike to understand how the provision of services shifted as well as how different community service providers collaborated with each other during the first months of the pandemic in the summer of 2020. The in-depth interviews and focus group were conducted through online video platforms in Spanish and English by two trained interviewers during the second half of 2020. The online surveys were administered anonymously during the same time period in 2020 and largely used the same language as the interviews. The results and analysis of the qualitative and quantitative information gathered from our study revealed that significant gaps in national, state, and local services and responses had made basic human needs, such as housing, health care, food, transportation, and technology, inaccessible for marginalized groups. Below, we describe how the lack of access to basic needs was exacerbated during the COVID-19 pandemic for GBV survivors from marginalized groups, causing service providers to have to adapt their provision of services.

³⁵ *Id.*

³⁶ The authors are grateful for the participation and input of community partners and stakeholders like WeCount!, The Domestic Violence and Sexual Assault Council of Greater Miami (DVSAC), Cities for CEDAW, and Women, United in Justice, Education, and Reform (MUJER).

A. Online Database Crowdsourcing, Interviews, and Observations

1. Methodology

One observation our team made at the outset of our study was that no centralized online database existed to offer real-time information to survivors and service providers about what governmental and civil society services were available during the pandemic, and in what format (online, telephonic, in person). This appeared to be a significant informational gap that could have real-life consequences for survivors or service providers who might rely on such information to make decisions about their safety and security.

Thus, between April and June 2020, the clinic team informally gathered information from service providers and criminal justice system actors in South Florida, to better understand and make public information about how services were shifting during the first few months of the pandemic. On the basis of phone interviews, email exchanges, and observations during community meetings, and with the permission of those involved, the clinic created a synchronously updated database. Participating organizations were subsequently invited to populate it with real-time information about their respective organizations. This database allowed the team to observe the shifting landscape of available services and facilitated coalition-building and interagency cooperation between service providers as they adapted to the shifting landscape in order to ensure adequate care for survivors.

Below, the team presents some core observations from the information collected in our fact-finding process.

2. Results and Analysis

The preliminary information gathered from South Florida members of the criminal justice system and service providers indicated that there needed to be an expanded and cohesive effort to advance technological use and continuity in the justice system, to better serve survivors and victims. This information pointed to the shifting needs by service providers, given survivors' precarious economic security during the pandemic and service providers' infrastructural and financial inability to make the needed shifts.

a. The Criminal Justice System Response to the Shifting Landscape

Study participants reported that the criminal justice system worked relatively well during the first few months of the pandemic. Participants indicated that access to justice was particularly advanced through technology. Changes in judicial procedure, such as telehearings, allowed for greater access to justice for victims. The barriers to entry for telehearings were low, victims did not have to worry about commuting, childcare, or taking time off work. Miami domestic violence criminal court staff reported that technology afforded victims increased access to the court. Court staff hoped to continue telehearings as an option after the pandemic. However, participants also noted that the prompt adjudication of cases was delayed by the use of technology. Telehearing platforms did not allow for expeditious hearings and the structure of judicial calendars pre-COVID proved impossible to replicate given that hearings via Zoom took longer because of technology-related access issues for some survivors and abusers. Study participants also indicated that during the pandemic, communication between criminal justice system actors needed to be strengthened.

b. Infrastructural and Financial Inability to Pivot

Participant non-profit entities reported continuing to provide vital assistance to DV survivors ranging from mental health services to housing and legal assistance; however, many of them lacked the sophisticated processing systems, technological capabilities, and financial resources to provide quality remote services amidst COVID-19. In April, four non-profit service providers said one of their greatest challenges during COVID-19 was the lack of financial means to provide remote services.³⁷ One non-profit that provides legal services to immigrant survivors of sex crimes and other violent crimes, said they had to purchase additional equipment such as scanners and printers to support the transition to remote services.³⁸ Additionally,

³⁷ Zoom & Telephone Interviews by U. Mia. Sch. L. Hum. Rts. Clinic with Miami service providers between April and December 2020.

³⁸ *Id.*

their postage and mailing expenses tripled.³⁹ Another interviewed non-profit that provides counselling services reported that their funding sources had been rerouted and since many clients had become unemployed, they were unable to afford the organization's fees. The non-profit reported having to absorb all these costs, and employees were not being paid. Another interviewed non-profit service provider typically used income earned from the medical services they provide to fund operations and pay staff; however, due to COVID-19 movement restrictions, clients were rarely utilizing these services. When the services were utilized by clients, the state of Florida, which makes the payments on clients' behalf, was taking a long time to pay the bill.⁴⁰

Participants reported that the lack of access to technology prevented many survivors from accessing financial assistance for food, housing, and support services, like counseling. For instance, clients who had no access to printers and laptops could not fill out online Health Insurance Portability and Accountability Act (HIPAA) compliant forms and other intake forms that are required before service provision.⁴¹ Several non-profits and government service providers reported they have clients who had lost their jobs and as a result were unable to pay phone and internet bills, which limited or severed their ability to reach service providers.⁴²

Service providers and survivors relied on state funding and donations directly to non-profits and survivors to alleviate financial burdens. For example, one non-profit reported using donations to acquire twenty laptops for victims who had no means to access virtually delivered services.⁴³ Another interviewed non-profit said the U.S. Department of Veterans affairs had been very helpful during the pandemic by increasing funding. State support also included the Coronavirus Aid, Relief, and Economic Security (CARES) Act,⁴⁴ which

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ *Id.*; DVSAC meetings.

⁴² *Id.*

⁴³ *Id.*

⁴⁴ Staff Writer, *NCADV Applauds Congress for Meeting Needs of Victims and Survivors Impacted by COVID-19*, National Coalition Against Domestic Violence (NCADV) Blog (Mar. 26, 2020), <https://ncadv.org/blog/posts/ncadv-applauds-congress-for-meeting-needs-of-victims-and-survivors-impacted-by-covid-19>

included specific funding for DV victims. Additionally, a rental assistance grant funded by the U.S. Department of Housing and Urban Development (HUD) was reported to enable the Coordinated Victims Assistance Center (CVAC) to provide housing assistance to a minimum of 28 domestic violence survivor families, starting early July 2020.⁴⁵ The grant was expected to pay for up to 100% of the families' rent for up to six months.⁴⁶ Interviewees reported that funding initiatives like these were needed to continue supporting the agencies that service providers and survivors need during these times of increased economic hardship.

B. Focus Group and Interviews

1. *Methodology*

Based on the preliminary information gathered during informal interviews of the first phase of the study, our team designed a semi-guided interview and focus group questionnaire meant to more systematically explore the shifting needs and priorities of DV service providers during the continuing pandemic between September and December of 2020. To address these questions, our team first conducted a larger focus group, followed by 10 individual interviews with service providers that represented a variety of stakeholders – representing government and law enforcement, disability services, the immigrant community, LGBTQ+ services, and domestic violence and sexual assault service providers in South Florida.

(Although the CARES Act provides increased financial support to vulnerable populations, including victims and survivors, NCADV highlights that it is only a first step. The CARES act fails to fully address the needs of victims and survivors by leaving out important provisions to support immigrant/non-citizen taxpaying survivors, and disable survivors, and it fails to adequately fund several programs that provide short- and long-term support for survivors and Culturally Specific and Outreach to Undeserved grant programs.).

⁴⁵ Representative, Remarks at a Meeting for the Coordinated Victims Assistance Center (June 19, 2020).

⁴⁶ *Id.*

2. *Results and Analysis*

Our study revealed that as the pandemic progressed significant gaps in national, state, and local services and responses made basic human needs, such as housing, health care, food, transportation, and technology, inaccessible for marginalized groups. GBV service providers repeatedly noted that the lack of access to basic needs was exacerbated during the COVID-19 pandemic for GBV survivors from marginalized groups, causing a significant shift in the role of service providers. The sheer volume and degree of need amongst survivors created an environment in which service providers were pushed to play many of the fundamental support roles we expect from a social safety net.

a. Lack of access to basic human needs

Service providers repeatedly emphasized that GBV survivors are experiencing a **uniquely amplified and desperate need for shelter, food, wages, technology, and transportation during the COVID-19 pandemic**. Shelters are much harder to access because of a shortage of beds due to social distancing guidelines. Job loss has made it harder for people to pay for utilities and necessities like food. The lack of access to technology, which manifests itself as a lack of access to computers, inability to interact properly with technology, and surveillance by the abuser, makes it difficult for survivors to access justice. People who do not have cars cited transportation as a barrier because they cannot easily leave their homes and get access to services. Providers reported that public transportation, if it is even accessible for survivors, carries the risk of infection due to cramped, tight quarters, forcing survivors to choose between their safety and health or getting help. Furthermore, service providers identified **immigrants and the LGBTQ+ community as the most affected groups of survivors during the COVID-19 pandemic**. These groups were identified as being particularly vulnerable to gaps in national, state, and local services and responses, which severely affected their ability to access safety.

1. Housing

Service providers identified the lack of housing as a major problem for GBV survivors during the pandemic. South Florida shelters and nonprofits,⁴⁷ which offer transitional housing, are the primary responders to survivors' housing needs in South Florida. From 2013 to August 2019, more than 15,800 Miami-Dade residents who received homeless emergency shelter and other housing assistance reported fleeing domestic violence.⁴⁸ Study participants reported a significant increase in housing needs during the pandemic amid their own staffing, funding, and COVID-safety challenges. As one provider mentioned, one major issue is transitional housing. Providers reported clients telling them that they "'need a place to go,' [but] the wait time is months and sometimes years."⁴⁹ If some survivors are lucky enough to find housing, that housing remains temporary and inaccessible. As another provider mentioned, "[it] pains me to have a woman be put in a shelter, and 45 days later, they're telling her that she needs to get out."⁵⁰ Providers noted that while their clients were promised resources and assistance during the pandemic, many of these plans did not come to fruition to aid survivors. One provider explained that "when people actually asked for those resources, there were no resources available. For example, the rental assistance that they said they have so many millions to give out to the people. But a lot of people applying [got] nothing."⁵¹ Another provider explained that LGBTQI populations are especially affected by the lack of housing because of the lack of appropriate shelters for gender non-conforming people, especially transgender women, who are often placed in the male pavilion instead of the cisgender women unit.

⁴⁷ Julie Landry Laviolette, *Domestic Violence Shelters Saw Calls Surge Amid Pandemic*, MIAMI HERALD (Oct. 23, 2021), <https://www.miamiherald.com/news/local/community/miami-dade/article255186302.html>.

⁴⁸ *Gaps and Need Report*, Gaps And Needs Workgroup Of The County Domestic Violence Oversight Board (May 9, 2020) (citing Miami-Dade County Homeless Trust, Homeless Management Information System data, 2013 to August 2019).

⁴⁹ Zoom Interview, Anonymous (Oct. 1, 2020, 3:20 PM).

⁵⁰ Zoom interview, Anonymous (Sept. 28, 2020, 11:17 AM).

⁵¹ *Id.*

2. Food and Wages

Service providers identified survivors' lack of access to basic needs, like food, as a barrier to access safety. With increased job loss and pervasive low wages, some survivors stay with their abusers because they are financially dependent on the perpetrator to survive.⁵² Service providers have had to step up in areas where governmental assistance and funding is lacking, forcing them to carry out responsibilities that are a direct departure from their usual area of expertise. Because the pandemic has exacerbated issues in the home for survivors, there has been an increased need for food banks, prompting a provider to mention that "sometimes . . . we have been able to give out food, for example. Boxes of food, we allocate them. We have, for example, had an event where we gave out over 2000 boxes of food."⁵³

Providers also noted that undocumented survivors were the most affected during the pandemic because their lack of documentation makes it particularly challenging for them to find a new job after losing one. Providers noted that undocumented immigrants not only lose their jobs, but they're now also stuck at home with an abuser because there is no assistance available to them, no jobs, and no respite since government programs often exclude them.

3. Technology

The pandemic forced everything online, causing greater barriers to access for those who did not have easy access to technology. Providers noted that many survivors do not know how to navigate computers, making it difficult to access forms they need, or enter Zoom calls. One provider observed that many survivors "are not up to the challenge of maneuvering a computer, logging into Zoom. You need an account. You need this, you need to, you know, press here. They don't know how to start a video, and they don't know how to

⁵² For example, one provider recounted her conversation with a survivor: "she's telling me, 'you know, like I get paid \$8.15 an hour. I have two kids. How am I going to survive on a \$8.15 hour?' So she needed [her abuser] economically."

⁵³ Interview.

put their names on the screen.”⁵⁴ Some providers mentioned that training should be provided to help survivors become more technologically competent so that they are in a better position to advocate for themselves and access resources. Another provider emphasized that, in addition to training, survivors “also need devices, because what good is it to know how to do something if you don’t have...a cell phone. Some people don’t have access to a cell phone. So if you want to have equity in services, we want to have equity in resources.”⁵⁵

4. Transportation

Miami-Dade County is defined by urban sprawl, which results in heavy dependence on vehicles to access services and employment opportunities. For people living in poverty, public transportation is often the only transit option available in Miami. The spatial mismatch of employment opportunities, affordable housing, and accessible public transit is another obstacle for accessing services. Study participants noted that the pandemic has further exacerbated existing transportation barriers, thus impeding survivors’ access to services. Factors contributing to survivors’ lack of access to transportation during the pandemic included loss of income to pay for private transportation or ride sharing services, fear of infection in public transit due to cramped, tight quarters, and the logistical challenges of having to care for children during the pandemic while trying to access public transit. Providers noted that during the pandemic, people who used to have cars no longer had cars. One provider explained that “it’s not easy for victims [without cars] to go over to the services in Miami, for example. . . sometimes we do provide the transportation, but . . . we don’t have the capability to provide transportation to every single victim.”⁵⁶ Fear of infection and the logistical challenges of navigating public transit with children at home forced people to choose between their safety and health or getting help. Providers noted that survivors were worried about becoming infected by using public transportation and thus opted to access the limited services they were able to provide

⁵⁴ Interview.

⁵⁵ *Id.*

⁵⁶ T.S. Interview.

over the phone or online. Participants noted that fear of infection in public transit was also having an impact on survivors' ability to earn an income. For example, one provider mentioned a client who relied on public transportation to travel to her job as a housekeeper pre-COVID. During the pandemic, this housekeeper's boss refused to let her travel via public transportation because of the high risk of infection, instead asking the client to take an Uber, "but the Uber was costing her maybe \$20 to get to her boss's house where the bus was costing her maybe \$5."⁵⁷ The client now had to decide whether to spend half her paycheck getting to and from work, or risk losing her only source of income altogether.

b. The transformation of the specialist service provider

Over the last several decades, communities have identified domestic violence as a social problem of significant proportions and over time initiated parallel strategies and systems to address it. More recently, advocates have identified limitations and fragmentations inherent in parallel systems and have sought to propose models for coordinated community response. In Miami, CVAC and MUJER provide wrap-around services with permanent personnel onsite for ease of coordination; however, due to increased demands during the pandemic, providers across DV service entities have been assigned more and different work than before the pandemic and are having to develop new skillsets to help their clients. While some providers noted an immediate increase in calls from survivors during times of COVID-19 and others noted an initial decrease followed by an increase, service providers reported, almost universally, a seismic shift in the role they play in the lives of their clients. This broadening scope of work and expansion of services includes helping with basic needs like applying for housing rental assistance and unemployment, directly providing food and other essential items, buying computers and helping clients and their children access technology for school, and providing transportation for clients to access services. More specifically, specialists found themselves packaging and delivering groceries,

⁵⁷ C.L. Interview.

personal protective equipment (PPE), and critical technology for clients who may be undocumented or afraid to venture out, disabled and unable, or otherwise in need. In addition, providers reported having to spend more time advocating for increased financial assistance for community-based needs, like those applicable to undocumented immigrants, children, the elderly, and the LGBTQ+ community. Additionally, providers are assisting survivors with accessing judicial resources and helping them navigate relationships with law enforcement. The pandemic has forced specialist service providers to make a transformation, such that specialists have needed to become generalists, taking on many general responsibilities that the state would typically fill to provide basic resources and unmet needs to survivors. Moreover, many service providers reported becoming “part of the client’s family” by providing services in almost all areas of need, extending themselves beyond their usual scope of duties and activities. For example, to provide a social outlet, service organizations have hosted virtual social events and zoom support groups. In turn, interest in enrollment and engagement among clients has increased, posing an unprecedented challenge for service providers.

C. Survey

a. *Methodology*

Thirty-seven participants who worked as community-based service providers completed the anonymous online survey between September and December of 2020. Service providers were recruited through word of mouth. As described above, the in-depth interviews, focus group, and surveys focused on five primary lines of inquiry: health and wellbeing of the service providers; evolution of service providers’ working environments; service providers’ interactions and collaboration with one another and with local actors; impacts on organizations’ ability to provide support to survivors of gender-based violence in South Florida; and law enforcement responses to GBV survivors. Participants answered four demographic questions about their ethnicity, gender, job and organization type. Participants were largely Black and Latinx (40% and 47% respectively), overwhelmingly female (93%), and ranged in age from 28 years old to 61 years old, with

an average age around 47. The participants worked at all levels of their respective organizations and represented every type of service provider, from organizations focused only on domestic violence or sexual assault, to human trafficking-related and legal aid organizations, to law enforcement and criminal justice system actors.

b. Results and Analysis

Responses to the surveys revealed an enormous psycho-physiological toll of the pandemic on providers, and changes to the accessibility of the services they offer. Some key data points include:

- 66.67% of responding providers reported at least one case of COVID-19 among their workforce at some point since the beginning of the pandemic.
- 25% reported that their hours having increased since the beginning of the pandemic.
- 33% reported that it has been somewhat or very hard to meet basic needs for themselves and their families, with 41% reporting having to cut back or not being able to meet ends financially.
- All told, 64% of responding providers report that these experiences impacted their work.
- 67% of respondents reported some level of anxiety, depression, burn-out, or difficulty sleeping at night.

In terms of organizational challenges,

- 41% of responding providers cited fear for personal health and the health of survivors as their greatest organizational challenges.
- 22% reported that previously existing services have become unavailable due to the coronavirus pandemic.
- 33% cited lack of material resources as their greatest organizational challenges.

Among the resource deficiencies, affordable housing and direct finances were prominent.

- 48% of responding providers reported that their clients were, overall, less safe than when the pandemic began.

• With an overall increase in service demand, 51.85% of responding providers also reported that the kind of service requests had changed.

- 67% listed rental assistance and housing and 42% listed direct financial assistance as the greatest emerging needs.
- Looking toward the future, 80% of responding service providers reported that they were anticipating preparing for dramatic increases in need for services as the pandemic wore on and once lockdown measures had been lifted.

D. Overall Qualitative and Quantitative Analysis

The qualitative and quantitative information from all three parts of our study indicates that COVID-19 has not only created new gaps in our safety net, but widened relief gaps that have long existed. Providers unanimously described the increased difficulty in switching over to providing support virtually while losing the in-person interactions so essential to establishing trust. In addition, during the pandemic, GBV service providers had to adjust to a different type of service provision as a result of the seismic shift in survivor need. Instead of specialized counseling and legal support, survivors needed access to technology, housing, food and nutritional provisions, and transportation. While federal and state authorities stepped in to provide financial support in the form of direct payments, small business loans, and rent relief for some, many of South Florida's most vulnerable survivors were ineligible for such support due to their immigration status, lack of proof of residency, and lack of trust in government systems that had traditionally discriminated against marginalized groups. The cumulative result of this was what some providers described as a "cycle of dependency," wherein survivors were left optionless and stuck in dangerous households without recourse for themselves or their children, and fundamentally distrusting of local authorities.⁵⁸ The gaps left in the social safety net by federal and state authorities generated downward pressure impacting not just vulnerable survivors, but the private organizations that stepped in to provide basic services to survivors. This, in turn, materially limited those organizations' financial and practical ability to maintain standards of care for entire communities for which they otherwise would have been responsible.

⁵⁸ *Id.*

IV. HUMAN RIGHTS ANALYSIS: EXPANDING THE HUMAN RIGHTS FRAMEWORK TO PROTECT GBV SURVIVORS

This section provides an expanded normative analysis of the international human rights framework to address GBV. We propose a broadened vision of the state's obligation to protect within the due diligence standard so that this obligation goes beyond the provision of short-term emergency assistance, and instead includes the type of long-term and comprehensive access to basic services that will provide survivors with the means to avoid re-victimization. More specifically, this expanded understanding of the obligation to protect GBV survivors would include the state's obligation to realize survivors' economic, social, and cultural rights, such as their rights to housing, health, and food, by addressing violations of these at the root.

International and regional human rights bodies have recognized state responsibility to respond to acts of GBV with due diligence (i.e. prevention, protection, prosecution, punishment, and redress), regardless of whether the perpetrator is a state or non-state actor, and whether an act is committed in an official or private capacity.⁵⁹ These components create a standard that addresses the

⁵⁹ Comm. on the Elimination of Discrimination against Women, *General Recommendation No. 35 on Gender-based Violence Against Women, Updating General Recommendation No. 19*, ¶ 14, U.N. Doc. CEDAW/C/GC/35 (July 26, 2017) [hereinafter CEDAW Gen. Rec. 35]; see also *M.W. v. Denmark*, Communication No. 46/2012, ¶ 5.4, U.N. Doc. CEDAW/C/63/D/46/2012 (Mar. 12, 2016) (reasoning that States may 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); *X and Y v. Georgia*, Communication 24/2009, ¶ 9.7, U.N. Doc. CEDAW/C/61/D/24/2009 (Aug. 25, 2015) (holding that the State party failed to fulfill obligations and adopt appropriate legislative measures to establish legal protection of women's rights); *İzci v. Turkey*, App. No. 42606/05, (July 23, 2013), <http://hudoc.echr.coe.int/eng?i=001-122885> (holding a violation of Article 3 when a woman was attacked by police during her peaceful demonstration for Women's Day); *Opuz v. Turkey*, App. No. 33401/02, ¶ 176 (June 9, 2009), <http://hudoc.echr.coe.int/eng?i=001-92945> (holding that "there has been a violation of Article 3 of the Convention as a result of the State authorities' failure to take protective measures in the form of effective deterrence against serious breaches of applicant's personal integrity by her husband" through domestic violence); *Bevacqua and S. v. Bulgaria*, App. No. 71127/01, ¶ 63 (June 12, 2008), <http://hudoc.echr.coe.int/eng?i=001-86875> (holding the authorities' failure to impose sanctions or otherwise enforce husband's obligation to refrain from unlawful acts related to private GBV against wife was incompatible with State's positive obligations

proactive actions, such as prevention, and reactive actions, such as protection, investigation and remedy, that a State must take in the context of GBV.

International human rights law has narrowly construed the duty to protect GBV survivors to include the “adopt[ion] and implement[ation of] effective measures to protect and assist women complainants and witnesses of gender-based violence before, during and after legal proceedings[.]”⁶⁰ Additionally, the duty to protect has been construed as the duty of states to provide access to justice by creating a safe environment that enables women to report acts of violence and obtain effective protective measures.⁶¹ While the protection of GBV survivors includes access to immediate needs, such as financial aid, affordable housing, land, child care, and employment opportunities, among others,⁶² these are typically articulated, as the CEDAW Committee does in General Recommendation 35, in the context of “measures to protect and assist women complainants”⁶³ in connection with access to legal proceedings. In these articulations, the

toward applicant and her rights); Jessica Lenahan (Gonzales) et al. v. United States, Case 12.626, Inter-Am. Comm’n H.R., Report No. 80/11, ¶ 199 (July 21, 2011) (concluding that the U.S. and the state of Colorado violated petitioner’s human rights by not enforcing a restraining order that resulted in the death of three children); Ana, Beatriz, and Celia González Pérez v. Mexico, Case 11.565, Inter-Am. Comm’n H.R., Report No. 129/99, ¶ 38 (1999) (holding multiple violations of the American Convention and the Inter-American Convention to Prevent and Punish Torture through State breach of duty to guarantee the exercise of the rights and liberties of women who were illegally detained, raped, and tortured by soldiers); Njemanze v. Nigeria, Suit No. ECW/CCJ/APP/17/14, Judgment, Community Court of Justice of the Economic Community of West African States [ECOWAS], 40-42 (Oct. 12, 2017), http://prod.courtecowas.org/wp-content/uploads/2019/01/ECW_CCJ_JUD_08_17-1.pdf (holding that human rights of four women were violated when abducted, assaulted, and unlawfully detained by law enforcement officers); Zimbabwe Human Rights NGO Forum v. Zimbabwe, Communication 245/2002, African Commission on Human and Peoples’ Rights [Afr. Comm’n H.P.R.], ¶ 160 (May 15, 2006), <https://www.globalhealthrights.org/wp-content/uploads/2013/10/Zimbabwe-HR-NGO-Forum-Zimbabwe-2006.pdf> (holding that during election violence “a State can be held complicit where it fails systematically to provide protection of violations from private actors who deprive any person of his/her human rights”).

⁶⁰ CEDAW Gen. Rec. 35, *supra* note 60, ¶ 40.

⁶¹ *Id.*; see also DV Guide at 4.

⁶² CEDAW Gen. Rec. 35, *supra* note 60, ¶ 40(c).

⁶³ *Id.* ¶ 40.

state's obligation to provide economic and social needs to GBV survivors is generally focused more on how the lack of access to these basic material needs impedes survivors' short-term ability to access *immediate* safety or services within the criminal justice system. Similarly, the UN Special Rapporteur on Violence against Women found that part of States' obligation under the due diligence standard includes ensuring victims of DV have access to basic support and rehabilitation services "that respond to their immediate needs", such as health care, counseling, and housing and that measures should be "aimed at providing immediate material assistance (shelter, clothing, child maintenance, employment, education) to women who are survivors of violence".⁶⁴

The due diligence principle's obligation to protect, as currently construed, proves inadequate when applied to our study findings indicating the primacy of long-term economic, social, and cultural rights when addressing GBV. In contrast to the traditional understanding of the duty to protect in international law, rooted in access to specific legal proceedings and short-term safety, **our study reveals that GBV survivors and service providers define protection as rooted in long-term economic and social supports that are adapted to their specific needs, considering language accessibility, local accessibility, and cultural adequacy, among others.**

Our research indicates that survivors' and service providers' economic insecurity during the COVID-19 pandemic made it incredibly difficult for established state and NGO systems to meet GBV survivors' immediate needs. Service providers repeatedly shared that survivors' needs during the pandemic primarily revolved around housing, jobs, food, transportation, and technology, and that the gap in government attention to these basic needs had led to an untenable situation for GBV survivors and to the transformation of the service provider. Instead of specialized counselling and legal support, service providers found themselves packaging and delivering groceries, helping fill out forms to receive unemployment and housing benefits,

⁶⁴ Yakin Ertürk (Special Rapporteur on Violence against Women), *The Due Diligence Standard as a Tool for the Elimination of Violence Against Women*, ¶¶ 82–83, U.N. Doc. E/CN.4/2006/61 (Jan. 20, 2006), <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G06/103/50/pdf/G0610350.pdf?OpenElement> [hereinafter SRVAW Report on the Due Diligence Standard].

and purchasing computers for their clients. Service providers further noted that the pandemic had exacerbated pre-existing economic conditions that link the lack of access to economic and social services to GBV re-victimization and a cycle of dependency that prevents survivors from seeking pathways to safety. The COVID-19 pandemic dramatically decreased access to reactive support services and resources around housing, health care, food, jobs, transportation, and technology in a way that made clear that the provision of short-term emergency assistance is not sufficient when seeking to protect survivors of GBV. **A broader notion of the duty to protect in international human rights law would expand protective measures to include the provision of long-term means that would enable survivors to avoid re-victimization during future emergencies and pandemics.**

A redefined duty to protect that includes a more expansive notion of economic and social rights would go far beyond the basic provision of short-term material needs⁶⁵ such as specialized shelters, health care, and food, and would instead seek to comprehensively address women's right to an adequate standard of living that includes the right to live a life with dignity. Over the last several years, international and regional human rights bodies have increasingly called for the protection of women's economic and social rights within the context of GBV. For example, the Commissioner for Human Rights of the Council of Europe issued a recommendation in 2009 advocating for the adoption and implementation of national housing strategies by all Council of Europe member States as a way to address GBV. More specifically, the 2009 recommendation called to "include positive measures for ensuring their effective enjoyment of the right to housing,"⁶⁶ and to also "adopt anti-violence provisions in housing legislation and policies and ensure that domestic violence

⁶⁵ Raquel Rolnik (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), ¶ 3, U.N. Doc. A/HRC/19/53 (Dec. 26, 2011), <https://undocs.org/Home/Mobile?FinalSymbol=A%2FHRC%2F19%2F53&Language=E&DeviceType=Desktop>.

⁶⁶ Council of Europe, *Recommendation of the Commissioner for Human Rights on the Implementation of the Right to Housing* (CommDH(2009)5), section 5.5 (June 30, 2009), <https://rm.coe.int/16806da713>.

laws include provisions to protect women's right to housing.⁶⁷ Similarly, the Committee on Economic, Social, and Cultural Rights has construed States' obligations to address access to health care in the context of gender discrimination as going beyond the provision of health care, but addressing access to the determinants of health, such as water and food.⁶⁸ The UN Special Rapporteur on Violence against Women has also identified a potential gap in the narrow construction of the state obligation to protect by noting that "the focus of protection has too frequently been on the provision of short-term emergency assistance rather than on providing women who have been victims of violence with the means to avoid re-victimization."⁶⁹

A redefined duty to protect that includes a more expansive notion of economic, social, and cultural rights would enable the authors of this article to conduct a more adequate human rights analysis of our study results. This more expansive duty to protect that goes beyond the basic provision of material needs would direct us to assess whether existing government policy is taking progressive steps to ensure that marginalized groups of survivors of GBV have the support they need to access adequate housing and food and the right to the highest attainable standard of health, among other social and economic rights. For example, the right to adequate housing⁷⁰ is not merely a right to shelter, but it is "the right to live somewhere in security, peace and dignity."⁷¹ Realizing the right to housing requires

⁶⁷ *Id.* section 5.6.

⁶⁸ *Id.*

⁶⁹ Ertürk, *supra* note 65, ¶ 49.

⁷⁰ See International Covenant on Economic, Social, and Cultural Rights, art. 11, *opened for signature* Dec. 19, 1966, 933 U.N.T.S. 4 (entered into force Jan. 3, 1976) [hereinafter ICESCR]; G.A. Res. 217 (III) A, Universal Declaration of Human Rights, art. 25 (Dec. 10, 1948) [hereinafter UDH]; International Convention on the Elimination of All Forms of Racial Discrimination, art. 5, *opened for signature* Dec. 21, 1965, 660 U.N.T.S. 195 (entered into force Jan. 4, 1969) [hereinafter ICERD]; Convention on the Elimination of All Forms of Discrimination Against Women, art. 14, *opened for signature* Dec. 18, 1979, 1249 U.N.T.S. 13 (entered into force Sept. 3, 1981) [hereinafter CEDAW]; Convention on the Rights of the Child, art. 27, *opened for signature* Nov. 20, 1989, 1577 U.N.T.S. 3 (entered into force Sept. 2, 1990) [hereinafter CRC].

⁷¹ UN Committee on Economic, Social and Cultural Rights (CESCR), *General Comment No. 4: The Right to Adequate Housing (Art. 11 (1) of the Covenant)*, ¶ 7,

that governments guarantee legal protection against forced evictions, keep the financial costs of housing at such a level that the satisfaction of other basic needs is not compromised, and provide a habitable space that is safe from threats to health and structural hazards, culturally adequate, and that allows access to employment options, health care services, and schools.⁷² Similarly, the human right to food⁷³ is more than the right to be provided with enough calories to survive by food banks, but instead, “the right to food is realized when every man, woman and child, alone or in community with others, have physical and economic access at all times to adequate food or means for its procurement.”⁷⁴ The right to food requires that governments progressively make safe food that is nutritionally and culturally adequate physically accessible in neighborhoods and to all groups, and that land and natural resources be readily available to those who grow their own food.⁷⁵ The right to food also requires that food be economically accessible so that the costs of accessing adequate food are not so high that other basic needs are threatened, and that low-wage “essential” workers in the food system enjoy adequate working conditions.⁷⁶ The right to the highest attainable standard of physical and mental health⁷⁷ means that health care and services should be accessible, available, acceptable, and of quality.⁷⁸ The right to health is also the right to the underlying determinants of health, such as water,

U.N. Doc. E/1992/23 (Dec. 13, 1991), <https://www.refworld.org/docid/47a7079a1.html>.

⁷² *Id.* ¶ 8.

⁷³ See ICESCR art. 11; UDHR art. 25; CEDAW art. 12 & 14; CRC art. 24 & 27.

⁷⁴ UN Committee on Economic, Social and Cultural Rights (CESCR), *General Comment No. 12: The Right to Adequate Food (Art. 11)*, ¶ 6, U.N. Doc. E/C.12/1999/5 (May 12, 1999), <https://www.refworld.org/pdfid/4538838c11.pdf>.

⁷⁵ *Id.* ¶ 14.

⁷⁶ *Id.* ¶ 13; see also Hilal Elver & Melissa Shapiro, *Violating Food System Workers' Rights in the Time of COVID-19: The Quest for State Accountability*, 10 STATE CRIME J. 80, 84 (2021), https://www.jstor.org/stable/pdf/10.13169/statecrime.10.1.0080.pdf?refreqid=excelsior%3A8be3bfd9b49c52da7cbd561f94cec866&ab_segments=&origin=.

⁷⁷ ICESCR art. 12; ICERD art. 5; CEDAW art. 11, 12; CRC art. 24.

⁷⁸ UN Committee on Economic, Social and Cultural Rights (CESCR), *General Comment No. 14: The Right to the Highest Attainable Standard of Health (Art. 12)*, ¶ 12, U.N. Doc. E/C.12/2000/4 (Aug. 11, 2000), <https://www.refworld.org/pdfid/4538838d0.pdf>.

food, and housing, and the right to participate in health-related decision-making processes at community, national and international levels.⁷⁹

V. CONCLUSION AND RECOMMENDATIONS

The lockdowns imposed throughout the United States in 2020 were designed to keep people safe, but ironically they exacerbated dangers for survivors of gender-based violence—particularly those from underserved, marginalized, or historically exploited communities. As the New York Times reported, “in Europe, one country after another seem[ed] to have followed the same grim path: First, governments impose lockdowns without making sufficient provisions for domestic abuse victims. About 10 days later, distress calls spike, setting off a public outcry.”⁸⁰ The same appeared to be true in Miami-Dade, where service providers and law enforcement reported an eerie pause on domestic violence and child abuse reporting in the early days of the pandemic, fueling fear that violence had been shut away behind closed doors.⁸¹

To make matters worse, while federal and state authorities stepped in to provide financial support in the form of direct payments, small business loans, and rent relief for some, many of South Florida’s most vulnerable survivors were ineligible for such support or even for the vaccine itself due to their immigration status and lack of proof of residency, or were left to their own devices by a law enforcement infrastructure which, initially, was triaging calls for service and failing to enforce injunctive orders against perpetrators. The cumulative result of this was what some providers described as a “cycle of dependency,” wherein survivors were left optionless and stuck in dangerous households without recourse for themselves or their children, and fundamentally distrusting of local authorities.⁸²

⁷⁹ *Id.* ¶ 11.

⁸⁰ Amanda Taub, *A New Covid-19 Crisis: Domestic Abuse Rises Worldwide*, N.Y. TIMES (Apr. 14, 2020), <https://www.nytimes.com/2020/04/06/world/coronavirus-domestic-violence.html>.

⁸¹ C.L. Interview.

⁸² D.A. Interview.

This result is brought into even sharper focus when considered in the context of what providers characterized as a seismic shift in survivor need, away from specialized response and toward basic nutritional and material support. In other words, the gaps left in the social safety net by federal and state authorities generated downward pressure impacting not just vulnerable survivors, but the private organizations that stepped in to provide basic services to survivors. This, in turn, materially limited those organizations' financial and practical ability to maintain standards of care for entire communities for which they otherwise would have been responsible.

Specifically, with respect to survivors' access to justice, some courts experienced closures; almost all experienced significant logistical challenges. The digital and linguistic shortcomings have made it difficult for some survivors to ask for and receive help. Logistical challenges, such as court closures, long lines, online interfaces, and difficulty filing for relief, have made it even more difficult for survivors to trust the system to provide them with justice. Many survivors do not have computers, smart phones, or internet service, so they rely on service providers to assist them through the process of obtaining virtual restraining orders. One organization that was open during the pandemic allowed survivors to come into the office and provided them with an advocate who has knowledge and expertise to guide them through the virtual restraining order process.⁸³

Relationships between law enforcement and survivors continue to be strained during the pandemic.⁸⁴ Survivors mention a lack of trust and language barriers as the main reasons for this strain. Additionally, survivors fear calling the police to their house because they are afraid they will not get the help they actually need. Instead, they fear that their abuser may be arrested, forcing the family out of their sole source of income, and putting the perpetrator—and by extension the family—at risk of COVID-19, since jails can be super spreaders for the virus. Lack of trust in officers and delayed police

⁸³ R.D. Interview.

⁸⁴ LGBTQ+ individuals and immigrants have historically struggled with their relationships with law enforcement. This has been a theme with our interviews, specifically the continued lack of access to help from law enforcement due to language barriers and fear of legal status. This can also be seen in police response to transgender individuals because of favorability toward their cisgender counterparts.

responsiveness during the pandemic further alienates survivors from asking for help. Some survivors are afraid that they will be arrested because of their undocumented status and others are afraid of discriminatory treatment because of their gender identities or sexual orientation. Language barriers cause increased fear and apprehension, especially amongst undocumented communities.

To address these ongoing challenges, many of which preexisted the pandemic but were exacerbated by it, we have made the following recommendations to local policymakers in Miami-Dade County.

- ❖ The **formation of a municipal body** to work to expand and strengthen existing coalitions of GBV service providers, including (1) maintaining an online repository of real-time information about the provision of services, (2) streamlining and providing institutional support for the process of material/strategic cooperation, and (3) creating the possibility for funding opportunities.

- ❖ Invest in the **operationalization of the human rights principles reflected in the 2015 DOJ guidance** regarding bias in gender-based violence investigations and prioritize law enforcement gender diversity

- ❖ The passage of a resolution or bill which instructs/**requires local police departments to screen 911 callers reporting GBV** at the operator-intake stage for language requirements and to ensure that calls for responding units communicate a preference for bilingual officers or for the assignment of a translator to the response.

- ❖ **Involve voices and experiences of survivors**, especially women of color and LGBTQ+ individuals, **directly** in the leadership and policymaking processes at the local and state levels.

- ❖ The passage of a bill/resolution calling for the **creation and funding of county-wide (1) GBV survivor stockpile** of materials which meet basic needs, **(2) programs that meet immediate safety needs** (targeted, community-based violence interrupter models, restorative justice) and **(3) services that meet long-term needs to address “root causes”** (family support, education youth programs, health care, housing, and economic development).

- ❖ The city should collaborate with nonprofits and law enforcement to build trust and push to **repeal anti-immigrant laws**,

such as **SB 168**, that chill the reporting of domestic violence incidents and threaten public safety.

❖ The creation and implementation of a **county-wide “panic button” code** which would connect survivors directly with service providers or their unifying municipal body mentioned above.

❖ The commission/publication of a **step-by-step manual for survivors** including but not limited to instructions regarding: (1) how to find service providers; (2) what forms they may need; (3) how to navigate the TRO/Preliminary Injunction process; (4) common English phrases relevant and necessary to navigating the aforementioned processes translated into Spanish, Portuguese, and Creole; and (5) a list of and directions to South Florida’s DV shelters.

We believe these recommendations are relevant in other spheres as well, and can be helpful to the international human rights community for using the COVID-19 crucible to develop an expanded notion of the duty to protect.