

Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention)

Children's Rights

Introduction

- The Council of Europe Convention on preventing and combating violence against women, or Istanbul Convention for short, has a strong focus on women and girls in as far as they experience gender-based violence, such as stalking, sexual harassment, sexual violence, domestic violence, forced marriage, female genital mutilation, forced sterilisation and forced abortion. This means the Istanbul Convention contains a range of measures to prevent gender-based violence against girls, protect girls against such violence and prosecute the perpetrators. The reason for this focus on women and girls is that it is mainly women and girls who are exposed to the forms of violence covered by the Convention and that these are a manifestation of historically unequal power relations between men and women.
- But that is not to say that it does not offer protection to boys as well. With the exception of its provisions on female genital mutilation, forced sterilisation and forced abortion, the Istanbul Convention is drafted in gender-neutral language. This means that any of its provisions can be implemented with a view to supporting and protecting boys who experience any of the forms of violence covered by the Convention. In fact, in as far as domestic violence is concerned, the Convention even encourages states parties to do so, as the drafters recognised that many children, girls and boys, are exposed to domestic violence and thus in need of support.

Children and domestic violence

- While it is important to recognise that most victims of domestic violence are women, it is equally important to recognise that many of these women have children. In some cases, the violence is directed at both, women and children. In other cases, children are not targeted themselves but witness violence against their mothers. Either way they suffer and either way they need to be protected.
- The drafters of the Istanbul Convention had in mind both scenarios when they negotiated the Convention. There are several provisions that address both children as direct victims of physical, sexual or psychological violence, and children who witness such violence between their parents.
- For example, in the area of preventive measures, the Istanbul Convention calls on states parties to conduct or promote awareness-raising campaigns on the different forms of violence it covers, including domestic violence. It specifically states that such campaigns should show or emphasise the consequences on children (Article 13 paragraph 1). This means not only raising awareness of how violence between parents can have a long term effect on their children, but also how physically reprimanding, controlling or killing for example an older sister to restore so-called family honour adversely affects younger siblings.
- When it comes to protection and support services, the Istanbul Convention requires all measures of protection to take into account the relationship between victims, perpetrator, children and their wider social environment. The aim is to avoid a situation where victims and their needs are addressed in isolation or without acknowledging their social reality (Article 18 paragraph 3). Measures taken in protection of an abused mother, i.e. moving her and her children to a shelter far away, will often mean interrupting the children's schooling or uprooting and isolating children. A careful balance will need to be struck in such cases. Similarly, it is important that services such as shelters are better equipped to deal with children who accompany their mothers. It is not enough to offer them a place to stay. Rather, the Istanbul Convention calls for specialist support for children in such situations (Articles 22, 23 and 26) based on their needs. This includes age-appropriate psycho-social counselling and respect for the best interests of the child.
- It is in the context of finding holistic solutions which avoid secondary victimisation that the Istanbul Convention requires judges to take into consideration any known incidents of domestic violence when they decide over custody or visitation rights (Article 31). There have been examples of the abusive parent being granted visitation or even custody rights simply because it was considered to be in the best interest of the child to maintain contact. The Istanbul Convention now clearly establishes that violence against the non-abusive carer or the child itself will always need to factor into decisions on the exercise of parental rights and that the exercise of visitation or custody rights shall never jeopardise the safety of the victims or that of their children.

Children and forced marriages

- In many cases, victims of forced marriage are below the age of 18. Often, they are not married against their will in the country in which they live but are lured or forced to travel to another country where they have been promised to someone. The Istanbul Convention criminalises both: forcing a child to enter into a marriage, as well as luring a child to another country with the intention of marrying the child, boy or girl, against his or her will (Article 37). The intention is to make sure that every step towards a forced marriage is criminalised, including using a pretext such as visiting family members to make a child travel abroad, when the real reason is to force the child to marry. It is important to note, however, that the Convention neither addresses early marriages nor does it deal with the question of marriageable age.

Girls and female genital mutilation

- Owing to the nature of female genital mutilation, this is one of the criminal offences established by the Istanbul Convention that breaks with the principle of gender neutrality (Article 38). Its victims are necessarily women and girls. It aims to criminalise the traditional practice of cutting away certain parts of the female genitalia which some communities perform on their female members. This practice causes irreparable and lifelong damage and is usually carried out without the consent of the victim. Often, it is carried out on extremely young girls. By making it a criminal offence, the drafters of the Istanbul Convention wished to demonstrate that it is a violation of the right to personal integrity of women and girls which needs to be protected by law.

Children and crimes committed in the name of so-called “honour”

- The Istanbul Convention addresses crimes committed in the name of so-called “honour”, with which perpetrators wish to punish the victim for a particular behaviour, in two ways. The first is to establish that culture, custom, religion, tradition or so-called “honour” can never be accepted by a court of law to justify the commission of a crime (Article 42 paragraph 1). The second is to make sure that the instigation of a child, for example a child below the age of criminal responsibility, will not diminish the criminal liability of the instigator (Article 42 paragraph 2). Often, it is the youngest member of the family, a child not yet criminally responsible, who is chosen to carry out the actual murder and/or made to believe that that is the right thing to do. This has devastating consequences for the child and needs to be addressed.

Investigations and judicial proceedings involving children as victims or witnesses

- One of the major aims of the Istanbul Convention is to end impunity for all acts of violence against women and domestic violence. It therefore introduces a range of measures to improve the capacity of law enforcement agencies to investigate and prosecute such cases. Moreover, it contains a number of measures designed to encourage victims to file complaints and testify, even if it means testifying against a close member of the family. In this context, and in line with the Council of Europe Guidelines on Child-friendly Justice, the Istanbul Convention requires states parties to afford child victims and child witnesses special protection at all stages of investigations and judicial proceedings (Article 56). Children are much more vulnerable and likelier to be intimidated by having to face the perpetrator in court. For this reason, the best interest of the child must be the guiding principle when children come in contact with the justice system as a result of domestic violence.

Offences covered by the Convention committed against children

- The Istanbul Convention introduces a number of specific criminal offences, including domestic violence in all its elements: physical violence, sexual violence and psychological violence – irrespective of whether this violence is directed at an adult victim or a child victim. In fact, the Istanbul Convention requires harsher sentences (Article 46 aggravating circumstances) if the offence is committed against or in the presence of a child. The same goes for offences committed by a family member or a person having abused her or his authority. A previous conviction for a similar offence will also lead to an increased sentence. With this provision the drafters wished to ensure that the particularly devastating effects of violence in the family and its often repeat nature are taken into account in the sentencing by courts.

Children as agents of change

- The Istanbul Convention does not only recognise children as victims of physical, sexual and psychological violence, it also ascribes them great responsibility as agents of change. Today’s girls are tomorrow’s women just as today’s boys are tomorrow’s men. Attitudes, convictions and behavioural patterns are shaped very early on in life. To break the continuity of gender-based violence, the Istanbul Convention places great emphasis on the importance of changing mentalities, attitudes and gender relations. It therefore requires states parties to teach children the concept of equality between women and men, non-stereotyped gender roles, and non-violent conflict resolution in interpersonal relationships (Article 14). Building gender relations on mutual respect and recognition rather than dominance and control is the best way to prevent gender-based violence. This is why the Convention calls on all members of society, in particular men and boys, to contribute actively to the prevention of further violence (Article 12).