

# REGIONAL TOOLS TO FIGHT VIOLENCE AGAINST WOMEN:



*The Belém do Pará  
and Istanbul Conventions*



Organization of  
American States



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The **Organization of American States (OAS)** brings together the nations of the Western hemisphere to promote democracy, strengthen human rights, foster peace, security and cooperation and advance common interests. The origins of the Organization date back to 1890 when nations of the region formed the Pan American Union to forge closer hemispheric relations. This union later evolved into the OAS and in 1948, 21 nations signed its governing charter. Since then, the OAS has expanded to include the nations of the English-speaking Caribbean and Canada, and today all of the independent nations of North, Central and South America and the Caribbean make up its 35 member states.

The **Inter-American Commission of Women (CIM)** is the main hemispheric policy forum for the promotion of women's rights and gender equality. Created in 1928 - in recognition of the importance of women's social inclusion to democratic strengthening and human development in the Americas – CIM was the first inter-governmental organization established to promote women's human rights and gender equality.

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The Council of Europe has 47 member states, covering virtually the entire continent of Europe. It seeks to develop common democratic and legal principles based on the European Convention on Human Rights and other reference texts on the protection of individuals, including women and girls. As Europe's leading human rights organisation, the Council of Europe has undertaken a series of initiatives to promote the protection of women against violence since the 1990s. In particular, these initiatives have resulted in the adoption, in 2002, of the Council of Europe Recommendation Rec(2002)5 of the Committee of Ministers to member states on the protection of women against violence, and the running of a Europe-wide campaign, from 2006-2008, to combat violence against women, including domestic violence.

**The Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention)** opened for signature in May 2011. It will enter into force following its ratification by 10 countries. An independent group of experts (GREVIO) will monitor the implementation of the Convention.

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## *preface*

The aim of “Regional Tools to Combat Violence against Women” is to contribute to strategies and actions developed between the Organization of the American States and the Council of Europe, in order to advance the agenda for women’s equality. Within this framework, and among the agreed bi-regional targets, the right of women to live a life free of violence has been defined as a priority.

And this is defined and agreed upon on a particular historical moment. The international community is discussing the agenda for the future that we deserve and need. An agenda that is necessary in order to effectively achieve economic, social, and environmentally sustainable models of human development favor a more just free, equal, safe and peaceful world.

It is clear that these debates and the future of these strategies should include, as horizontal components and as specific dimensions, the human right approach and gender perspective.

Therefore, the current debates on the MDGs +2015, the ODS, Beijing +20 also establish our present as a favorable time to make a balance of the current situation. They promote an assessment of the impact of regional instruments designed to achieve women and gender equality on legislation and public policy. And particularly, their help to evaluate their effect in promoting, protecting and ensuring women’s right to live a life free of violence.

We know that the different forms of violence against women in the public and private sectors cannot be tackled from a reductionist point of view. Rather, they should be considered as part of the complex web of gender discrimination that, despite the enormous progress achieved in our societies and states, still prevent the effective and full exercise of “all” human rights.

However, we also recognize that the extent and intensity of the different forms of violence against women, as serious violation of human rights, is something that should be made visible and should be interpreted in its concrete specificity.

The two regional existing tools that establish legal frameworks for the protection of women, and prevent, punish and eradicate all forms of violence against them are: in Latin America and the Caribbean, the The Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women (Convention of Belem do Pará - 1994); and in Europe, the European Convention on Preventing and Combating Violence Against Women and Domestic Violence (Istanbul Convention - 2011).

Out of the 35 Member States to the Organization of American States, 32 are States Parties to the Convention of Belem do Pará. 24 States have signed the Istanbul Convention and 8 have ratified it.

We encourage more States to sign and ratify these instruments because they both enshrine the rights and guarantees and on the establishment of basic standards of human rights for women: rights that states are required to recognize and ensure, and that a democratic society should respect.

We think that this volume contains especially valuable and timely information. Likewise, the reflections contained in this publication also present the positive achievements, they make visible the unfinished tasks and they make concrete proposals so Belém do Pará and Istanbul can be translated into legal rights and real ones for all women.

Also, this material presents a thorough analysis of the degree of incidence and of implementation of these regional legal instruments and the various recommendations and resolutions adopted by the human rights bodies of the United Nations and the Inter-American and European systems of human rights among States Parties.

Finally, this work is also an incentive for innovation and creativity. It allows us to see how and to what extent these tools have helped to improve and strengthen policies and practices at all levels of government and all agencies and public institutions in order to protect women that are victims of violence, to implement effective preventive mechanisms that ensure the safety of women, and at the same time to promote nondiscrimination policies and equal opportunities, conditions and treatment of the female population.

We welcome the initiative of MESECVI of developing this work, implemented by the Organization of American States and the Council of Europe. Moreover, we also appreciate the opportunity of collaborating with editing o get us to collaborate on editing and disseminating this work.

Argentina works daily so the de facto and the legal equality between men and women are a reality. As the President of Argentina, Cristina Fernández de Kirchner, stated, “*we are at a hinge of history*” in which our mission “*is not only to restore and extend rights snatched for decades,*” but also “*to promote new rights that seemed impossible to achieve in other times.*” We are working on this mission: Both as a social mandate and as a political conviction, human rights in our country are state policy.”

**Ambassador María Cristina Perceval**

*Permanent Representative of Argentina to the United Nations*

*Regional tools to  
fight violence against women*



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*The Belém do Pará  
Convention*



# SECTION I

## The Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women

# 1 FULL TEXT OF THE BELÉM DO PARÁ CONVENTION

## PREAMBLE:

THE STATES PARTIES TO THIS CONVENTION,

**RECOGNIZING** that full respect for human rights has been enshrined in the American Declaration of the Rights and Duties of Man and the Universal Declaration of Human Rights, and reaffirmed in other international and regional instruments;

**AFFIRMING** that violence against women constitutes a violation of their human rights and fundamental freedoms, and impairs or nullifies the observance, enjoyment and exercise of such rights and freedoms;

**CONCERNED** that violence against women is an offense against human dignity and a manifestation of the historically unequal power relations between women and men;

**RECALLING** the Declaration on the Elimination of Violence against Women, adopted by the Twenty-fifth Assembly of Delegates of the Inter-American Commission of Women, and affirming that violence against women pervades every sector of society regardless of class, race or ethnic group, income, culture, level of education, age or religion and strikes at its very foundations;

**CONVINCED** that the elimination of violence against women is essential for their individual and social development and their full and equal participation in all walks of life; and

**CONVINCED** that the adoption of a convention on the prevention, punishment and eradication of all forms of violence against women within the framework of the Organization of American States is a positive contribution to protecting the rights of women and eliminating violence against them,

**HAVE AGREED** to the following:

## **CHAPTER I: DEFINITION AND SCOPE OF APPLICATION**

**Article 1:** For the purposes of this Convention, violence against women shall be understood as any act or conduct, based on gender, which causes death or physical, sexual or psychological harm or suffering to women, whether in the public or the private sphere.

**Article 2:** Violence against women shall be understood to include physical, sexual and psychological violence:

- a. that occurs within the family or domestic unit or within any other interpersonal relationship, whether or not the perpetrator shares or has shared the same residence with the woman, including, among others, rape, battery and sexual abuse;
- b. that occurs in the community and is perpetrated by any person, including, among others, rape, sexual abuse, torture, trafficking in persons, forced prostitution, kidnapping and sexual harassment in the workplace, as well as in educational institutions, health facilities or any other place; and
- c. that is perpetrated or condoned by the state or its agents regardless of where it occurs.

## **CHAPTER II: RIGHTS PROTECTED**

**Article 3:** Every woman has the right to be free from violence in both the public and private spheres.

**Article 4:** Every woman has the right to the recognition, enjoyment, exercise and protection of all human rights and freedoms embodied in regional and international human rights instruments. These rights include, among others:

- a. The right to have her life respected;
- b. The right to have her physical, mental and moral integrity respected;
- c. The right to personal liberty and security;
- d. The right not to be subjected to torture;
- e. The right to have the inherent dignity of her person respected and her family protected;
- f. The right to equal protection before the law and of the law;
- g. The right to simple and prompt recourse to a competent court for protection against acts that violate her rights;
- h. The right to associate freely;
- i. The right of freedom to profess her religion and beliefs within the law; and
- j. The right to have equal access to the public service of her country and to take part in the conduct of public affairs, including decision-making.

**Article 5:** Every woman is entitled to the free and full exercise of her civil, political, economic, social and cultural rights, and may rely on the full protection of those rights as embodied in regional and international instruments on human rights. The States Parties recognize that violence against women prevents and nullifies the exercise of these rights.

**Article 6:** The right of every woman to be free from violence includes, among others:

- a. The right of women to be free from all forms of discrimination; and
- b. The right of women to be valued and educated free of stereotyped patterns of behavior and social and cultural practices based on concepts of inferiority or subordination.

## **CHAPTER III: DUTIES OF THE STATES**

**Article 7:** the States Parties condemn all forms of violence against women and agree to pursue, by all appropriate means and without delay, policies to prevent, punish and eradicate such violence and undertake to:

- a. refrain from engaging in any act or practice of violence against women and to ensure that their authorities, officials, personnel, agents, and institutions act in conformity with this obligation;
- b. apply due diligence to prevent, investigate and impose penalties for violence against women;
- c. include in their domestic legislation penal, civil, administrative and any other type of provisions that may be needed to prevent, punish and eradicate violence against women and to adopt appropriate administrative measures where necessary;
- d. adopt legal measures to require the perpetrator to refrain from harassing, intimidating or threatening the woman or using any method that harms or endangers her life or integrity, or damages her property;
- e. take all appropriate measures, including legislative measures, to amend or repeal existing laws and regulations or to modify legal or customary practices which sustain the persistence and tolerance of violence against women;

- f. establish fair and effective legal procedures for women who have been subjected to violence which include, among others, protective measures, a timely hearing and effective access to such procedures;
- g. establish the necessary legal and administrative mechanisms to ensure that women subjected to violence have effective access to restitution, reparations or other just and effective remedies; and
- h. adopt such legislative or other measures as may be necessary to give effect to this Convention.

**Article 8:** The States Parties agree to undertake progressively specific measures, including programs:

- a. to promote awareness and observance of the right of women to be free from violence, and the right of women to have their human rights respected and protected;
- b. to modify social and cultural patterns of conduct of men and women, including the development of formal and informal educational programs appropriate to every level of the educational process, to counteract prejudices, customs and all other practices which are based on the idea of the inferiority or superiority of either of the sexes or on the stereotyped roles for men and women which legitimize or exacerbate violence against women;
- c. to promote the education and training of all those involved in the administration of justice, police and other law enforcement officers as well as other personnel responsible for implementing policies for the prevention, punishment and eradication of violence against women;
- d. to provide appropriate specialized services for women who have been subjected to violence, through public and private sector agencies, including shelters, counseling services for all family members where appropriate, and care and custody of the affected children;
- e. to promote and support governmental and private sector education designed to raise the awareness of the public with respect to the problems of and remedies for violence against women;
- f. to provide women who are subjected to violence access to effective readjustment and training programs to enable them to fully participate in public, private and social life;
- g. to encourage the communications media to develop appropriate media guidelines in order to contribute to the eradication of violence against women in all its forms, and to enhance respect for the dignity of women;
- h. to ensure research and the gathering of statistics and other relevant information relating to the causes, consequences and frequency of violence against women, in order to assess the effectiveness of measures to prevent, punish and eradicate violence against women and to formulate and implement the necessary changes; and
- i. to foster international cooperation for the exchange of ideas and experiences and the execution of programs aimed at protecting women who are subjected to violence.

**Article 9:** With respect to the adoption of the measures in this Chapter, the States Parties shall take special account of the vulnerability of women to violence by reason of among others, their race or ethnic background or their status as migrants, refugees or displaced persons. Similar consideration shall be given to women subjected to violence while pregnant or who are disabled, of minor age, elderly, socioeconomically disadvantaged, affected by armed conflict or deprived of their freedom.

## **CHAPTER IV: INTER-AMERICAN MECHANISMS OF PROTECTION**

**Article 10:** In order to protect the right of every woman to be free from violence, the States Parties shall include in their national reports to the Inter-American Commission of Women information on measures adopted to prevent and prohibit violence against women, and to assist women affected by violence, as well as on any difficulties they observe in applying those measures, and the factors that contribute to violence against women.

**Article 11:** The States Parties to this Convention and the Inter-American Commission of Women may request of the Inter-American Court of Human Rights advisory opinions on the interpretation of this Convention

**Article 12:** Any person or group of persons, or any nongovernmental entity legally recognized in one or more member states of the Organization, may lodge petitions with the Inter-American Commission on Human Rights containing denunciations or complaints of violations of Article 7 of this Convention by a State Party, and the Commission shall consider such claims in accordance with the norms and procedures established by the American Convention on Human Rights and the Statutes and Regulations of the Inter-American Commission on Human Rights for lodging and considering petitions.

## **CHAPTER V: GENERAL PROVISIONS**

**Article 13:** No part of this Convention shall be understood to restrict or limit the domestic law of any State Party that affords equal or greater protection and guarantees of the rights of women and appropriate safeguards to prevent and eradicate violence against women.

**Article 14:** No part of this Convention shall be understood to restrict or limit the American Convention on Human Rights or any other international convention on the subject that provides for equal or greater protection in this area.

**Article 15:** This Convention is open to signature by all the member States of the Organization of American States.

**Article 16:** This Convention is subject to ratification. The instruments of ratification shall be deposited with the General Secretariat of the Organization of American States.

**Article 17:** This Convention is open to accession by any other state. Instruments of accession shall be deposited with the General Secretariat of the Organization of American States.

**Article 18:** Any State may, at the time of approval, signature, ratification, or accession, make reservations to this Convention provided that such reservations are:

- a. not incompatible with the object and purpose of the Convention, and
- b. not of a general nature and relate to one or more specific provisions.

**Article 19:** Any State Party may submit to the General Assembly, through the Inter-American Commission of Women, proposals for the amendment of this Convention.

Amendments shall enter into force for the states ratifying them on the date when two-thirds of the States Parties to this Convention have deposited their respective instruments of ratification. With respect to the other States Parties, the amendments shall enter into force on the dates on which they deposit their respective instruments of ratification.

**Article 20:** If a State Party has two or more territorial units in which the matters dealt with in this Convention are governed by different systems of law, it may, at the time of signature, ratification or accession, declare that this Convention shall extend to all its territorial units or to only one or more of them.

Such a declaration may be amended at any time by subsequent declarations, which shall expressly

specify the territorial unit or units to which this Convention applies. Such subsequent declarations shall be transmitted to the General Secretariat of the Organization of American States, and shall enter into force thirty days after the date of their receipt.

**Article 21:** This Convention shall enter into force on the thirtieth day after the date of deposit of the second instrument of ratification. For each State that ratifies or accedes to the Convention after the second instrument of ratification is deposited, it shall enter into force thirty days after the date on which that State deposited its instrument of ratification or accession.

**Article 22:** The Secretary General shall inform all member states of the Organization of American States of the entry into force of this Convention.

**Article 23:** The Secretary General of the Organization of American States shall present an annual report to the member states of the Organization on the status of this Convention, including the signatures, deposits of instruments of ratification and accession, and declarations, and any reservations that may have been presented by the States Parties, accompanied by a report thereon if needed.

**Article 24:** This Convention shall remain in force indefinitely, but any of the States Parties may denounce it by depositing an instrument to that effect with the General Secretariat of the Organization of American States. One year after the date of deposit of the instrument of denunciation, this Convention shall cease to be in effect for the denouncing State but shall remain in force for the remaining States Parties.

**Article 25:** The original instrument of this Convention, the English, French, Portuguese and Spanish texts of which are equally authentic, shall be deposited with the General Secretariat of the Organization of American States, which shall send a certified copy to the Secretariat of the United Nations for registration and publication in accordance with the provisions of Article 102 of the United Nations Charter.

**IN WITNESS WHEREOF** the undersigned Plenipotentiaries, being duly authorized thereto by their respective governments, have signed this Convention, which shall be called the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women ~Convention of Belém do Pará.”

**DONE IN THE CITY OF BELÉM DO PARA, BRAZIL**, the ninth of June in the year one thousand nine hundred ninety-four.

“

*The States Parties condemn all forms of violence against women and agree to pursue, by all appropriate means and without delay, policies to prevent, punish and eradicate such violence...*

”



# 2. POLITICAL WILL TO FIGHT VIOLENCE AGAINST WOMEN

Through the Belém do Pará Convention, the States Party agreed that violence against women:

*“...constitutes a violation of their human rights and fundamental freedoms, and impairs or nullifies the observance, enjoyment and exercise of such rights and freedoms”*

*“...is an offense against human dignity and a manifestation of the historically unequal power relations between women and men”*

*“...pervades every sector of society regardless of class, race or ethnic group, income, culture, level of education, age or religion and strikes at its very foundations”*

For the first time, the Belém do Pará Convention establishes women’s right to live a life free of violence. This inter-American human rights treaty has served as the basis for the adoption of laws and policies on prevention, eradication and punishment of violence against women in its States Party, as well as the formulation of national plans, the organization of campaigns and the implementation of care protocols and services, among other initiatives. The Convention has made a significant contribution to strengthening the Inter-American Human Rights System.

## 2.1 How is violence against women defined?

In Article 1, the Convention defines violence against women as:

*“...any act or conduct, based on gender, which causes death or physical, sexual or psychological harm or suffering to women, whether in the public or the private sphere.”*

Article 2 recognizes three types of violence:

1. **Physical violence**
2. **Sexual violence**
3. **Psychological violence**

The Convention also highlights three spheres where this violence takes place:

4. **In private life:** Violence that occurs within the family or domestic unit or within any other interpersonal relationship, even when the perpetrator no longer lives with the victim.
5. **In public life:** Violence that is perpetrated by any person and occurs in the community, in the workplace, in educational institutions, health facilities or any other place; and
6. **Violence that is perpetrated or condoned by the state or its agents, regardless of where it occurs.**

## 2.2 Which rights does the Convention recognize and protect?

The rights established by the Convention are listed in Articles 3 to 6.

Every woman has the right to be free from violence in both the public and private spheres.

These rights include, among others:

- ~ The right of women to be free from all forms of discrimination;

- ~ The right of women to be valued and educated free of stereotyped patterns of behavior and social and cultural practices based on concepts of inferiority or subordination.

Every woman is entitled to the free and full exercise of her civil, political, economic, social and cultural rights as embodied in regional and international instruments on human rights.

These rights include, among others:

- ~ The right to have her life respected;
- ~ The right to have her physical, mental and moral integrity respected;
- ~ The right to personal liberty and security;
- ~ The right not to be subjected to torture;
- ~ The right to have the inherent dignity of her person respected and her family protected;
- ~ The right to equal protection before the law and of the law;
- ~ The right to simple and prompt recourse to a competent court for protection against acts that violate her rights;
- ~ The right to associate freely;
- ~ The right of freedom to profess her religion and beliefs within the law; and
- ~ The right to have equal access to the public service of her country and to take part in the conduct of public affairs, including decision-making.

The obligations to which the States Party to this Convention have committed are:

- ~ Refrain from engaging in any act or practice of violence against women and ensure that their agents comply with this obligation;
- ~ Apply due diligence to prevent, investigate and impose penalties for violence against women;
- ~ Include in their domestic legislation and policy, provisions that will ensure compliance with the objectives of the Convention;
- ~ Adopt legal measures that effectively protect women from their abusers;
- ~ Amend or repeal existing legal norms practices that perpetuate violence against women;
- ~ Establish legal procedures that ensure that women who have been subjected to violence have access to justice and due process;
- ~ Ensure that women subjected to violence have effective access to restitution, reparations or other remedies;
- ~ Promote awareness and observance of the right of women to be free from violence;
- ~ Modify social and cultural patterns of behaviour of men and women, eliminating educational practices that reinforce ideas, attitudes and stereotypes on men and women that perpetuate violence against women;
- ~ Promote the education and training of State agents charged with applying the law and policies on prevention, punishment and eradication of violence against women;
- ~ Provide appropriate specialized services for women who have been subjected to violence;
- ~ Promote and support education programs designed to raise the awareness of the public on violence against women;

- ~ Provide women who are subjected to violence with access to effective readjustment and training programs to enable them to fully participate in public, private and social life;
- ~ Encourage communication media to develop appropriate media guidelines that contribute to the eradication of violence against women;
- ~ Ensure research and the gathering of statistics and other relevant information that increases the visibility of the violence suffered by women; and
- ~ Foster international cooperation for the exchange of ideas and experiences.

## 2.3 What inter-American protection mechanisms are contemplated by the Convention?

### National reports

The States Party must include in their national reports to the Inter-American Commission of Women information on:

- ~ measures adopted to prevent and prohibit violence against women,
- ~ measures adopted to assist women affected by violence,
- ~ any difficulties they observe in applying those measures, and factors that contribute to violence against women.

In 2004, the Follow-up Mechanism to the Belém do Pará Convention – MESECVI – was created on the basis of these national reports, in which the States Party can highlight their progress in the implementation of the Convention.

For more information on the MESECVI, visit: <http://www.oas.org/en/mesecvi>

## Advisory opinions from the Inter-American Court of Human Rights

The States Party and the Inter-American Commission of Women may request advisory opinions on the interpretation of the Convention from the Inter-American Court of Human Rights. To-date, this mechanism has not been utilized.

## Denunciations or complaints before the Inter-American Commission of Human Rights (IACHR)

The IACHR may receive denunciations or complaints from either individuals or non-governmental entities of violations of Article 7 of the Convention.

“

*A life free of violence is the right of  
all women*

”



# 3 THE BELÉM DO PARÁ CONVENTION AND ITS FOLLOW-UP MECHANISM

The Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women was adopted in Belém do Pará, Brazil, in 1994 and establishes violence against women as a violation of their human rights.

For the first time, the Belém do Pará Convention establishes the development of mechanisms for the protection and defense of women's rights in the struggle to eliminate violence against their physical, sexual and psychological integrity – in both the public and private spheres.

The effective implementation of the Convention requires a continuous and independent process of evaluation and support.

## 3.1 MESECVI: Political will to monitor progress in the implementation of the Belém do Pará Convention

In 2004, the Follow-up Mechanism to the Belém do Pará Convention (MESECVI) was established.

MESECVI is a systematic and ongoing multi-lateral evaluation methodology, based on a forum for permanent dialogue and technical cooperation between the States Party to the Convention and a Committee of Experts.

The goal of the MESECVI is to analyze progress in the implementation of the Convention by its States Party, as well as persistent challenges to an effective response to violence against women.

## 3.2 How does MESECVI work?

MESECVI works through evaluation and follow-up rounds that include:

1. Evaluation of reports submitted by the States Party to the Convention on the measures they have adopted to address violence against women; and
2. Follow-up of the implementation of the recommendations made by the Committee of Experts.

The **Committee of Experts** is a technical body, composed of Experts designated by each of the States Party.

The **Conference of States Party** is a political body that brings together each of the States that has signed and ratified the Convention.

**Civil society organizations** exchange information and experiences with the States Party and Experts in order to strengthen implementation of the Convention.

### MESECVI Secretariat

- Inter-American Commission of Women (CIM) at the OAS
- Link between States and Experts
- Link between MESECVI and other Organizations

### Committee of Experts

- Evaluates the State reports and issues recommendations
- Prepares the consolidated Hemispheric Report
- Follows-up on its recommendations with the States

### Conference of States Party

- In accordance with their agreed commitments, the States implement the Convention
- Prepare their reports on policies and programs implemented to punish, prevent and eradicate violence against women
- Implement the recommendations of the Committee of Experts

### Civil Society

- Participates in the processes implemented by the States Party
- Presents shadow reports to the Committee of Experts for their consideration in the MESECVI's evaluation process

## Multi-lateral Evaluation Round

In this first phase, the States Party commit to providing information on the measures they have implemented in the six action areas of the Convention:

- ~ **Legislation**
- ~ **National plans**
- ~ **Access to justice**
- ~ **Specialized services**
- ~ **Budgets**
- ~ **Information and statistics**

This phase ends with the publication of the Hemispheric Report (2008 and 2012), which:

- ~ Synthesizes information on compliance with the Convention in each of the States Party;
- ~ Summarizes the conclusions and recommendations of the Committee of Experts on strengthening implementation of the Convention.

## Follow-up of the recommendations

The second phase analyzes the progress made and the specific measures adopted in compliance with the recommendations made by the Committee of Experts.

At this time, the States Party also provide information on the technical assistance they may need in specific areas.

This phase concludes with the publication of a Report on the Implementation of Recommendations (2010 and 2013).

With the results of these two phases, MESECVI promotes the ongoing exchange of good practices and lessons learned on the implementation of the Convention.

# 4 THE EXTENT OF VIOLENCE AGAINST WOMEN IN THE AMERICAS

Since the adoption of the Convention of Belém do Pará in 1994, the American region has been engaging in efforts to reflect in numbers the severity of violence against women. Such efforts, however, have been isolated and circumstantial, which has had ramifications not only on the operational capacity of States to gauge the reality of the problem, but also on the capacity of regional institutions to measure the progressive impact of public policies implemented since the Convention entered into force. Figures from surveys, health records, and different institutions involved in the administration of justice continue to be limited and still impossible to establish as national figures or, even less so, as regional numbers. That notwithstanding, some States that have been making efforts to gauge the problem enable us to move closer to a detailed image of the status of the situation.

This image is a reflection of some of the figures provided by States that furnished information in fulfillment of the recommendations made in the Second Hemispheric Report of the MESECVI.<sup>1</sup> Hence, while they fail to show the entire picture, they do enable us to move forward with policies that range from the collection of statistical data to the [determination of the] indicators necessary to respond effectively to the phenomenon of violence against women and girls in the region. In the specific case of girls, there is less data. Most of the figures obtained through surveys apply to the phenomenon starting at 15 years of age and therefore, few of these statistics make it possible for us to make broader projections about the phenomenon; the same

is true in the case of older adult women. Nevertheless, the absence of data provides important elements that enable us to move forward in making recommendations in this direction.

For purposes of this publication, we decided to prioritize three groups of statistical indicators, to wit: violence rates, femicide<sup>2</sup> or feminicide figures, and administrative records. As the data and the way such data are collected vary in the States that responded [with] indicators at the time these figures were being compiled, we are not providing figures that are similar or comparable among countries, only data and statistics by country that enable us to determine the severity of the problem as a whole.

Violence against women continues to be an underreported phenomenon for many reasons (gender stereotypes, lack of trust in the justice system, etc.) and thus official figures are partial and reflect only a portion of the reality and of women's lack of ability to fully exercise their right to live in a world free of violence. Additionally, only the figures from those States that reported having collected some statistics pursuant to the commitments taken on under the Convention are reflected. Of a total of 32 states parties, 15<sup>3</sup> provided a response on the follow-up indicators; 13 of these states made figures available on the three indicators surveyed, which is the information we are providing below.

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2. For purposes of this document, the MESECVI defines "femicide" as "the violent death of women based on gender, whether it occurs within the family, a domestic partnership, or any other interpersonal relationship; in the community, by any person, or when it is perpetrated or tolerated by the State or its agents, by action or omission." Nevertheless, in the follow-up indicators, information was requested on existing femicide rates and thus each State has responded according to its own definition of the concept, which can range from the violent death of women at the hands of a partner or ex-partner, to broader concepts that include any type of violent death of women based on gender.

3. Argentina, Barbados, Bolivia, Brazil, Colombia, Costa Rica, Dominican Republic, Ecuador, El Salvador, Guatemala, Mexico, Panama, Paraguay, Peru, Suriname.

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1. The Follow-up Mechanism for the Implementation of the Convention of Belém do Pará (MESECVI).



## Argentina:

- ~ In 2008, 1.8 out of every 100,000 women were victims of criminal homicide.<sup>4</sup> Argentina estimates that most of these cases were the result of gender violence.
- ~ Every year, more than 8,000 women report having been directly and indirectly affected by some type of violence.

## Bolivia:

- ~ In the past three years (2010-2012), approximately 300 cases of femicide were reported, for an average of 100 per year.
- ~ According to health records,<sup>5</sup> 323 out of every 100,000 women have been victims of violence.
- ~ The rate of demand for care for women who have been victims of gender violence is estimated to be 10.46 per every 100,000.<sup>6</sup>

## Brazil:

- ~ Between 2009 and 2011, the annual femicide rate was an estimated 5.82 women killed out of every 100,000.<sup>7</sup>
- ~ In the past 12 months, 815.04 out of every 100,000 women have been victims of violence:<sup>8</sup> 123,000 women were attacked by relatives; 348,000, by people they knew; 16,000, by police or security personnel; and 315,000 were attacked by strangers.

- ~ From 2006 to 2011, a total of 98,990 criminal actions were brought for violence against women and girls.<sup>9</sup>

## Colombia:

- ~ In 2011, 101 women were murdered at the hands of their intimate partner or former intimate partner.<sup>10</sup>
- ~ 65% of women reported that their husband or partner exerted control over them.<sup>11</sup>
- ~ 37% of women who had ever been married or in a relationship reported having been victims of physical abuse by their husband or boyfriend.
- ~ 13.9% had been physically attacked by someone other than their spouse.
- ~ 5.9% of all women reported having been raped or forced to have sexual relations against their will by someone other than their spouse.
- ~ Only 12,437 judgments were handed down out of a total of 580,504 cases of sexual and domestic violence: 10,386 convictions and 2,051 acquittals.<sup>12</sup> Of these cases, 123 occurred in the context of armed conflict.
- ~ Eighty-seven cases were assigned to the National Human Rights and International Humanitarian Law Unit. Of these, to date, only 7 have ended in convictions, and 11 arrest warrants have been issued.

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4. Office of Domestic Violence. Supreme Court of Justice of the Nation, Argentina.

5. National Demographic and Health Survey (ENDSA). National Institute of Statistics, 2008.

6. Records of the Special Fight Against Violence Force.

7. Study by the Applied Economics Research Institute.

8. Table 1.2.6.9.1. National Household Sample Survey (PNAD) conducted in 2009 by the Brazilian Geography and Statistics Institute (IBGE).

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9. National Justice Council Study.

10. National Institute of Legal Medicine and Forensic Sciences (NMLCF).

11. National Demographic and Health Survey (ENDSA), 2010.

12. Office of the Attorney General of the Nation, Colombia, 2012.

## Costa Rica:

- ~ The current femicide rate as established under Article 21 of the Law Criminalizing Violence Against Women is 0.22<sup>13</sup> per 100,000 women.
- ~ Number of cases reported under the Law Criminalizing Violence Against (older) Women (LPVCM): 20,850. Number of judgments: 704<sup>14</sup>
- ~ Number of cases reported under the Criminal Juvenile LPVCM: 160. Number of judgments: 5.
- ~ Number of cases filed for the crime of femicide (under Art. 21 of the LPVCM):<sup>15</sup> 5. Number of judgments: 7.
- ~ Number of cases filed for the crime of femicide (under the Convention of Belém do Pará): 21.
- ~ Number of requests for protection measures: 90,507.

## Ecuador:

- ~ A total of 654,449 women reported having suffered violence at the hands of their partner or ex-partner in the past 12 months, giving us a rate of 12.164 out of every 100 women.<sup>16</sup>
- ~ 2,487,428 women stated that they had been victims of violence at the hands of their partner or ex-partner at some point in their lives, which is a rate of 46.233 per 100,000 women.

## El Salvador:

- ~ The national rate of violent deaths of women is 21 violent deaths per 100,000 women.<sup>17</sup>
- ~ In the 2005-2010 period, only between 2.7% and 5% of the total number of cases filed with the Office of the Prosecutor General of the Republic were prosecuted and ended with sentences.<sup>18</sup> This means that 95% of the violent deaths of women have gone unpunished.<sup>19</sup>

## Guatemala:

- ~ The rate of violent deaths of women is 9.17 per 100,000 women.<sup>20</sup>
- ~ 41.9% of women have been victims of verbal violence at some point in their lives, 24.3%, of physical violence, and 12.9%, of sexual violence.<sup>21</sup>
- ~ From 2008 to June 2013, 226 judgments were handed down for femicide and 2,445, for violence against women in its different manifestations.
- ~ Out of a total of 7,548 cases filed for violence against women, rulings have been made in only 909.<sup>22</sup>

13. For purposes of making calculations, the following is to be considered: Number of femicides - Article 21 + broader femicide + criminal homicides of women for other reasons, all multiplied by 100,000 and divided by the number of women counted in the census by INEC. Statistics Section of the Judiciary.

14. Statistics Section, Judiciary, 2013.

15. Article 21 of the LPVCM: A prison sentence of between 20 and 35 years shall be imposed on any individual who kills a woman with whom he is married, or in a relationship, whether openly or not.

16. National survey on family relationships and gender violence against women, 2001. National Institute of Statistics and Census.

17. 2012 National Report. Status and situation of violence against women in El Salvador.

18. Office of the Prosecutor for the Defense of Human Rights.

19. 2012 National Report. Status and situation of violence against women in El Salvador.

20. Data from the National Institute of Forensic Sciences, 2012; 2000-2020 Population Projections.

21. 2008-2009 Maternal-Infant Health Survey.

22. Judicial body, 2012.

## Mexico:

- ~ Out of every 100,000 women, 46,994.7<sup>23</sup> between the ages of 15 and 55 report having experienced at least one violent incident during their relationship with their most recent partner.<sup>24</sup>
- ~ Out of every 100,000 women, 43,090.2 indicated having endured emotional violence.
- ~ Out of every 100,000 women, 24,478.7 had suffered economic violence.
- ~ Out of every 100,000 women, 14,029.9 had been subjected to physical violence.
- ~ Out of every 100,000 women, 7,348.9 had endured sexual violence.
- ~ The prevalence rate of patrimonial violence<sup>25</sup> suffered by women who were married or in a relationship at the time of the survey was 58,563 out of every 100,000, while for women who had been in a relationship at one time in their lives, the rate was 17,202.4.

## Paraguay:

- ~ In 2012, the total number of cases of deaths caused by gender violence recorded was 36, of which, 33 had been perpetrated by the woman's intimate partner or ex-partner.<sup>26</sup>
- ~ 18.7% of women had endured verbal violence.
- ~ 6.7% reported physical violence.
- ~ 1.7% had been victims of sexual violence.

- ~ Among women either currently or ever married or in a relationship, the figures go up.<sup>27</sup>
- ~ 36% of the women reported having suffered verbal violence.
- ~ 17.9% reported physical violence. 16.8% of the women had been victims of physical violence before the age of 15. Women between 35 and 39 years of age are the ones with the highest percentage at 22.9%.
- ~ 5% of women had suffered sexual abuse. 24% of rapes had been committed by the husband, 16%, by an ex-husband, and 12%, by a boyfriend or ex-boyfriend. The vast majority of rapes were committed by people the victim knew: 35% by neighbors, friends, employers (bosses), relatives, and stepfathers. 13% of the women who had been raped reported having been victimized by a stranger.
- ~ Between 2006 and 2011, 1,408 cases of domestic violence were filed, of which 127 were resolved in the justice system.<sup>28</sup>
- ~ In 2012, 3,881 reports<sup>29</sup> were filed with the Assistance for Women, Children, and Adolescent Victims Divisions.
- ~ In 2012, the Assistance for Women, Children, and Adolescent Victims Divisions handled 122 cases of sexual violence.<sup>30</sup>

23. The sum of the types of violence does not add up to the total, as each woman might have been victim of more than one type.

24. Data furnished by Inmujeres based on INEGI, taken from the 2011 National Survey on Household Relationship Dynamics.

25. Any act or omission that affects the survival of a woman. This manifests in the transformation, removal, destruction, retention, or diversion of objects, personal documents, property and securities, assets, or economic resources used for meeting her needs and may extend to damage to shared property and property belonging to the woman.

26. Source: Ministry of Women/National Police.

27. Source: National Demographic and Sexual and Reproductive Health Survey, ENDSSR, 2008.

28. Clarification: Not all cases end with a firm judgment, but rather with other types of legal resolutions (interlocutory appeal or orders). Secretariat for Gender of the Judiciary, Supreme Court of Justice.

29. National Police.

30. National Police.

## Peru:

- ~ Ninety-nine women were victims of femicide in 2012.<sup>31</sup> According to the National Institute for Statistics and Informatics (INEI), in 2012, the female population in Peru was an estimated 15,032,872 (PERU: Population Estimates and Projections by Sex, Broken Down by Department, Province, and District, 2000-2015).<sup>32</sup> The femicide rate is 0.6585 per every 100,000 women.
- ~ 12.9% of women who have ever been in a relationship reported having endured physical and sexual violence at the hands of their husband or partner in the past 12 months.
- ~ 37.2% of women who have ever been in a relationship reported having been victims of physical and sexual violence at the hands of their husband or partner.<sup>33</sup>
- ~ 27.6% of the women interviewed mentioned individuals (family members, relatives, friends, employers, or strangers) as perpetrators of physical violence against them other than their husband or partner.
- ~ 66.3% of women who have ever been in a relationship reported that their husband or partner exerted some form of control over them.<sup>34</sup>
- ~ 21.7% of women who have ever been in a relationship reported having experienced episodes of verbal violence in the form of being humiliated in front of others.<sup>35</sup>

- ~ 19.9% of women who have ever been in a relationship reported that their husband or partner had threatened to leave home or take away their child(ren) or financial support.
- ~ In 2012, 141,114 reports were filed with the Public Ministry and 54,599 cases of violence were forwarded to the justice system. In that same year, the National Police received 122,689<sup>36</sup> reports of domestic violence, of which 110,161 (90%) involved female victims. Of these, 129 were cases of femicide and 744 were cases of trafficking in women.
- ~ In 2012, there were a total of 6,240 reports of violations of sexual freedom, with female victims accounting for 93.41% of such reports; of these victims, 4,257 were younger than 18 years of age.
- ~ 75.4% of victims of violence go to the police in search of help.

## Dominican Republic:

- ~ In 2012, a total of 116 cases of femicide were filed.<sup>37</sup>
- ~ Recent violence has been substantially worse among women who had a partner or who, at the time the survey was taken, were married or in a relationship (14% and 11%, respectively) compared to women who had never had one (4%).<sup>38</sup>
- ~ The way physical violence unfolds illustrates the most significant differences in terms of marital status, and hence, one may conclude that the development of a relationship constitutes a clear risk factor for physical violence.

31. Crime Observatory of the Public Ministry. 2013 Report.

32. The National Institute of Statistics and Informatics (INEI) <http://www.inei.gob.pe/biblioineipub/bancopub/Est/Lib0842/>

33. INEI. 2013 Report.

34. INEI. Demographic and Family Health Survey - ENDES 2012. Lima: 2013.

35. INEI. Demographic and Family Health Survey - ENDES 2012. Lima: 2013.

36. Ministry of Women and Vulnerable Populations. 6th Report on Compliance with the Law on Equal Opportunity. Lima, 2013, p. 105.

37. Observatory on Citizen Security of the Dominican Republic (OCS-DR).

38. Office of the Prosecutor General of the Republic, Statistics Unit.

- ~ 31% of divorced, separated, or widowed women and 21% of women who are married or in a relationship reported that, at some point in their lives after the age of 15, they had experienced some type of physical violence, compared to 8% of women who have never been married or in a relationship.<sup>39</sup>
- ~ One out of every 10 women has been the victim of sexual violence at some point in her life.
- ~ 8% of women who have never been married or in a relationship reported having experienced some episode of physical violence. 4% of women who have never been married or in a relationship report having been the victim of sexual violence.
- ~ In 2012, approximately 65,709 cases of violence against women were reported.<sup>40</sup>
- ~ Also in 2012, 3,488 cases of sexual violence were reported.

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39. 2007 Demographic and Health Survey, Dominican Republic (ENDESA).

40. Office of the Prosecutor General of the Republic.

- ~ From January to September 2012, 1,469 cases of violence against women, domestic violence, and sex crimes against women were prosecuted. In 2012, 355 judgments were handed down, of which 84% were convictions.<sup>41</sup>

### **Suriname:**

- ~ In 2012, 2,582 women were victims of femicide at the hands of their intimate partner or ex-partner.<sup>42</sup>
- ~ In the period from September to December 2012 alone, 176 women were victims of domestic violence.<sup>43</sup>

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41. Statistics from the Public Ministry of the National District's Public Prosecutor's Office.

42. Suriname Police Force, 2012.

43. Suriname Police Force. Criminal Data Collection Department.

# 5. PROGRESS MADE IN THE IMPLEMENTATION OF THE CONVENTION

## 5.1 Legislation

### Overview

For some countries, ratification of or accession to the Convention is sufficient for it to be applied in law. In others, it must be published or national laws enacted. A number of Caribbean States do not provide information on the process whereby the Convention is incorporated into national law, although they note that Parliament must enact implementing legislation. Some say that the provisions of the Convention can be developed in common law.

Without specifying a ranking order, other States (like Colombia, Guatemala, and Paraguay) indicate that the Convention and other human rights treaties take precedence in the domestic legal system; other countries (such as Ecuador, Mexico, and Peru) state that the rights and guarantees therein recognized apply directly. In other cases, it is not the treaty that has constitutional force, but rather the right to live free from violence, as is the case in Bolivia, and the right is guaranteed to both men and women. Uruguay merely states that application of the Convention is mandatory, while Trinidad and Tobago requires a law implementing the treaty; otherwise, its provisions would be merely hortatory.

## Progress and Challenges in the States

### A. PROVISIONS THAT INCLUDE THE DEFINITION OF VIOLENCE AGAINST WOMEN AS CONTAINED IN THE BELÉM DO PARÁ CONVENTION

Article 1 of the Convention of Belém do Pará defines violence against women as “any act or conduct, based on gender, which causes death or physical, sexual or psychological harm or suffering to women, whether in the public or the private sphere.” This definition of violence, taken together with Article 2 of the Convention, covers both violence that occurs in the family, domestic unit, or in any other interpersonal relationship, within the community or by the State.

It is apparent that the definition of violence against women used in Article 1 of the Convention was incorporated, in whole or in part, mainly in those countries that have enacted comprehensive laws on violence against women or whose legislation has been updated in the last five years. Comprehensive laws allow for unified and consistent treatment of the different forms of violence against women in public policy, justice, research and compilation of data and statistics. Thus, implementation is based on shared principles and on coordination of the different agents responsible for their enforcement.<sup>44</sup>

To date, Mexico (2007), Venezuela (2007), Guatemala (2008), Colombia (2009), Argentina (2009) and El

44. MESECVI (2011). *Follow-Up Report on the Recommendations Made by the CEVI in the Evaluation Stage of the First Multilateral Evaluation Round. Document MESECVI-II/doc.16 rev. 1, esp. 2008, p. 3.*

Salvador (2010) have such laws, while Paraguay and Peru report that they have prepared draft legislation on the matter. Although Ecuador does not have such a law, it has incorporated the definition of the Convention of Belém do Pará into its Constitution, which at the same time upholds the right of women to a life free of violence. Costa Rica has a Law Criminalizing Violence against Women, but the scope of its application is limited to marital or cohabiting relations.

## B. PROVISIONS OF CIVIL, CRIMINAL, AND ADMINISTRATIVE LAW THAT INCORPORATE PHYSICAL, PSYCHOLOGICAL, SEXUAL, ECONOMIC, PROPERTY-RELATED, FINANCIAL OR OTHER FORMS OF VIOLENCE AGAINST WOMEN

Physical, psychological, and sexual violence are found in a number of legal provisions, from comprehensive laws on violence against women, to laws on domestic violence, criminal codes, and even the Constitution in the case of Bolivia and Ecuador. Economic, patrimonial, or financial violence, which was not expressly mentioned in the Convention but which is now considered internationally to be a form of violence,<sup>45</sup> is being included in these legal provisions.

Other forms of violence against women have also been recognized in the region. These include moral violence, understood as any behavior that involves libel and slander, defamation or other harm inflicted on a woman; and symbolic violence, which includes messages, values, and symbols that convey and

perpetuate dominance over women, their inequality, and discrimination against them. We also note that in some countries, the comprehensive laws on violence cover femicidal violence, defined as:

*“the extreme form of gender violence against women, a product of the violation of their human rights in the public and private spheres, consisting of a combination of misogynistic behaviors that can lead to social and State impunity and may culminate in homicide and other forms of violent death among women.”<sup>46</sup>*

In a significant number of States, physical, psychological, sexual, and patrimonial or economic violence are considered to be forms of domestic or family violence, which augurs well for prevention and punishment of violence in the private sphere.

## C. LEGISLATION ON TRAFFICKING IN PERSONS, INCLUDING WOMEN<sup>47</sup>

Article 3 (a) of the Protocol of Palermo defines trafficking in persons as:

*“the recruitment, transportation, transfer, harboring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery or practices similar to slavery, servitude or the removal of organs;”*

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45. According to the UN Secretary General's In-depth Study on All Forms of Violence Against Women (2006), economic violence is defined as restricting access to basic resources or control over them. In Latin America and the Caribbean, the laws are beginning to draw a distinction between economic violence and property-related violence: the former is understood as limiting, controlling or obstructing the economic benefits that women receive, whereas property-related violence involves limitations on women's ability to dispose of their property, including conjugal property and their own property (see document MESECVI/CEVI/doc.168 rev. 1 - Hemispheric Report - Table 1).

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46. Article 21 of Mexico's Ley General de Acceso de las Mujeres a una Vida Libre de Violencia (2007) and Article 9(b) of El Salvador's Ley Especial Integral para una Vida Libre de Violencia para las Mujeres (2010).

47. MESECVI/CEVI/doc.168.rev.1. -Hemispheric Report - Table 2.



Some States modernized their legislation on trafficking in persons in light of the Protocol of Palermo, either by making it a crime, or by enacting specific laws on trafficking in persons. Such laws included amendments to the Criminal Codes; intersectoral policies; protective measures and/or programs to assist the victims, witnesses and/or others involved, and compensation for the persons harmed. This last option takes a holistic approach to the strategy to prevent and punish trafficking in persons.

Cases were also seen in which the description of the crime of trafficking in persons draws some elements from the definition given in the Palermo Protocol and other instruments. For example, the use of threat, force, coercion or any other means of intimidation is regarded as an aggravating circumstance. In other cases, States incorporate recruitment, transportation, and coercion. Some laws mention sexual exploitation as the purpose of trafficking in persons and omit forced labor or services, slavery or other forms of exploitation. Other States legislate international trafficking or domestic trafficking but not both.

## D. LEGISLATION ON FORCED PROSTITUTION<sup>48</sup>

The Elements of Crime, which supplement the Rome Statute, set out the characteristics of the crime of forced prostitution:

1. The perpetrator caused one or more persons to engage in one or more acts of a sexual nature by force, or by threat of force or coercion, such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power, against such person or persons or another person, or by taking advantage of a coercive environment or such person's or persons' incapacity to give genuine consent.

2. The perpetrator or another person obtained or expected to obtain pecuniary or other advantage in exchange for or in connection with the acts of a sexual nature (...)

Unlike the laws on trafficking in persons which have been brought into line with international standards in the last five years, legislation on forced prostitution has not yet been updated in most of the States and does not include the characteristics of forced prostitution proposed in the Elements of Crimes of the Rome Statute. For example, the element of pecuniary advantage is seldom mentioned, whereas the use of force, the threat of force or coercion against the victim usually appears as an aggravating circumstance but not an element of the crime. In a number of states, forced prostitution figures in the Criminal Code as a crime against morals, honor or social mores, but not as a crime against a woman's life or liberty. In other cases, the Committee of Experts found that the legislation is adequate in those cases in which the victim of prostitution is a minor.

The Committee noted that, even though- at the moment of the report- 26 of the 32 States Party to the Convention of Belém do Pará<sup>49</sup> have ratified or acceded to the Rome Statute, only Colombia reported having criminalized forced prostitution as a war crime or crime against humanity in its national laws, although in the latter case it is only in the context of an armed conflict.

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49. As of 14 February 2014, 27 States Parties to the Belém do Pará Convention have ratified the Rome Statute. Neither El Salvador, Nicaragua, nor Saint Kitts and Nevis have either ratified or acceded to the Convention. Haiti and Jamaica have signed but not ratified it. Guatemala is the last country in the region that has acceded.

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48. MESECVI/CEVI/doc.168 rev.1 –Hemispheric Report – Table 2.

## E. LEGISLATION ON SEXUAL HARASSMENT IN THE WORKPLACE, IN HEALTH AND EDUCATION CENTERS, AND ELSEWHERE<sup>50</sup>

Article 2(b) of the Belém do Pará Convention establishes that physical, sexual, and psychological violence that occurs in the community includes, inter alia, sexual harassment in the workplace, as well as in educational institutions, health facilities, or any other place.

On the basis of the reports presented in the second round, the Committee of Experts noted that the expressions in Spanish for sexual harassment--“acoso sexual” and “hostigamiento sexual”--are used in legislation in the region, although there is no consensus as to their usage. Some countries use them as synonyms, while others draw a distinction between them, depending on whether the sexual harassment occurs in the context of a relationship of subordination (where the Spanish expression “hostigamiento sexual” would be used) or in a relationship between equals (in which case, “acoso sexual” would be used in Spanish). This may be a reflection of the limited international framework, which recognizes sexual harassment (“acoso sexual”) as a form of sex discrimination and a violation of employment equality<sup>51</sup>, but there are no international instruments that probe more deeply into the content of sexual harassment and measures for protection and punishment.

The Committee observed that no consensus exists concerning the legal means used to penalize sexual harassment in the workplace, in health or education centers and elsewhere. Some States have opted to criminalize sexual harassment in the Criminal Code, thereby ensuring a sentence of incarceration, whether actually enforced or suspended. This also ensures that the prohibition of sexual harassment will apply in any

context and in any type of relationship, because the emphasis is on the effect that the harassment had on the victim rather than her relationship with the assailant. Others adopted specific laws on the subject, which heightens awareness of the problem and helps create a multisectoral strategy for preventing and eliminating sexual harassment, as is the case of workplace sexual harassment in Belize, whose Protection Against Sexual Harassment Act (1996) states that if a supervisor or chief has knowledge of an act of sexual harassment and fails to take the necessary action to put a stop to such acts, he/she is also answerable for the crime.

Even though the States still tend to focus their efforts on sexual harassment in the workplace, the Committee welcomes the fact that there are now more provisions that make sexual harassment in health centers, educational institutions and elsewhere, such as lodgings or military-police installations and/or quarters, a punishable offense. In some Caribbean countries, the law states that sexual harassment may be a form of domestic violence when perpetrated by members of the family and may be grounds for filing a request seeking a restraining or other protection order.

## F. LEGISLATION ON SEXUAL VIOLENCE WITHIN MARRIAGE OR COMMON-LAW OR DE FACTO UNIONS<sup>52</sup>

In the First Hemispheric Report, the Committee of Experts recommended criminalization of sexual violence within marriage or common-law or de facto unions. In this Round, the Committee of Experts found a situation very similar to that of the First Round. On the one hand, while making such sexual violence a criminal offense, some States opted to make rape and sexual violence within marriage or cohabitation an aggravating circumstance of the generic crime of rape. In yet another case, the State opted to expressly prohibit invocation of an existing or prior marital or other type of relationship with the victim as a defense for sexual crimes.

50. MESECVI/CEVI/doc.168 rev.1 – Hemispheric Report – Table 2.

51. Thus, the Committee on the Elimination of Discrimination against Women (CEDAW Committee) in its Recommendation 19 on Violence against Women (1992), paras. 17-18. The International Labor Organization (ILO) does not have conventions on the topic, but dealt with it in the context of ILO Convention No. 111 (1958), Discrimination (Employment and Occupation) Convention. See in this regard: <http://www.ilo.org/public/english/bureau/inf/magazine/19/sexhar.htm>

52. MESECVI/CEVI/doc.168.rev.1 – Hemispheric Report – Table 2.

The adoption of comprehensive laws on violence against women in the last five years has served to raise awareness of sexual violence within marriage or a common law union. The provisions of some comprehensive laws on violence against women still need to be harmonized with the Criminal Codes. However, the tendency is still not to punish that form of sexual violence as a criminal offense or to incorporate it [into criminal law] with the limitations mentioned in the preceding paragraph. It is particularly disturbing that in so many States, sexual violence in de facto unions is not prohibited by law.

## G. EXPRESS PROHIBITION OF CONCILIATION, MEDIATION OR ANY OTHER MEASURES TO OBTAIN AN OUT-OF-COURT SETTLEMENT<sup>53</sup>

Although this issue was not included in the questionnaire for the First Round, in the First Hemispheric Report the Committee of Experts noted with concern that a number of States reported that methods were available for conciliation or mediation between the victim of violence and her aggressor, or for a pardon for the aggressor if he agrees to marry the victim, or for application of the discretionary power principle.

The Committee of Experts finds that the use of these measures in cases of violence against women has counterproductive effects in terms of the victims' access to justice and the permissive message conveyed to society. The Inter-American Commission on Human Rights has underscored that allowing a crime of this type to be settled by negotiation and compromise starts from the premise that the parties involved are operating from equal bargaining positions, which is generally not true in cases of intra-family violence.<sup>54</sup> For its part, the Pan American Health Organization (PAHO) found that this type of power imbalance in conciliation

agreements places women at greater physical and emotional risk; as a rule, the assailant does not comply with the agreement and the causes and consequences of the violence itself are not addressed.<sup>55</sup>

Based on the replies received from the States, the Committee of Experts is once again highlighting the contribution that comprehensive laws on violence against women make toward prohibiting the use of conciliation, mediation, and other out-of-court settlement practices in cases of violence against women. Procedural rules still have to be adjusted to reinforce this prohibition.

The Committee of Experts also observed that as a rule, States have provisions prohibiting conciliation, mediation or other similar methods for cases of domestic violence, although no reference is made to other forms of violence against women. Once again, the Committee acknowledges the efforts of States to prevent and punish violence against women in the private sphere. However, in order not to limit the scope of application of the Belém do Pará Convention, actions to that same end are also needed in the public sphere.

## H. LEGISLATION ON FEMICIDE<sup>56</sup>

In the First Hemispheric Report, the Committee of Experts proposed some guidelines for a criminal policy on the prevention and punishment of femicide<sup>57</sup> and pointed to the lack of consensus on the distinctive features of this crime. As its contribution to this discussion and to facilitate follow-up on the implementation of its recommendations on this subject, the Committee adopted the Declaration on Femicide (2008) where it defines this offense as follows:

*“...the murder of women because they are women, whether it is committed within the*

53. MESECVI/CEVI/doc.168.rev.1 –Hemispheric Report – Table 6.

54. Inter-American Commission on Human Rights (IACHR) (2007). *Access to Justice for Women Victims of Violence in the Americas*. Document OEA/Ser.L/V/II/Doc.68, January 20, 2007, para. 161.

55. Pan American Health Organization (PAHO). *Modelo de Leyes y Políticas sobre Violencia Intrafamiliar contra las Mujeres*. Washington DC: PAHO, 2004, p. 20.

56. MESECVI/CEVI/doc.168.rev.1 –Hemispheric Report – Table 2.

57. MESECVI (2008), p. 35.

*family, a domestic partnership, or any other interpersonal relationship, or by anyone in the community, or whether it is perpetrated or tolerated by the State or its agents.*<sup>58</sup>

In the Second Round, the Committee of Experts finds that femicide is still not an issue in the legislation of most States Party. To begin with, one group of States has dealt with femicide through comprehensive laws on violence against women. Of these, only Guatemala has a special law classifying femicide as a crime<sup>59</sup> and lays the foundations for a public policy with which to address it.<sup>60</sup> In its comprehensive law on a violence-free life for women, El Salvador defines “femicidal violence” as a type of violence,<sup>61</sup> but goes a step further

in not only criminalizing femicide<sup>62</sup> but also femicidal suicide.<sup>63</sup> Mexico also defines “femicidal violence”<sup>64</sup> in its legislation and, as a Federal State, has begun the process of classifying it as a crime in the various states of the union.<sup>65</sup> The Mexican law also provides for certain specific actions, such as the gender alert, consisting of governmental emergency actions to confront and eradicate femicidal violence in a particular area, be it perpetrated by individuals or by the community.<sup>66</sup> For its part, Costa Rica criminalizes femicide that is committed within the marital relationship or de facto union, declared or otherwise, but does not address femicides committed within the community or by the State.<sup>67</sup>

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58. *Declaración sobre el Femicidio del Comité de Expertas/os* (document MESECVI/CEVI/DEC. 1/08), of August 15, 2008, point 2.

59. *Law against Femicide and Other Forms of Violence against Women of Guatemala*, Decree 22-2008, May 2, 2008.

Article 6: Femicide

Femicide is, in the framework of the unequal power relations between men and women, the murder of a woman because she is a woman, if any of the following circumstances apply:

- a. Having attempted in vain to establish or restore a relationship of a couple or of intimacy with the victim;
- b. Having, at the time of the murder, or having had with the victim family, conjugal, cohabitational, or intimate relations, or those of a fiancé, friend, companion, or colleague;
- c. The murder is a result of reiterated manifestations of violence against the victim;
- d. The murder is a result of group rites, whether using weapons of any kind, or not;
- e. Abuse of the victim's body in order to satisfy sexual instincts, or committing acts of genital mutilation or any other kind of mutilation;
- f. Misogyny;
- g. When the murder is committed in front of the victim's children;
- h. With the concurrence of any of the determining circumstances contemplated in Article 132 of the Criminal Code.
- i. The person who commits this crime shall be sentenced to between 25 and 50 years in prison, with no possibility of a reduction in the term, for whatever reason. Persons convicted of this crime shall not benefit from any substitute measure.

60. *Ibid.*, Chapter VI, *Obligations of the State*.

61. *Special Comprehensive Law for a Life Free from Violence for the Women of El Salvador*. Decree 520 of November 25, 2010. Article 9 – Types of Violence.

For the purposes of this law, types of violence shall mean (...) b) Femicidal violence: This is the extreme form of gender-based violence against women, a product of the violation of their human rights, in both the public and the private sphere, comprising the set of misogynous forms of behavior that are associated with social or State impunity and that may lead to femicide and in other forms of violent death of women.

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62. *Ibid.*, Title II, *Offenses and Punishments*

Article 45: Femicide

Whoever murders a woman because of hate or contempt for her gender shall be punished with 20-35 years in prison.

Hate or contempt for a woman because of her gender shall be deemed to exist when one of the following circumstances are given:

- a. The woman's death was preceded by any act of violence by the perpetrator against the victim regardless of whether she denounced it or not;
- b. The perpetrator took advantage of any state of physical or mental state of risk or vulnerability of the victim;
- c. The perpetrator took advantage of a superiority derived from gender-based inequality in power relations;
- d. Prior to the victim's death, the perpetrator had committed any crime against her classified as sexual assault;
- e. The victim was mutilated before she died.

Article 46: Aggravated femicide

In the following cases, the crime of femicide shall be punished with imprisonment for between thirty and fifty years:

- a. If the femicide was committed by a government or municipal government official or employee, a public authority or agent of such an authority;
- b. If it was carried out by two or more people;
- c. If the femicide was committed in front of any family member of the victim;
- d. If the victim was under 18 years of age, an older person, or a person with physical or mental disability;
- e. If the perpetrator took advantage of a superior position based on relations of trust or friendship, or domestic, educational, or workplace ties.

63. *Ibid.*, Title II, *Offenses and Punishments*

Article 48: Femicidal suicide, induced or aided

Whoever induces or helps a woman to commit suicide, in any of the following circumstances, shall be punished with between five and seven years' imprisonment:

- a. The suicide was preceded by any of the types or forms of violence contemplated in this or any other law;
- b. The accused took advantage of any risk situation or physical or mental state affecting the victim as a result of her being subjected to any of the types or forms of violence contemplated in this or any other law;
- c. The person inducing the suicide availed himself of a superiority derived from existing or former relations between him and the victim.

64. *General Law of Women's Access to a Life Free of Violence, Mexico*, February 1, 2007.

Article 21: Femicide Violence

This is the extreme form of gender-based violence against women, a product of the violation of their human rights, in both the public and the private sphere, comprising the set of misogynous forms of behavior that are associated with social or State impunity and that may lead to femicide and in other forms of violent death of women.

65. According to the response of the government of Mexico to the questionnaire sent by CEVI, by July 2010 18 federated states and the Federal District had already included “femicidal violence” in their legislations.

66. Article 22, *General Law of Women's Access to a Life Free of Violence, Mexico*.

67. *Law 8589 on the Criminalization of Violence against Women of Costa Rica*, April 25, 2007.

Article 21: Femicide

Whoever kills a woman he is married to or living with, regardless of whether that cohabitation has been formally declared or not, shall be punished with between 20 and 35 years in prison.

A considerable number of States have penal codes that regard femicide as an aggravating circumstance of homicide. For example, Colombia lists it as an aggravating circumstance of homicide when it is committed against a woman “just because she is a woman.”<sup>68</sup> In Brazil, it is considered an aggravating factor when it is committed “taking advantage of domestic relations, cohabitation or hospitality, or with violence against women as described specifically by law.”<sup>69</sup> In Venezuela, it is an aggravating circumstance of homicide when it is committed by the “spouse, former spouse, lover, former lover, a person with whom the victim had a marital relationship, stable de facto union or affective relationship, with or without co-habitation.”<sup>70</sup>

In the case of Argentina, the aggravated circumstance is perfected when a person commits a homicide against “his/her parent, child, spouse, former spouse, or the person with whom he/she maintains or has maintained a relationship with, with or without living together”, “for pleasure, greed, racial hate, religious hate, gender or sexual orientation, gender identity or its expression.” Also against “a woman when the act is perpetrated by a man and gender violence” or “with the intent to cause suffering to a person with whom it has or has

had a relationship” of a couple, with or without living together. . Extraordinary attenuation circumstances are not applicable to those “who had previously committed acts of violence against a female victim.”<sup>71</sup>

A fewer number of States have opted to address femicide as a form of parricide, that is, the murder of the female spouse or common-law partner of the aggressor. Chile’s Penal Code expressly states that such homicide shall be called femicide when “the victim is or has been the spouse or common-law partner of the perpetrator,”<sup>72</sup> whereas Peru’s Penal Code will consider as femicide the homicide of a woman when “she is or has been the spouse or common-law partner of the perpetrator, or when she was involved with him in a similar relationship.”<sup>73</sup> Lastly, femicide does not appear in the laws of the Caribbean countries, so that murders of women are prosecuted as homicide, aggravated homicide, and murder.

## I. LEGISLATION ON STATE VIOLENCE AGAINST WOMEN<sup>74</sup>

Article 2(c) of the Belém do Pará Convention establishes that violence against women includes violence “that is perpetrated or condoned by the State or its agents

68. Penal Code of Colombia, Law 599 of July 24, 2000.

Article 103: Homicide

Whoever kills another person shall be liable to imprisonment of between two hundred and eight (208) and four hundred and fifty (450) months.

Article 104: Aggravating Circumstances

The sentence shall be between four hundred (400) and six hundred (600) months imprisonment, if the conduct described in the foregoing Article is committed:

1. Between spouses or life-long partners, a father and mother of a family, even if not living under one roof, among their forebears or descendants and adopted children; and among all others permanently pertaining to the household.  
(...)

11. Against a woman just because she is a woman.

69. Penal Code of Brazil, Decree Law 2848 of December 7, 1940; amended by Law 11340, which establishes mechanisms for preventing domestic and family violence against women (Maria da Penha Law) of August 17, 2006.

Article 61: Aggravating circumstances

These are circumstances that aggravate a sentence, provided that they do not constitute or are not classified as a crime:

(...)

II. when the agent committed the crime:

(...)

f) misusing his authority or taking advantage of domestic ties, cohabitation, or hospitality, and with violence against women  
(Translated from the Secretariat’s Spanish version).

70. Organic Law on Women’s Right to a Life Free from Violence of Venezuela, March 16, 2007.

Article 65: Single Paragraph

In cases of intentional homicide, however classified, that are defined in the Penal Code, when the perpetrator of the offense addressed in this Law is the spouse, former spouse, concubine or former concubine, a person with whom the victim had a marital life, a stable de facto union, or an affective relationship, with or without cohabitation, the punishment to be imposed shall be between 28 and 30 years of imprisonment.

71. Criminal Code of Argentina - Amended by Law No. 26,791 B.O. 12/14/2012. Article 80 - Perpetual reclusion or life imprisonment shall be imposed upon and provisions of Article 52 may apply to those who kill:

1. Their ancestor, descendant, spouse, former spouse, or the person with whom they maintain or have maintained a partner relationship, with or without living together.

4. For pleasure, greed, religious, racial or gender hatred, or sexual orientation, gender identity or its expression.

11. A woman when the act is perpetrated by a man and involves violence.

12. With the intent to cause suffering to a person with whom they maintain or have maintained a relationship within the terms of subsection

Where in the case of subsection 1 of this article, extraordinary mitigating circumstances are involved, the judge may apply imprisonment or detention of eight (8) to twenty five (25) years. This will not apply to those who had previously committed acts of violence against a female victim.

72. Penal Code of Chile, amended by Law 20480 of December 18, 2010.

Article 390: Whoever, aware of the ties between them, kills his or her father, mother, or child, or any other of his or her forebears or descendants, or anyone who is or has been his or her spouse or common-law spouse, shall be punished as a parricide, to maximum rigorous imprisonment for life.

If the victim of the offense referred to in the preceding paragraph is or was the spouse or common-law spouse of its perpetrator, the offense shall be called femicide.

73. Penal Code of Peru, amended by Law 29819, of December 27, 2011.

Article 107: Parricide / Femicide

Whoever, aware of the ties between them, kills his or her forebear, natural or adoptive descendant, or anyone who is or has been his or her spouse or common-law spouse, or anyone who is or has been linked to in a similar relationship shall be punished with imprisonment of minimum fifteen years.

Imprisonment shall be of minimum twenty five years when any of the aggravating circumstances established in numerals 1,2,3, and 4 of Article 108 concur.

If the victim of the offense referred to in the preceding paragraph is or was the female spouse or female common-law spouse of its perpetrator, or was linked to him in any type of intimate relationship the offense shall be called feminicide.

74. MESECVI/CEVI/doc.168.rev.1 –Hemispheric Report – Table 3.



regardless of where it occurs.” For that reason, in Article 7.1, the States Party undertake to “refrain from engaging in any act or practice of violence against women and to ensure that their authorities, officials, personnel, agents, and institutions act in conformity with this obligation.”

As for whether **violence against women perpetrated by the State or its agents is a punishable offense**, the Committee of Experts finds that only a few States have provisions criminalizing State-perpetrated violence. Those provisions appear mainly in the Criminal Code, representing them either as stand-alone offenses or as aggravating circumstances when the offense was committed by a public official. Some constitutions and comprehensive laws on violence against women make reference to violence perpetrated by the State or regard it as part of “institutional violence.”<sup>75</sup>

A significant number of States do not have specific provisions on the topic; some, however, make the point that even so, cases of State violence against women can be prosecuted under the Criminal Code, as it does not draw distinctions among perpetrators.

As for whether **sexual violence in an armed conflict is a punishable offense**, the Committee of Experts was troubled by the fact that only Colombia and Chile have specific provisions on this subject. Most States have not criminalized sexual violence as a war crime or crime against humanity. If such provisions were in place, these crimes could be prosecuted not just when committed in an armed conflict (in which case they would be war crimes and the crime of sexual violence in armed conflict) but also when committed in the absence of armed conflict, when a systematic or generalized pattern against the civilian population is proven (in the case of crimes against humanity). The Committee observed with interest that in the case of Chile, sexual violence is also regarded as an act conducive to genocide.

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75. The comprehensive laws on violence against women currently in force define institutional violence as violence perpetrated by a public servant to discriminate or to delay, obstruct, or prevent women from enjoying or exercising their fundamental rights and freedoms, and violence that seeks to obstruct or obstructs women's access to and enjoyment of public policies intended to prevent, address, investigate, punish and eradicate the manifestations, types, and modalities of violence that the law contemplates.

**Sexual violence committed in state facilities/ establishments such as hospitals, educational, and prison facilities and others.** Most States do not have or do not report that they have provisions punishing this type of violence. Those few States that did report having legislation on the matter addressed the provisions on institutional violence in their comprehensive laws on violence (as was the case with Argentina); or referred to the fact that one of the aggravating circumstances of the crime of sexual violence was the fact that it was committed by a public official or civil servant in the performance of his/her functions (as in Guatemala); or to the establishment of a specific criminal offense when committed in only one such institution (as in Venezuela, where sexual violence is a punishable criminal offense when the victim is in custody or has been convicted and is serving a sentence).

The Committee recognizes the impact of comprehensive laws on violence against women in recognizing the different modalities of violence, including institutional violence. However, not all comprehensive laws on violence take concrete actions such as establishing criminal penalties for institutional violence, or making them aggravating factors when the crime is committed by public officials or civil servants, or in state facilities.

## J. LEGISLATION PROTECTING WOMEN'S SEXUAL AND REPRODUCTIVE RIGHTS<sup>76</sup>

### Obstetric violence

The definition of *obstetric violence* used was the one that appears in Article 15(13) of Venezuela's Organic Law on Women's Right to a Violence-free Life, which was the first to define this form of violence. The definition of obstetric violence in that law is as follows:

*“... the appropriation of a woman's body and reproductive processes by health personnel,*

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76. MESECVI/CEVI/doc.168 rev.1 –Hemispheric Report –Table 4.

*in the form of dehumanizing treatment, abusive medicalization and pathologization of natural processes, involving a woman's loss of autonomy and of the capacity to freely make her own decisions about her body and her sexuality, which has negative consequences for a woman's quality of life."*

Most States do not have or do not report that they have provisions to prevent and punish obstetric violence. In its comprehensive law on violence, Argentina defines obstetric violence as one form of violence, although it does not describe the measures taken to implement it in national law, whether in the Criminal Code or in guidelines in the General Law on Health.

Some States have provisions that, while not expressly mentioning "obstetric violence", affirm respect for natural processes before, during, and after childbirth. In addition to the Venezuelan law, the Law on Defense of the Right to Sexual and Reproductive Health (2008) of Uruguay promotes humanized childbirth that guarantees privacy, in accordance with the woman's biological and psychological time and cultural patterns, and avoiding invasive practices or providing medication when it is not justified.

At the same time, Ecuador's Organic Law on Health addresses the subject from a multicultural perspective, stating that the traditional knowledge and practices of alternative medicine of the indigenous and Afro-Ecuadorian peoples will be respected in connection with pregnancy, childbirth, and post-partum, always provided that they do not compromise the life and physical and mental integrity of the person.

## Legal interruption of pregnancy

Five States (Chile, Dominica, El Salvador, the Dominican Republic, and Saint Kitts and Nevis) reported that they do not allow for legal interruption of pregnancy. In some Caribbean countries such as Jamaica and Trinidad and Tobago, although regulations do not permit interruption

of a pregnancy under any circumstances, under common law exceptions are made for therapeutic reasons, for pregnancy caused by rape, or on account of substantial abnormality of the fetus.

Some other cases of the lawful interruption of pregnancy in legislation in the region are: a serious malformation or grave handicap of the fetus; pregnancy resulting from incest, and pregnancy caused by artificial insemination to which the woman has not consented.

## For therapeutic reasons

Most States have legislation that permits lawful interruption of pregnancy for therapeutic reasons; however, there is no regional consensus on how to define those reasons. A significant number of States permit this practice only to save the mother's life. Other States say that this procedure can be used to safeguard the mother's life or to prevent serious or permanent harm to her physical health. A few States also seek to protect her mental health, in addition to the two previous instances.

The States concentrated on reporting on articles of their Criminal Codes that decriminalize abortion; however, they do not mention the existence of protocols or guidelines for care that would make them truly applicable in health centers and guarantee a woman's access to this procedure. Only Argentina and Jamaica reported having guidelines for care in such cases, but they do not provide information on their actual application, obstacles encountered in implementation, or measures taken to remove such obstacles.

## On account of rape

The tendency in the region to legalize the interruption of pregnancy for therapeutic reasons does not hold in the case of termination of a pregnancy that is the result of rape. Some States allow interruption of the pregnancy, although in one case abortion as a result of rape is permitted only in the case of a woman who is either mentally challenged or of unsound mind, and in other States it is permitted in cases of statutory rape of adolescent girls between the ages of 16 and 18.



There are also differences in how rape must be proven in order to qualify for this procedure. Some countries either expressly or tacitly require that the person seeking an abortion must file formal charges against the suspected rapist; other States, mainly those in the Caribbean, require a sworn statement from the person seeking an abortion.

The Committee of Experts found that interruption of a pregnancy resulting from rape is criminalized in some cases, although it does figure among the conditions that can be invoked as grounds for a reduced sentence. The Committee notes that under the Criminal Codes of two countries, the sentence may be reduced when the pregnancy is interrupted to save the honor and reputation of one's spouse, mother, daughter, sister or adopted daughter. Thus, in this case, the protected legal good is not the life or integrity of the mother but the honor of the man, be it the husband, father, forebear, or brother.

## Forced sterilization

The Committee notes that only six States reported having penalties for forced sterilization. The most reported case is the criminalization of forced sterilization as an act conducive to genocide, either implicitly or expressly, defined as a means of "imposing measures intended to prevent births within the group." This may be due to the influence of the Rome Statute that created the International Criminal Court, where forced sterilization figures as a war crime and a crime against humanity (Articles 7 and 8) and where "imposing measures intended to prevent births within the group" is an element of the crime of genocide (Article 6). Venezuela makes forced sterilization a common crime, but does not say whether it is also criminalized as an act conducive to genocide, a war crime, or crime against humanity.

The Committee of Experts recalls that forced sterilization, classified as either a common crime or a crime that is conducive to genocide, a war crime or crime against humanity, is an assault on a woman's life and physical, psychological, and moral integrity. The CEDAW Committee has written that compulsory sterilization adversely affects women's physical and

mental health, infringes on the right of women to decide the number and spacing of their children<sup>77</sup> and is a form of coercion that States must not allow.<sup>78</sup> For its part, the IACHR observes that this practice is based on gender stereotypes that see women as vulnerable and unable to make autonomous decisions regarding their own health.<sup>79</sup>

## Artificial insemination without the woman's consent

As with the questions on sexual and reproductive rights, in the replies to the question on artificial insemination without the woman's consent, the Committee of Experts found that only Colombia, Guatemala, and Panama reported having provisions to make it a punishable offense; Mexico does not make it a punishable offense, but makes it one of the circumstances under which a decriminalized abortion is allowed. What these four States have in common is that they have modernized their legislation through their comprehensive laws on violence against women and/or recent amendments to their Criminal Codes.

## Emergency contraception

On the subject of emergency oral contraceptives, ten countries in the region reported having provisions permitting emergency oral contraceptives to be dispensed free of charge, especially in cases of rape. However, based on a number of shadow reports, the Committee identified cases where these provisions encounter obstacles in practice. The main obstacles are legal suits, such as suits challenging the constitutionality of emergency contraception and petitions seeking *amparo* relief alleging the pill's possible abortive effects, even though the World Health Organization has discounted any possibility of this pill causing abortion.<sup>80</sup>

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77. CEDAW Committee. *General Recommendation No. 19 – Violence against Women*, paragraph 22.

78. CEDAW Committee. *General Recommendation No. 24 – Article 12 of the Convention on the Elimination of All Forms of Discrimination against Women: Women and Health*, paragraph 22.

79. IACHR (2010). *para. 38*.

80. World Health Organization (WHO) (2005). *Emergency Contraception. Fact Sheet No. 244, October 2005*. Available at: <http://www.who.int/mediacentre/factsheets/fs244/en/index.html>.

## Emergency prophylactic care and treatment of HIV and other sexually transmitted diseases, especially in cases of sexual violence

In the Second Round, the Committee of Experts observes that a significant number of States report that their health care services offer emergency prophylactic care and treatment of HIV/AIDS and other sexually transmitted diseases, which in various cases are administered according to certain protocols. However, some replies did not say whether such care is available for both HIV and STDs, or just for HIV/AIDS or for STDs; others did not indicate how victims of sexual violence can benefit and whether treatment protocols for STDs and for HIV/AIDS are in place for them.

## Recommendations

1. Amend and/or harmonize legislation on the prevention and punishment of violence against women to bring it into line with the definition of “violence against women” set out in Articles 1 and 2 of the Belém do Pará Convention.
2. Criminalize trafficking in persons and forced prostitution in accordance with the standards of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime, known as the Palermo Protocol, and the Elements of Crimes of the Rome Statute creating the International Criminal Court, and adopt measures to protect and provide care for victims, their relatives and witnesses.
3. Punish sexual harassment in the workplace, in health and education centers and in any other setting, as provided in Article 2 of the Belém do Pará Convention, and repeal any provision that would revictimize the women harmed or block their attempts to obtain punishment for those responsible and to seek appropriate compensation.
4. Criminalize sexual violence and rape committed within a marriage or common law unions, and revise the rules of criminal procedure to remove obstacles that might prevent women from seeking justice in these cases.
5. Forbid the use of conciliation, mediation and other methods for out-of-court settlement of cases of violence against women, as well as the use of the “principle of discretionary prosecution”, and also bring procedural law into line with these prohibitions. If these prohibitions exist only in cases of family or domestic violence, the ban should be expanded to other cases of violence against women.
6. Take measures to prevent and punish femicide, in both public and private spheres. Monitor enforcement of those measures by judges and prosecutors and remove any judicial obstacles that may prevent the victims’ relatives from obtaining justice or that lessen the sentence for an assailant who claims to have acted under the force of “strong emotion”.
7. Adopt provisions to punish sexual violence committed in armed conflicts and in natural disasters.
8. Adopt provisions to punish sexual violence committed in State institutions, either as an independent crime or an aggravating factor to the sexual crimes included in the Criminal Code. In the event such violence is listed under ‘institutional violence’, take steps to penalize this type of violence.

- 9.** Adopt provisions to criminalize obstetric violence. Define by all appropriate means what constitutes a natural process before, during and after childbirth, without arbitrary or excessive medication and guaranteeing the free and voluntary consent of women to procedures related to their sexual and reproductive health. In health centers, take an intercultural approach that respects the customs and cultural patterns of indigenous women and women of African descent.
- 10.** Legalize interruption of pregnancy on therapeutic grounds, whether to save the life of the mother or to prevent serious or permanent injury to her physical and mental health. Implement this service in hospitals and health centers, and set protocols or guidelines for care to ensure that women have access to this procedure.
- 11.** Legalize the interruption of pregnancy caused by rape. Implement that service in hospitals and health centers and set protocols or guidelines for care to ensure that women have access to this procedure.
- 12.** Adopt provisions to criminalize forced sterilization as a common crime and an act conducive to genocide, war crimes, and crimes against humanity.
- 13.** Adopt regulations on artificial insemination and punish those who perform it without the woman's consent.
- 14.** Adopt provisions to guarantee the free distribution of emergency contraceptives in public health services without distinction as to social class or ethnic origin, and ensure that this measure is fully complied with and that barriers to implementation are removed.
- 15.** Adopt legislation that will guarantee emergency prophylactic treatment for HIV/AIDS and other sexually transmitted diseases in the public health service, especially for cases of sexual violence. Adopt protocols that set out the phases of treatment steps and the types of care to be given to clients.
- 16.** Conduct campaigns to raise awareness about and to prevent violence against women, and to promote women's rights and understanding of their rights; these campaigns should be stable over time, and make no differentiation as to sex, social class or ethnic origin. Also set up machinery to evaluate the results.

## 5.2 national plans

### Overview

#### Overview of the region<sup>1</sup>

- Nine countries in the region have a National Plan, Plan of Action, or Strategy on the problems of violence against women, while six countries have framed their actions on violence against women in National Plans against domestic violence.
- Only Guatemala and Paraguay are evaluating their National Plans.
- Twenty-three countries set out actions or strategies related to violence against women in the national plans of other sectors.
- Training plans for judges and justice personnel have been developed in 16 countries; training for the armed forces and the police is conducted in 14 countries; in seven countries, training is provided for health care personnel, and in six countries, for educators. Only Dominica and Uruguay have training programs for legislators.
- Eleven countries have promoted the participation of civil society in their plans on violence.
- Almost all of the countries have no formal agreements with the media or advertising agencies to work on campaigns on violence against women.

1. MESECVI. II Hemispheric Report on Implementation of the Convention of Belém do Pará. Table 5, p. 131.

National plans for action on violence against women are an effective tool encompassing all settings in which violence occurs, strategies, partners, areas of intervention, conceptual framework, and plan of operations, among other points. They also become a means of consolidating efforts made jointly by the State in coordination with organizations working on the issue and society at large to confront violence against women. The States Party to the Convention of Belém

do Pará agreed to adopt policies to prevent, punish, and eradicate violence against women<sup>81</sup>. Over the past ten years, the Convention has given impetus to a notable transition in public policies on the matter.<sup>82</sup>

Before the Fourth World Conference on Women (Beijing, 1995), most countries had no laws addressing violence against women, nor did they have services or specialized institutions to deal with cases of this nature. The Convention of Belém do Pará is the only binding

81. Article 7 of the Convention of Belém do Pará.

82. ECLAC. *iNi una más! El derecho a vivir una vida libre de violencia en América Latina y el Caribe*. 2007, p.78.

82. Lahera, Eugenio. *Política y Políticas Públicas. Serie Políticas Sociales*. ECLAC, Nº 95. 2004, p. 12

international instrument designed to combat gender violence, and it has been the framework for changes in criminal codes and for the development of laws to combat violence against women in the region.

The National Plans define lines of action, assign inter-agency responsibilities and, in many cases, allow for the participation of civil society organizations, either in designing the Plan or in the evaluation phase. National inter-agency plans to prevent, punish, and eradicate violence against women must, therefore, have mechanisms for evaluation, dissemination, and civil society participation in the various stages of the Plan, and provide for penalties for those government officials who fail to implement the plan. The absence of an evaluation mechanism means that the design of a public policy was incomplete and shows great potential loss of efficiency and effectiveness in implementation.<sup>83</sup> It is also necessary that National Plans take into account women's diversity and that they include actions to prevent violence at all stages of a woman's life cycle.

In addition to plans on violence against women, it is important that countries have actions or strategies related to violence against women in their national plans for other sectors such as, inter alia, education, employment and income generation, poverty eradication, gender equity and equality, health, HIV/AIDS, and public security and crime prevention. This will ensure that violence against women is addressed effectively from an intersectoral perspective, and that actions contained in the national plans are correlated with plans of other sectors or agencies.

In many countries, the issue of violence against women is covered mostly in gender equality and equity plans, while in other cases, it is limited to domestic violence—a hindrance that must be overcome. The concentration in national plans of actions against intra-family violence omits other forms of violence that take place in the public sphere, which is not in conformity with the

standards of the Convention of Belém do Pará. This is a situation that the States must remedy, in that public policies are part of the toolkit that States use to enforce the existing legislative framework.

Gender prejudices and insensitivity to gender issues on the part of judicial and health care personnel are an obstacle to full application of the provisions on prevention and punishment of violence against women. Here, under the Convention of Belém do Pará<sup>84</sup>, the States agreed to undertake progressively specific measures such as training of administration of justice personnel, police and other law enforcement personnel as well as other personnel responsible for implementing policies for the prevention, punishment and eradication of violence against women. It has been noted that many of the training programs for judges and prosecutors have not been institutionalized and do not feature the accountability mechanisms needed to effect sustainable change.<sup>85</sup>

It is important that ongoing training programs on women's rights be conducted for groups of public officials such as legislators, justice and health workers, educators, military and police forces, women's social and community organizations and special centers to address violence. On the subject of police training, the IACHR wrote that ongoing training for police personnel is one of the essential avenues to achieving a police force that aspires to be respectful of human rights.<sup>86</sup>

Many of the training plans and programs consist of sporadic workshops or activities that do not constitute an ongoing permanent program, or else they come about because of projects that are time-limited or partial in scope. Many of them focus on family, intra-family or domestic violence and do not cover other forms of violence such as community violence or State violence. These training plans and programs should be outlined in the national plan on violence against women,

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83. MESECVI. *II Hemispheric Report on Implementation of the Convention of Belém do Pará*. Table 5, p. 131.

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84. Article 8(c) of the Convention of Belém do Pará.

85. IACHR. *Access to Justice for Women Victims of Violence in the Americas*. Document OEA/Ser.L/V/II.doc. 68. 20 January 2007. Introduction, para. X.

86. IACHR. *Report on Citizen Security and Human Rights*. Document OEA/Ser.L/V/II.doc. 57. 31 December 2009, para. 80.

should have agencies responsible for conducting them, and should have a budget, so that institutional capacity-building is part of the State's strategy to prevent, punish and eradicate violence against women.

The participation of civil society in public life, including in the design, execution, and monitoring of national plans on violence against women, is crucial to reflecting their vision, perspective, and experience and to ensuring greater positive impact on the lives of both women and men.<sup>87</sup> It is important that these plans be designed and put into practice after broad consultation with civil society organizations. It is also important that these organizations be represented on high level inter-agency committees and other entities responsible for monitoring the implementation of the National Plan, and their participation should be institutional.

Partnerships formed between the State and women's organizations are an opportunity to make the administration of specialized services for victims, particularly shelters and free legal services, more effective; in many cases, these services are provided by women's organizations but are supervised and financed by the State. However, it is worrisome that the participation of civil society organizations is simply confined to individual actions and not as part of the execution and evaluation of national plans and projects—which would indicate that their participation is not yet institutionalized in a plan with an organizational structure, but rather is selective and potential.

With respect to the role of the media as an instrument for education and awareness about violence against women, the Convention of Belém do Pará encourages the media in the States Party to develop appropriate media guidelines in order to contribute to the eradication of violence against women in all its forms, and to enhance respect for the dignity of women<sup>88</sup>. Here, the Beijing Platform for Action recognized the media's

potential for promoting equality, by portraying women and men in a non-stereotypical, diverse, and balanced manner, and by respecting the dignity and worth of the human person.<sup>89</sup>

Even though there may be no formal agreements between the State and the media and/or advertising agencies to promote and publicize women's rights, joint actions have in fact taken place to this end. They have been part of the activities carried out by national mechanisms, or in other cases, as part of campaigns on violence against women that broadcast spots on radio and television. This highlights the importance of carrying out media awareness activities about violence against women, particularly family, intra-family or domestic violence, and sexual violence and femicide, to ensure that this problem is properly addressed, without the use of stereotypes.

## Progress and challenges in the States

### NATIONAL PLANS, ACTIONS, OR STRATEGIES TO PREVENT, PUNISH, AND ERADICATE VIOLENCE AGAINST WOMEN

The countries that have a National Plan, Action Plan or Strategy on the problem of violence against women are: Antigua and Barbuda, Belize, Bolivia, Brazil, Colombia, Costa Rica, Dominica, Dominican Republic, Ecuador, El Salvador, Mexico, Paraguay, and Peru. Of these countries, only Guatemala and Paraguay reported that they were about to begin or were in the process of evaluating their National Plans.

### VIOLENCE AGAINST WOMEN IN OTHER NATIONAL PLANS, ACTIONS, AND STRATEGIES

Chile, Guatemala, Guyana, Panama, Suriname, and Uruguay have framed their actions to address violence

<sup>87</sup> Under Art. 6 of the Inter-American Democratic Charter, It is the right and responsibility of all citizens to participate in decisions relating to their own development.

<sup>88</sup> Article 8 (g) of the Convention of Belém do Pará.

<sup>89</sup> United Nations. Beijing Platform for Action. Document A/CONF.177/20/Rev.1. 1995, para. 33.



against women within their national plans on domestic violence. Chile has placed the issue in its Program to Prevent Intra-family Violence against Women; Guatemala has incorporated it in the National Plan to Prevent and Eradicate Intra-Family Violence and Violence against Women (PLANOVI), 2004-2014; Guyana proposes actions under the National Policy on Domestic Violence 2008-2013, Panama incorporates it in the National Plan against Domestic Violence and Policies on Citizen Harmony 2004-2014; Suriname describes it as domestic violence in its Sectoral Legal Protection and Security Plan 2006-2010, and Uruguay includes it in the National Plan to Combat Domestic Violence, 2004-2010.

Actions or strategies related to violence against women have also been set out in national plans of other sectors such as, inter alia, education, employment and income generation, poverty eradication, gender equity and equality, health, HIV/AIDS, public security, and crime prevention. This is the case in Argentina, Barbados, Belize, Brazil, Chile, Colombia, Costa Rica, Dominica, Dominican Republic, Ecuador, El Salvador, Guatemala, Guyana, Jamaica, Mexico, Panama, Paraguay, Peru, Saint Lucia, Saint Vincent and the Grenadines, Suriname, Trinidad and Tobago, and Uruguay.

Continuing training on violence against women and women's rights for public servants and others  
Antigua and Barbuda, Argentina, Bahamas, Belize, Brazil, Chile, Colombia, Ecuador, El Salvador, Guyana, Mexico, Panama, Saint Vincent and the Grenadines, and Uruguay have plans for continuing gender training and awareness for military and police personnel, and to deal with violence against women.

Similar ongoing training plans have been developed for health care personnel in Antigua and Barbuda, Bahamas, Brazil, Chile, Costa Rica, Dominica, and Guatemala. In the case of Colombia, it is reported to have training workshops on forensic medicine in cases of gender-based violence.

Antigua and Barbuda, Argentina, Belize, Brazil, Chile, Colombia, Costa Rica, Dominica, Ecuador, Guatemala, Guyana, Jamaica, Mexico, Panama, Uruguay, and Venezuela say that they have developed continuing education plans for judges and justice personnel.

Brazil, Costa Rica, Guyana, Mexico, Panama, and Peru reported offering training for teachers, and Dominica and Uruguay for legislators.

Bolivia, Paraguay, Dominican Republic, and Suriname state that they have continuing training plans, but do not say to whom this training is directed.

## PARTICIPATION OF CIVIL SOCIETY IN THE DESIGN, MONITORING, AND EXECUTION OF THE NATIONAL PLAN ON VIOLENCE AGAINST WOMEN OR JOINT ACTIVITIES

The countries that reported having promoted the participation of civil society in their Plans on Violence include Antigua and Barbuda, Belize, Bolivia, Brazil, Chile, El Salvador, Guatemala, Guyana, Mexico, Peru and Suriname. Of these, Antigua and Barbuda, Belize, Bolivia, Brazil, Guatemala, Guyana, Mexico, Peru, and Suriname indicated that civil society participated in drafting the plans; Chile said that civil society plays a part in execution of the plan, while El Salvador, Guatemala, Guyana, Mexico, Peru, and Suriname stated that it participates in monitoring.

Also, Argentina, Bahamas, Barbados, Colombia, Costa Rica, Dominica, Dominican Republic, El Salvador, Guyana, Jamaica, Paraguay, Peru, Saint Vincent and the Grenadines, Suriname, Trinidad and Tobago, and Uruguay say that they carry out joint activities with civil society, including training, care services, or actions on specific dates. For its part, Panama states that civil society does participate, but does not indicate how it participates.



## COOPERATION AGREEMENTS WITH THE MEDIA AND ADVERTISING AGENCIES

Almost all of the countries reported that they did not have formal agreements with the media or advertising agencies, but did say that they work hand in hand with the media. Peru has exchanged notes with radio stations and television channels.

Antigua and Barbuda, Argentina, Bahamas, Barbados, Belize, Bolivia, Brazil, Chile, Colombia, Costa Rica, Dominica, Dominican Republic, Ecuador, Guatemala, Guyana, Jamaica, Mexico, Panama, Paraguay, Peru, Saint Vincent and the Grenadines, Suriname, Trinidad and Tobago, Uruguay and Venezuela reported that they conduct campaigns to publicize the rights of women or the Convention of Belém do Pará.

As to activities carried out to commemorate dates such as March 8 and November 25, Antigua and Barbuda, Barbados, Brazil, Dominican Republic, Peru, and Uruguay reported actions carried out and planned for these dates. For their part, Argentina, Bolivia, Chile, Colombia, Ecuador, Guyana, Jamaica, Mexico, Panama, Paraguay, and Venezuela have established more long-lasting campaigns. In the case of the Dominican Republic, a nation-wide radio program has ongoing programming and information about women's rights. Saint Vincent and the Grenadines reports on campaigns to distribute printed copies of the Convention to the forces of order.

## Recommendations

The Committee of Experts forwarded to the States Party to the Convention of Belém do Pará five (5) Recommendations on National Plans in relation to Articles 1, 2, 7 and 8 (c) and (d) of the Convention of Belém do Pará.

1. Adopt national intersectoral plans to prevent, punish and eradicate violence against women, together with mechanisms for monitoring, evaluation and dissemination, and ensure

that civil society, organized communities and social movements participate in the various stages of these plans. Establish penalties for government officials who fail to implement them.

2. Define and implement actions or strategies on violence against women in the national plans for other sectors, particularly education; employment and income generation; poverty eradication; gender equity and equality; health; HIV/AIDS, and public security and crime prevention.
3. Develop ongoing training plans on violence against women and women's rights under the Convention of Belém do Pará for decision-making entities and authorities, and particularly for public officials who apply the laws and/or public policies on prevention, punishment and eradication of violence against women, including: legislators; justice and health personnel; educators; military and police personnel; women's social and community organizations, and centers of care that specialize in violence.
4. Institutionalize the participation of civil society, organized communities and social movements in the design, execution, monitoring and evaluation of national plans on violence against women, using such means as may be considered most appropriate, such as the participation in high-level committees, round tables on particular topics, and broad consultations, among others of a binding nature.
5. Include in national plans on violence against women strategies for cooperation with the media and advertising agencies in order to publicize women's rights and the Belém do Pará Convention. Ensure that they have sufficient budgetary funding for continuity as well as a mechanism for impact evaluation.

## 5.3 Access to justice

### Overview

#### Overview of the region<sup>1</sup>

- Twelve countries do not permit settlement or conciliation in cases of violence against women. Eight of these have framed the prohibition in the context of domestic and family violence, while four have included it in their provisions on violence against women.
- Nineteen countries have personnel who are specialized in issues related to violence against women.
- Twenty countries have set up free legal services. Seven of these have interpreters into indigenous languages.
- Nine countries have private areas where women who are victims of violence can be taken care of. Ten countries have provisions on confidentiality in data processing and protection.
- Twenty-five countries have laws that provide for protective measures. Five countries have provisions for women victims of violence to change their identity. Thirteen countries have witness protection mechanisms.
- Nine countries have mechanisms to rescue women who have been victims of violence. Only three countries have mechanisms to enable women who have suffered violence to leave the country.
- Nineteen countries have implemented Guidelines and Protocols for the care of victims of violence geared to the police, judges and/or health care personnel. No country has such Guidelines or Protocols in an indigenous language.

<sup>1</sup> MESECVI. II Hemispheric Report on Implementation of the Convention of Belém do Pará. Tables 6, 7 and 8, pp. 142-161

A woman's right to live a life free from violence and discrimination is a priority challenge for human rights protection systems both regionally and internationally. The adoption of international instruments on the matter reflects a consensus and recognition by the States of the discriminatory treatment that women have traditionally received from society, which has resulted in their being victims and exposed to different forms of violence, including sexual, psychological and physical violence

and bodily abuse. It also reflects the commitment that the States have undertaken to take measures to ensure that these acts are prevented, investigated, punished and compensated.<sup>90</sup>

In most cases, women who have been victims of violence cannot gain rapid, timely or effective access to the resources of the courts when they complain

<sup>90</sup> IACHR (2007). *Access to Justice for Women Victims of Violence in the Americas*. Document OEA/Ser.L/V/II/Doc68, 20 January 2007, para. 3.

of the acts they have suffered. Most of these cases therefore go unpunished, which means that their rights are unprotected<sup>91</sup>. The Convention of Belém do Pará provides that the States Party should act with due diligence to prevent, investigate and impose penalties for violence against women that takes place in both public and private spheres, whether inside the home or in the community, and that is perpetrated by individuals or by agents of the State.<sup>92</sup>

## ENTITIES THAT RECEIVE COMPLAINTS OF VIOLENCE AGAINST WOMEN

These entities are concentrated in the capitals or in the main cities, and the rural or more remote areas are not served; the victims use their own economic and logistical resources to file a complaint and take part in the judicial proceedings. The result is that indigenous and rural women and those who live outside urban centers are left unprotected.

The laws enacted on the subject –which include the comprehensive laws on violence against women--make provision for the establishment of specific courts to hear cases involving family, intra-family or domestic violence, sexual violence and/or trafficking in persons. Specialized police stations, with specialized female officers, for violence against women, especially family violence, continue to be one place to which women can turn to file complaints. Other institutions the offices of the public prosecutor on human rights, offices of ombudspersons, justices of the peace and emergency hotlines.

The Convention of Belém do Pará requires due diligence to prevent, investigate and punish violence against women, and provides that the States Party shall take special account of the vulnerability of women to violence by reason of, inter alia, their race or ethnic

background.<sup>93</sup> . It is for this reason that units to receive complaints be located in indigenous areas, so that indigenous women can have greater access to justice and receive services in indigenous languages.

## WOMEN'S ACCESS TO JUSTICE AND GUARANTEES OF DUE PROCESS

Specialized personnel include police, court personnel, staff of the ombudsperson's office, experts and forensic experts who collect and examine the evidence of violence, particularly sexual violence and femicide, as well as those who conduct psychological examinations of the victims. This is critical because it involves taking and preserving evidence needed to substantiate the victims' complaints, and ensures that their statements not be called into question by judges or prosecutors.

Having private spaces for questioning and/or examination of women who have been attacked prevents them from being victimized again and prevents their right to personal dignity from being violated.<sup>94</sup> As for free legal services, they are limited in that they are mainly geared to victims of family, intra-family or domestic violence, and do not cover other cases of violence against women committed in a public setting; in addition, these services are not being offered by State agencies, but by civil society organizations, universities and/or bar associations, which are located mainly in the capital or other urban centers. It is also important that these services have interpretation into indigenous languages available, to foster indigenous women's access to justice, which should consist of "free, impartial and culturally relevant translation services that are sensitive to the users' view of the world"<sup>95</sup>

Provisions on protection of the privacy of the victim and her family and witnesses are related to the prosecution of organized crime and corruption offenses, and it is unclear how they are used in cases of violence against women.

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91. *Idem*, para. 1.

92. *Idem*, para. 11.

93. Articles 7 and 9 of the Convention of Belém do Pará.

94. IACHR (2007). *Op. cit.*, para. 141-142.

95. *Idem*, para. 128

## MECHANISMS TO ENFORCE PROTECTIVE MEASURES ORDERED FOR WOMEN, THEIR FAMILY MEMBERS AND/OR WITNESSES

The Convention of Belém do Pará provides that States shall establish fair and effective legal procedures so that women who have been subjected to violence can count on protective measures.<sup>96</sup> These measures include moving women who have been victims of violence away from the place where they were attacked; rescue mechanisms, and safe conducts to leave the country.

As for secure referral networks, the most frequently used are shelters or safe houses for victims and their dependents, as well centers providing specialized care for victims. Obstacles include the scarcity and limited capacity of shelters, which are mainly located in the capital cities. Another negative factor is public awareness of where these centers are located, which makes it easier for the assailant to find his victim.

## USE AND EFFECTIVENESS OF PROTECTION MEASURES

A timely protection order prevents women from being unprotected and at the mercy of reprisals by their attackers. By making a judicial determination of the risk to the victims and the consequent need for protection, the State is obligated to ensure that its institutions respond effectively and in coordinated fashion to enforce the terms of the order.<sup>97</sup> Many provisions regulate protection orders as “open lists”, thereby leaving it up to the judge’s discretion to grant an order.

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96. Article 7(f) of the Convention of Belém do Pará

97. IACHR. Case 12.626, Jessica Lenahan (Gonzales) et al v. United States. Report Nº 80/11, July 21, 2011, para. 145.

## PROTOCOLS FOR THE CARE OF FEMALE VICTIMS OF VIOLENCE

Protocols for care to be used by the various agencies that provide services to women harmed by violence should be institutionalized in the languages of the women affected (official language and native languages). The lack of such protocols in indigenous languages prevents their being circulated and used among these populations. The protocols also need to indicate a methodology for data collection and sensitive, quality care for the victims of violence.

The lack of a protocol and procedures for caring for a victim of violence during the entire length of the criminal trial increases the danger that the complainants may be victimized again, that the case may be set aside or dismissed, or that there may be an out-of-court settlement with the assailant. Protocols are needed in all three services involved in women’s access to justice, that is, the police, the prosecutors’ offices and the health care services. Equally, health centers need to have protocols for the care of victims of sexual violence as well as victims of other types of violence that do not include sexual attacks.

## USE OF THE BELÉM DO PARÁ CONVENTION BY JUDGES AND PROSECUTORS

The Belém do Pará Convention is part of the domestic legal order of the States Party and part of the constitutional checks done by judges and prosecutors; however, no studies have been done on the use of the Convention of Belém do Pará in domestic sentencing. In some countries, judicial practice is beginning to incorporate the Convention of Belem do Pará and other international instruments that set standards for the prevention, punishment and eradication of violence against women<sup>98</sup>.

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98. In criminal proceedings in which sexual violence is being prosecuted as a war crime and crime against humanity, domestic courts are citing the Convention of Belém do Pará, the American Convention on Human Rights, and the case law of the Inter-American Court of Human Rights.

## USE OF STEREOTYPES, PREJUDICES OR NEGATIVE USE OF THE VICTIM'S PERSONAL HISTORY OR SEXUAL EXPERIENCE IN COURT RULINGS AND OPINIONS

In cases of rape, the constant inquiries into the sexual and moral life of the female victim constitutes an arbitrary interference in her private life and an illegal assault on her honor and reputation, especially since they were irrelevant for investigating the case.<sup>99</sup> Arbitrary interference means taking a woman's sexual life into account when deciding on the scope of her rights and protection under the law, including protection against rape.<sup>100</sup>

The use by judicial personnel of discriminatory socio-cultural patterns may end up discrediting the victim during the criminal case and lead to a tacit presumption that she is somehow to blame for the acts of violence committed against her, whether because of her style of dress, her job, her sexual behavior, relationship or kinship with her assailant. These discriminatory practices translate into inaction by the judicial authorities, and the investigation into the case and the evidence are adversely affected.<sup>101</sup>

## Progress and challenges in the States

### ENTITIES CHARGED WITH RECEIVING COMPLAINTS OF VIOLENCE AGAINST WOMEN

99. UN Human Rights Committee, *L.N.P. v. Argentina*. Opinion CCPR/C/102/D/1610/2007, August 24, 2011.

100. UN Human Rights Committee –General Comment No 28

101. IACHR (2007). *Op. cit.*, para. 115.

Argentina, Brazil, Costa Rica, Dominica, Dominican Republic, Ecuador, Guatemala, Guyana, Mexico, Panama, Paraguay, Peru, Saint Lucia, and Uruguay increased the number of entities charged with receiving complaints of violence against women.

Twelve countries do not permit conciliation or settlement in cases of violence against women; of these, Bolivia, Brazil, Chile, Colombia, Costa Rica, Dominican Republic, Ecuador, and Peru have framed this prohibition in the context of domestic and family violence, while Argentina, El Salvador, Guatemala, and Mexico have placed it in the provisions on violence against women.

### MEASURE FOR ACCESS TO JUSTICE AND DUE PROCESS GUARANTEES

Antigua and Barbuda, Argentina, Bahamas, Belize, Bolivia, Brazil, Costa Rica, Dominican Republic, Ecuador, Guatemala, Guyana, Mexico, Panama, Paraguay, Peru, Saint Lucia, Suriname, Trinidad and Tobago, and Uruguay have specialized personnel in the offices where complaints are received about violence against women, and they provide training for the staff of these offices. Of these countries, Argentina, Bahamas, Belize, Brazil, Costa Rica, Paraguay, and Suriname have private areas for attending to women who have been victims of violence, as do El Salvador and Saint Vincent and the Grenadines.

The countries that reported having free legal services are Antigua and Barbuda, Argentina, Bahamas, Bolivia, Brazil, Chile, Colombia, Costa Rica, Dominica, El Salvador, Guatemala, Guyana, Mexico, Panama, Peru, Saint Lucia, Saint Vincent and the Grenadines, Suriname, Trinidad and Tobago, and Uruguay. Of these twenty (20) countries, only seven (7) reported that they had interpreters into indigenous languages, namely Argentina, Bolivia, Guatemala, Mexico, Panama, Peru, and Suriname; for its part, Belize indicated that it has interpreters into Spanish.

As to the confidentiality of legal proceedings and data protection, Argentina, Bahamas, Bolivia, Brazil, Chile,

Colombia, El Salvador, Mexico, Peru, and Saint Lucia have such provisions in the laws and protocols that address cases of different types of violence against women.

## USE AND EFFECTIVENESS OF PROTECTION MEASURES

The countries that said they had laws providing for protective measures are Antigua and Barbuda, Argentina, Bahamas, Barbados, Belize, Bolivia, Brazil, Chile, Colombia, Costa Rica, Dominica, Dominican Republic, Ecuador, El Salvador, Guatemala, Guyana, Jamaica, Mexico, Panama, Peru, Saint Kitts and Nevis, Saint Vincent and the Grenadines, Suriname, Trinidad and Tobago and Uruguay; of these twenty-five (25) countries, only Argentina, Barbados, Brazil, Chile, Saint Kitts and Nevis, Saint Vincent and the Grenadines, and Trinidad and Tobago reported that they had studies or statistics on the matter.

## MEASURES TO PROTECT WOMEN, THEIR FAMILIES AND/OR WITNESSES

Argentina, Bahamas, Brazil, Colombia, Costa Rica, Dominican Republic, El Salvador, Mexico, and Saint Lucia have mechanisms for rescuing women who are victims of violence. Of these, only six (6) countries—Bahamas, Brazil, Costa Rica, Dominican Republic, Mexico, and Saint Lucia—reported that they had earmarked funds for transferring the women out of the place where the violence occurred.

Only Bolivia, Brazil, Ecuador, Peru, and Uruguay said that they had specific provisions on changing the identity of women who are victims of violence. The countries that reported having witness protection mechanisms were Bahamas, Bolivia, Brazil, Colombia, Costa Rica, Ecuador, El Salvador, Guatemala, Guyana, Panama, Peru, Suriname, and Uruguay.

In the event a woman who was the victim of violence needs to leave the country, there were only three (3) countries that said they had formal mechanisms for granting a safe conduct to their nationals: Costa Rica, Ecuador, and Saint Lucia.

As for secure referral networks, Argentina, Barbados, Bolivia, Brazil, Costa Rica, Mexico, Peru, Suriname, and Venezuela reported having shelters or homes for the victims and their dependents, as well as centers for specialized victim care. The case of Bolivia is notable, in that it has a detailed procedure for referral and counter-referral.

## PROTOCOLS FOR CARE OF VICTIMS OF VIOLENCE

Antigua and Barbuda, Bahamas, Belize, Bolivia, Brazil, Chile, Colombia, Costa Rica, Dominican Republic, Ecuador, El Salvador, Guatemala, Mexico, Panama, Paraguay, Peru, Suriname, Trinidad and Tobago and Uruguay reported that they had guidelines or protocols for the care of women who had been the victims of violence. These guidelines or protocols are geared to the police, judges and/or health care personnel. It is striking that no country has such Guidelines or Protocols in an indigenous language.

## USE OF THE CONVENTION OF BELÉM DO PARÁ BY JUDGES AND PROSECUTORS

Brazil, Colombia, Costa Rica, Dominican Republic, Mexico, Panama, Paraguay, and Uruguay said that they made use of the Convention of Belém do Pará in court sentencing. Of these, only Colombia, Costa Rica, Mexico, and Uruguay reported having studies on the way in which the Convention is applied.



## Recommendations

- 1.** Increase the number and effectiveness of entities receiving complaints, especially in non-urban areas with indigenous peoples and/or people of African descent, ensuring that they are inclusive and inter-cultural in nature.
- 2.** Ensure women's access to justice by guaranteeing, at a minimum, the availability of specialized personnel to serve victims and handle their cases throughout all the procedural stages; areas that offer privacy within police stations, courts and health centers; free legal services specialized in violence against women, provided by the State nationwide; interpretation services in indigenous languages for victims from indigenous communities who turn to the judicial system; and confidentiality and data protection both for victims and for their relatives and witnesses.
- 3.** Provide information to the Committee on access to justice for indigenous women, especially regarding the agencies and procedures available, the benefits and obstacles they entail, and the national and customary provisions used to administer justice.
- 4.** Ensure that protection orders are issued in all cases of violence against women. Monitor their use and conduct evaluations and studies of their implementation and effectiveness in order to take corrective measures or reinforce them as necessary.
- 5.** Implement mechanisms to ensure compliance with protection orders granted on behalf of women, their relatives and/or witnesses. Ensure funds for transfers; rescue mechanisms; change of identity for victims; witness protection; safe conduct to leave the country; and, inter alia, secure referral networks.
- 6.** Adopt and implement protocols for dealing with victims of violence against women in police stations or entities receiving complaints, prosecution offices and health services, and when necessary, these protocols shall be in indigenous languages.
- 7.** Conduct studies or compilations on the use of the Belém do Pará Convention in court judgments and opinions on violence against women, which can serve as tools for the work of judges, prosecutors, court system personnel and law students.
- 8.** Conduct studies on judgments and opinions containing stereotypes, prejudices, myths and customs in cases involving women victims of violence, as well as the use of the victim's personal history or sexual experience to deny her justice.



## 5.4 specialized services

### Overview

#### Overview of the region

- Our region has at least 266 shelters for women who are victims of violence, 86.6% of which are concentrated in six countries (Argentina, Brazil, Chile, Ecuador, Mexico, and Peru) out of the thirty-two countries that are Parties to the Convention.
- Only two countries (Chile and Mexico) indicated that their shelters/safe houses had specialized care for women who had been victims of violence, representing 20.6% of the total number of shelters/safe houses in the region.
- Fourteen countries (Barbados, Belize, Costa Rica, Dominica, Dominican Republic, El Salvador, Guyana, Panama, Paraguay, Saint Lucia, Suriname, Uruguay, and Venezuela) said they had fewer than three shelters/safe houses for women who had been victims of violence.
- As for Comprehensive Care Centers, the region has at least 387, 85.6% of which are concentrated in three countries (Chile, Mexico, and Peru).
- Twenty-four countries said that they offer legal assistance to women who have been victims of violence during the pre-trial period, while twenty-one countries offered legal counsel during the trial; only the Dominican Republic indicated that this latter service was not offered.
- Of the thirty-two States members of the Convention, twenty-two have some type of emergency hotline, sixteen of which are 24 hours a day, nineteen are free of charge, and only four are specialized in dealing with women who have been victims of violence (Argentina, Brazil, Mexico, b and Peru).
- Ten countries indicated that they have health programs for women who have been victims of violence (Antigua and Barbuda, Bahamas, Barbados, Bolivia, Brazil, Colombia, Jamaica, Mexico, Trinidad and Tobago, and Uruguay), eight of which said that sexual health was included in these programs (Antigua and Barbuda, Barbados, Bolivia, Brazil, Colombia, Mexico, Trinidad and Tobago, and Uruguay), and five that interruption of pregnancy was covered (Bahamas, Barbados, Colombia, Trinidad and Tobago, and Uruguay). This last figure is puzzling if we look at the United Nations figures for 2011, which showed that only four countries that are Party to the Convention of Belém do Pará criminalize the interruption of pregnancy under any circumstances (Chile, Nicaragua, Dominican Republic, and El Salvador), while 28 countries permit interruption of pregnancy to save the woman's life, 19 to preserve her physical health and seventeen her mental health; 12 countries permit interruption of pregnancy in cases of rape or incest, and six when the fetus presents with abnormalities, five on economic and social grounds, and two at the woman's request.<sup>1</sup>

1. <http://www.un.org/esa/population/publications/2011abortion/2011wallchart.pdf>

Specialized services play a fundamental role in empowering women who have been victims of violence, since they offer them a holistic, specialized response. The existence of these services requires both public and private institutions to communicate with each other and together form support networks that help victims by assuring multidisciplinary, coordinated, prompt, specialized and therefore effective care for violence, and by thus reducing the numbers of women victimized again, and reducing abandonment of judicial proceedings.

The second hemispheric report of the MESECVI sets out the facts about the specialized services in our region according to information presented by the States Party to the Convention of Belém do Pará, as part of their undertaking arising out of this instrument for the protection of human rights, pursuant to Article 8 of the Convention:

*“The States Parties agree to undertake progressively specific measures, including programs: ...*

*d. to provide appropriate specialized services for women who have been subjected to violence, through public and private sector agencies, including shelters, counseling services for all family members where appropriate, and care and custody of the affected children; ...”*

*f. to provide women who are subjected to violence access to effective readjustment and training programs to enable them to fully participate in public, private and social life;...”*

On this basis, the Committee of Experts focused its efforts on compiling information about five specialized services that are considered to be fundamental in the effort to eradicate violence against women: shelters and safe houses, comprehensive care centers, free legal advice and counsel, health care programs that include sexual health and voluntary interruption of pregnancy and finally psychological counselling, therapy, support groups and self-help groups, all specializing in the treatment of violence against women.

There has been an increase in the member states in the number of shelters, safe houses and comprehensive care centers, and this increase has sometimes translated into a more decentralized distribution, which in turn provides more effective coverage of the problem of violence against women in the country. One of the factors that had led to this welcome increase is the passage of specialized domestic legislation and/or adoption of national plans on issues of violence against women. Also noted was a significant participation of civil society as executing agencies of these initiatives, to which the State provides a subsidy or financing to carry out the mandate of the Convention.

However, it was also noted that in a significant number of countries, shelters and safe houses are concentrated in the capital, and we therefore reiterate the need for care for victims of violence to be decentralized and coverage provided in rural and urban areas away from the capital city.

We also invite those countries that do not have these services, or that have not increased them, to create or increase them to provide for specialized care and protection for women who suffered violence in their countries. This will also send a clear message about the State's commitment to women who are victims of violence in general.

The great majority of States comply in one way or another with the undertaking to provide specialized services of free legal advice and legal representation for women who are victims of violence, and thus remove the economic factor as an impediment to prosecution of punishment of this type of violence. It is necessary here to repeat that these services must be specialized, since the characteristics of women victims of violence are such that they require professionals trained in the subject, to ensure that the cases are not dropped but prosecuted to completion of the court case, and also to ensure that the victims are rehabilitated.

Most States also said that they have telephone lines where victims of violence can communicate with the authorities, and file their complaints. It is important here

to reiterate that this specialized service should be free of charge, available continuously for twenty-four hours a day throughout the country, and should be specialized in violence against women.

With regard to health care programs, including sexual health and voluntary interruption of pregnancy, for women who are victims of violence, most countries did not provide much information on this question. We therefore repeat our invitation to them to participate in this process, provide information on the various initiatives of government and/or civil society and exchange experiences in order to improve the procedures that already exist.

Lastly, most States said that they have the specialized service of psychological counselling, therapy, support groups and self-help groups for women who are victims of violence: this is essential to ensuring that the care provided is in fact comprehensive, and will exponentially increase the chances that the indicators on re-victimization of women who have been harmed will be cut.

## Progress and challenges in the States

### INCREASE IN THE NUMBER OF SHELTERS, SAFE HOUSES, AND COMPREHENSIVE CARE CENTERS FOR WOMEN WHO ARE VICTIMS OF VIOLENCE

The countries that provide joint specialized services of shelters, safe houses, and comprehensive care centers for women who are victims of violence include: Argentina, Chile, Colombia, Costa Rica, Mexico, Trinidad and Tobago, Peru, and Uruguay. In the case of Trinidad and Tobago, these services are provided through joint work with civil society. In the case of Uruguay, the shadow report also states that the shelters are mostly located in the capital city, and that women without dependents

or older women are sent to shelters for street people. It also reports on a pilot project being conducted by MIDES to provide temporary housing to women who have been subject to violence, in which the State gives the women subsidies to pay their rent, since they have difficulty in covering the basic costs of housing when they do not have a stable income.

In the case of Peru, although by design, the Women's Emergency Centers (CEMs) should have multidisciplinary teams, as of the date of the shadow report (2010), only one of the 75 CEMs met this requirement. There is also some concern over the working conditions of the CEM staff, and over whether these centers fully comply with human rights standards—attributable to a shortage of funds faced with growing demand. The shadow report indicates the need for a protocol regulating the procedures for interruption of pregnancy, since, even though therapeutic abortion is not penalized, it is not practiced in hospitals for lack of a protocol.

The countries that report having only shelters as the specialized service are: Bahamas, Barbados, Jamaica, Belize, Bolivia, Ecuador, Brazil, El Salvador<sup>102</sup>, Panama, Paraguay, Venezuela, Dominican Republic, and Suriname. In Brazil, the State is working with civil society to examine alternative forms of housing, while in Bahamas, Barbados and Jamaica, this specialized service is offered jointly with civil society.

In the case of Ecuador, the shadow report indicates that this service mostly operates under the auspices of non-governmental organizations, most of which have to raise their own resources themselves. The small number of shelters or safe houses, in addition to being insufficient, means that victims of violence do not file complaints, or abandon their case half-way through, which creates an environment of impunity for assailants. In the case of El Salvador, the shadow report says that the country has but a single shelter, because of the lack of a budget allocated to ISDEMU for this initiative.

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<sup>102</sup>. A comprehensive law on a life free of violence for women was approved in 2012, which created the program for safe houses for victims and their families.

The following countries also report that they have comprehensive care centers as the only specialized service for women who are victims of violence: Guyana, Saint Lucia, Dominica, Guatemala, Jamaica, Saint Vincent and the Grenadines and Antigua and Barbuda. In Dominica, this center belongs to civil society, while in Jamaica, the service involves joint work by the State and civil society.

## FREE SPECIALIZED SERVICES PROVIDED BY THE STATE

The Group of Experts examined five services under this point: free legal advice; free legal representation; free national hotlines 24 hours a day; health programs, and psychological counselling.

### a. Legal advice and legal representation

The countries that offer both legal advice and legal representation, free of charge to women victims of violence are: Argentina, Bolivia, Brazil, Chile, Colombia, Costa Rica, Ecuador, El Salvador, Panama, Peru, Guatemala, Jamaica, Mexico, Venezuela, Suriname, Dominica, Uruguay, Trinidad and Tobago, Barbados, and Belize. In Barbados and Belize, these services are provided by the State in conjunction with civil society; Trinidad and Tobago does not say whether these services are free of charge.

In Barbados, these services are not run by the State, but by civil society organizations and therefore in some cases, an additional cost for the victims is involved.

The Dominican Republic and Guyana offer victims of violence free legal advice only, but not legal counsel during trial.

### b. Free telephone hotlines open 24 hours a day

The following countries have 24 hour a day free hotlines: Argentina, Bahamas, Belize, Trinidad and Tobago, Brazil, Chile, Colombia, Guatemala, Guyana, Jamaica, Mexico, Peru, Paraguay, Saint Lucia, and Suriname. In Barbados and Jamaica, the hotlines are the result of joint efforts with civil society organizations. In Colombia, Ecuador, Paraguay, and Suriname, the hotlines are not specialized for women who are victims of violence.

In Uruguay and the Dominican Republic, the hotlines, while free of charge, do not operate twenty-four hours a day. And in the case of Bolivia, the hotlines are not free of charge.

Although Ecuador, Venezuela, Barbados, and Panama said they had a hotline, they did not specify whether it operated twenty-four hours a day. Nor did Panama indicate whether the hotline was free of charge. In the cases of Barbados, Bolivia, Jamaica, Panama, and Venezuela, it was not stated whether their coverage was nation-wide.

### c. Health programs, including sexual health and interruption of pregnancy

The following countries provide sexual health services and interruption of pregnancy to women who are victims of violence: Trinidad and Tobago, Barbados, Colombia, Uruguay, Bahamas, and Jamaica. In the Bahamas, the government works with civil society. In the case of Jamaica, these services focus on young women under the age of 17 who have dropped out of school due to a pregnancy.

The following countries said they provide sexual health services to victims of violence, but did not indicate whether these services include interruption of pregnancy: Antigua and Barbuda, Mexico, and Brazil.

Bolivia said that it did not provide the service of interruption of pregnancy, but has a national AIDS program; it did not specify how care is provided to women who are victims of violence.

The Dominican Republic provides neither of these two services.

#### **d. Psychological counselling, therapy and support groups, and self-help groups**

The States that said they had all of these services are: Antigua and Barbuda, Argentina, Brazil, Chile, Jamaica, Mexico, Peru, Panama, Paraguay, Colombia, Guatemala, Suriname, Trinidad and Tobago, Uruguay, Guyana, Venezuela, Dominican Republic, and Barbados. Antigua and Barbuda and Guyana gave no details about these services. In Barbados, this work is done jointly with civil society.

In the Bahamas, the State provides free psychological and psychiatric counselling, Belize has support groups, and Saint Vincent and the Grenadines offers counselling.

In the case of El Salvador, the shadow report indicates that the specialized services have not been increased because of the lack of a budget.

### **CAMPAIGNS TO PUBLICIZE THE SPECIALIZED SERVICES**

The following countries reported that they conducted campaigns to publicize the specialized services: Antigua and Barbuda, Argentina, Bahamas, Belize, Bolivia, Brazil, Chile, Colombia, Costa Rica, Dominica, Dominican Republic, Ecuador, Guyana, Saint Kitts and Nevis, Mexico, Panama, Peru, Saint Lucia, Trinidad and Tobago and Uruguay.

In the case of Ecuador, the shadow report indicates that although there have been a number of importance initiatives in this area, they do not meet the requirements of a nation-wide communications and information policy that fully publicize the advisory services available for women who are victims of violence.

The shadow report indicates that in Peru, even though there is publicity, it has not become a priority for the institutions responsible for it.

Both Paraguay and Surinam said that they conduct campaigns against gender violence, but did not say whether these campaigns also include information on the specialized services.

Barbados, El Salvador, and Guatemala do not publicize this information; Jamaica, Saint Vincent and the Grenadines, and Venezuela provided no information on this question.

### **EVALUATION OF SERVICES AND OF CLIENT SATISFACTION**

The countries that have evaluated their specialized services are: Antigua and Barbuda, Bolivia, Brazil, Colombia, Mexico, Panama, Peru, Saint Lucia, and Uruguay.

The countries that have not conducted such evaluations are: Barbados, Chile, El Salvador, Guyana, Saint Kitts and Nevis, Paraguay, Suriname, Trinidad and Tobago, Argentina, Bahamas, and Belize. Argentina, Bahamas, Belize, Chile, Costa Rica, Dominica, Dominican Republic, and Guatemala reported that they are in the process of conducting these evaluations.

For the Dominican Republic, the shadow report gives a positive evaluation of the participation of personnel from the judicial branch in regional training events on violence against women, given that improvements in care and in the quantity and quality of care have been empirically demonstrated.

In the case of Peru, the alternative report underscores that the reports of the Ombudsperson are one of the instruments that are most useful and whose results are most reliable in terms of evaluation of the specialized services.

## Recommendations

In order to comply with Article 8 (d) and (f) of the Convention of Belém do Pará<sup>103</sup>, the Group of Experts recommends to the States that they:

- 1.** Set up free specialized services for women who are victims of violence and their children, including: shelters, safe houses and comprehensive care centers; pre-trial legal assistance; legal representation during the trial; comprehensive health services that include sexual and reproductive health care as well as legal interruption of pregnancy; and psychological counseling, therapeutic support and self-help groups.
- 2.** Establish mechanisms of cooperation with civil society organizations, especially women's organizations that have experience in administering shelters and safe houses and in providing services to women victims of violence.
- 3.** Design strategies, on the basis of national plans on violence against women, for coordinated dissemination of specialized State services for women victims of violence, either as part of campaigns for prevention and punishment of violence against women or for promoting women's rights, or as part of an organized intersectoral dissemination plan.
- 4.** Evaluate the specialized services for women victims of violence and their children, and take such corrective action as may be necessary to improve the care provided to women.

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103. Article 8 of the Convention of Belém do Pará: "The States Parties agree to undertake progressively specific measures, including programs: ...d) to provide appropriate specialized services for women who have been subjected to violence, through public and private sector agencies, including shelters, counseling services for all family members where appropriate, and care and custody of the affected children; ...f) to provide women who are subjected to violence access to effective readjustment and training programs to enable them to fully participate in public, private and social life;..."



# 5.5 Budgets

## Overview

### Overview of the region

- 34% of the States Party to the Convention of Belem do Pará did not report the annual amounts in their national budgets earmarked for preventing and punishing violence against women.
- 81% of the countries did not report the budgets assigned to police stations, prosecution offices and entities receiving complaints for prevention and punishment of violence against women.
- 73% of the States did not answer the question about the budget allotted to training programs for public officials.
- 47% of the countries did not say whether they have a budget for the operations of the specialized services, while 53% said they had budgets to finance such services.
- 72% of the States did not report on a budget allocated to campaigns to prevent violence against women.
- 88% of the States Party to the Convention did not answer the question about the budget assigned to the health services to prevent and punish violence against women.

Budget factors play an important role in the fight to eradicate violence against women. In the second round of meeting with the States, the Group of Experts observed the same difficulties that had been seen in the first round: an insufficient budget (0.1-1% of the nation's budget and between 20% and 25% of the budget allocated to the national machinery for women are earmarked for the prevention, punishment and eradication of violence against women); there was a low rate of response from countries about budgets in general.

A number of States said that they allocated a budget to agencies responsible for the woman's agenda in their countries, but they did not detail the amounts assigned to each line of action within those agencies.

The Group of Experts appreciated the external support that some States received from international

cooperation, but at the same time, pointed out that such support is not permanent and that it is incumbent on the States to allocate a budget for the design and execution of national plans and programs for the prevention, punishment and eradication of violence against women.

The Committee of Experts reiterated its appeal to States to assign a clear budget in line with the seriousness of the problem and also to provide detailed information on the budget line items allocated for the prevention, punishment and eradication of violence against women both to national women's bureaus and to agencies that administer or provide services for women who are victims of violence.

As to the information requested by the Group of Experts on the percentage of the national budget earmarked for entities receiving complaints; training for public officials;



specialized services; prevention campaigns and health services, the States provided very little information on each area, and still less information from the last four years. Ecuador was the only State to provide detailed information on the budgets assigned to each of the abovementioned services, since they are incorporated into the National Plan to Eradicate Gender Violence and thus are detailed in its budget lines.

Otherwise, the States provided information about the amounts assigned to national women's bureaus, but not to other agencies responsible for providing services related to the prevention, punishment and eradication of violence against women.

The Committee of Experts notes with concern the limited degree to which the States provided concrete, detailed responses on the budget allocated to the different areas and programs discussed above for the prevention, punishment, and eradication of violence against women.

## Progress and challenges in the States

### PERCENTAGE OF THE NATIONAL BUDGET ALLOCATED TO COMBATTING VIOLENCE AGAINST WOMEN

Most of the countries said they had a budget for the prevention and punishment of violence against women, but it was also noted that such funds are not explicitly allocated to the topic in the national budgets. Barbados, Colombia, Panama, and Paraguay reported that they supplement the domestic budget with funds from international cooperation. In the case of Bolivia, international cooperation funds are the only funds earmarked for combatting violence against women.

Annual percentage allocated to police stations, prosecutors' offices, and entities receiving complaints

Argentina, Brazil, Dominica, Ecuador, and Guatemala said that they allocated resources in their national budgets for such institutions, to be used in the prevention and punishment of violence against women. Costa Rica indicated that it did not have a specific budget for these institutions on this matter. The countries not mentioned in this paragraph did not inform the Group of Experts about budget allocations to these services to prevent and punish violence against women.

### ANNUAL PERCENTAGE ASSIGNED TO TRAINING OF PUBLIC OFFICIALS

Argentina, Bahamas, Brazil, Dominica, Ecuador, El Salvador, Mexico, and Panama stated that they had budgets earmarked for training the staff of the various services offered by the State in the area of prevention and punishment of violence against women. Argentina said that these funds come from abroad; Bahamas, Brazil, and Dominica did not provide detailed information on the amounts set aside for this training.

Costa Rica indicated that it did not have a specific budget for training public officials in the prevention and punishment of violence against women.

The countries that are not mentioned in this paragraph did not provide the Experts with information on this topic.

### ANNUAL PERCENTAGE ASSIGNED TO SPECIALIZED SERVICES

Argentina, Bahamas, Barbados, Brazil, Chile, Dominica, Dominican Republic, Ecuador, El Salvador, Guatemala, Jamaica, Mexico, Panama, Saint Lucia, Trinidad and Tobago, and Venezuela said that they had a budget to finance specialized services, which included, *inter alia*, shelters, comprehensive care centers, and emergency hot lines. Neither Argentina nor Brazil provided any details about the figures at the level of the individual states.

## ANNUAL PERCENTAGE ASSIGNED TO CAMPAIGNS TO PREVENT VIOLENCE AGAINST WOMEN

The following countries said that they assigned a budget to campaigns to prevent violence against women: Argentina, Bahamas, Brazil, Chile, Dominica, Ecuador, El Salvador, and Panama. In the case of Argentina, the information supplied does not give any details about the situation in the various states of the country. Bahamas and Dominica did not specify amounts.

The countries not mentioned here did not provide any type of information on the subject.

## ANNUAL PERCENTAGE ASSIGNED TO THE HEALTH SERVICES TO PREVENT AND PUNISH VIOLENCE AGAINST WOMEN

Argentina, Dominica, Ecuador and Panama were the only States to provide information on this point. Argentina and Dominica did not provide details about the amounts allocated to their health services for the prevention and punishment of violence against women; and in the case of Panama, the information was not broken down in the way that had been requested by the Group of Experts.

## Recommendations

1. Approve sufficient budget appropriations for the execution of public policies and plans on the prevention, care, punishment and progressive eradication of violence against women in the public and private spheres.
2. Establish mechanisms to permit information to be provided on the percentage of the budget allocated to national women's mechanisms.
3. Identify national budget figures or percentages earmarked for services for women victims of violence, including: women's police stations, prosecution offices and other entities receiving complaints; training for government officials; specialized services such as shelters and safe houses, free telephone hot lines, free legal advice, free legal representation and free psychological counseling; campaigns for the prevention of violence against women and health services for women harmed by violence.

## 5.6 Information and statistics

### Overview

#### Overview of the region

- 40.6% of the States Party to the Convention reported that they had conducted surveys that included indicators to measure violence against women, both in general and of a particular type.
- 9.4% of the States said they had conducted surveys to measure women’s knowledge of their rights; we note here that 69% did not provide information on this point.
- As to surveys conducted regularly over the past four years that yielded information on women’s awareness of available government services, only 6.3% of the countries said they had such information, with 62.5% of States not responding.
- Regarding data on publicly-available government record-keeping systems that gather information on the number of cases and characteristics of violence against women, in 59% of the countries, these records are the responsibility of the police and the units that receive complaints; in 47%, they are kept by the courts and prosecution offices, and in 31%, by the health services. Thus we note that in 25% of the States Party to the Convention, such records are kept in all three government agencies.
- On the previous point, it is troubling that the States Party to the Convention provide so few data from the records mentioned above: indeed, 38% of the countries may no mention of records kept by the police or by the entities receiving complaints; 50% do not say whether the courts or prosecution offices collect such information or not, and 63% make no mention of whether their health care services have such records or not.
- 56% of the States Party to the Convention have data on the number of women who have been victims of violence, but 31% provided no information on this point.
- Some 19% of the States provided figures on the number of prosecutions for violence against women that had been brought compared to the number of complaints, but 66% did not provide information on this point.
- As to figures on the number of convictions compared to the number of complaints received, 17% of the countries provided information, while 63% made no mention of the question.
- 47% of the States reported the number of victims of femicide in their jurisdictions, while 34% provided no information on this point.
- 9% of the States Party to the Convention provide the Group of Experts with the number of convictions for femicide compared to the number of cases recorded; we note that 69% provided no information on this point.

Article 8 (h) of the Convention of Belem do Pará states:

*“The States Parties agree to undertake progressively specific measures, including programs:...h) to ensure research and the gathering of statistics and other relevant information relating to the causes, consequences and frequency of violence against women, in order to assess the effectiveness of measures to prevent, punish and eradicate violence against women and to formulate and implement the necessary changes, and...”*

Thus, the States Party to the Convention agreed on the importance of having machinery for the collection of data on the subject of violence against women—information that is essential to evaluating the effectiveness of policies to prevent and punish violence against women in each country, and to making improvements to those policies.

The second hemispheric report of the MESECVI shows that States have conducted studies and research that in most cases, involved the participation, either separately or together, or the national machinery for women, government observatories on gender, statistics institutes and/or government working groups.

In addition, some countries have incorporated these studies and research into their national plans, which ensures that government financing will be provided; in other cases, the financing is to be obtained via the international cooperation agency. Some countries said that they had not conducted research or studies because they did not have the budget or the human resources to do so.

The Group of Experts said it was concerned over the small amount of information provided on promotion of research on violence against women in civil society organizations, academic institutions and the State, and noted that only two States, Colombia and Ecuador, said that they had signed cooperation or national agreements on gender equity with academic institutions to carry out ongoing work on subjects related to violence against women.

Another point included in the second MESECVI report was conducting national surveys with indicators that would provide information on: violence against women; women's awareness of their rights, and women's awareness of the state services available to them. These surveys should also be done on a regular basis, they should be specialized, and have been carried out in the last four years. The Committee of Experts notes that the surveys to which some States alluded had dealt with specific topics on violence against women, or else this topic had been included in another survey or in the census. Some countries added that they had trained the survey takers in topics of violence against women.

The Group of Experts voiced its concern over the small number of countries that said they had conducted surveys that included violence against women, and that said they planned future surveys on the subject, as Ecuador has done.

The States were also asked for information on publicly-available records showing the number and/or characteristics of cases of violence against women that are kept by the police, the entities receiving complaints, prosecutors' offices, the courts, and the health care services. The Group of Experts notes here that in most of the countries, the police and the entities receiving complaints are the institutions that are largely responsible for record-keeping on violence against women. The case of the Bahamas, where the figures kept by the police are well-organized and posted on their web site, was notable. In the case of the prosecutors' offices, the courts and the health care services, the Committee of Experts was concerned over the lack of information contained in these records, in that it did not show the characteristics, functionality or efficiency of these institutions.

The Committee of Experts noted specific problems of implementation in the records, since some of them: record only specific types of violence against women (family, intra-family or domestic violence), and/or the data are not broken down by sex—any member of the family may be a victim. Added to this is the fact that some States said that the records were not freely

available to the public, and some even said that they had not been able to access the records themselves in order to respond to the MESECVI questionnaire, or that they required authorization from another authority to gain access to them.

Another important point of information that the States were asked to provide concerned the number of women who had been victims of violence, the number of prosecutions for violence against women, the number of prosecutions for violence against women that had been brought compared to the number of complaints received, the number of convictions compared to the number of complaints received, the number of victims of femicide, the number of convictions for femicide compared to the number of cases. The Group of Experts noted that the information supplied was problematic in that it was not broken down in the way that had been asked for (age, marital status, type of violence and geographic location), and it said it was concerned over the significant number of countries that did not break down the information by sex, a basic requirement of any useful study on violence against women and analysis of the role that other factors play in it.

The Committee of Experts noted that a large number of countries did not provide information on the judicial status or the outcomes of cases brought against persons who had committed crimes of violence against women, from which it may be deduced that specialized records on violence against women are not kept in the courts or the prosecutors' offices.

On the matter of femicides, the information provided was quantitative but not disaggregated by age, marital status, geographic location and, worse, in some cases not broken down by sex. Some States count the number of victims according to what is published in the press.

Another point examined in the report is the existence of mechanisms or agencies for coordination among women's institutes and the government entities that draw up and collect national statistics. The Committee of Experts reiterated the importance of such coordination, and voiced its concern over the large

number of countries that did not identify the agency or mechanism for coordination. The Group of Experts highlighted Colombia and Brazil for their use of gender observatories in their jurisdictions; Costa Rica, Panama, Guatemala and Uruguay for their use of coordinators of different unified information systems, and Bolivia and Ecuador for the existence or process of creation of gender and statistics units.

## Progress and challenges in the States

### REGULAR SURVEYS CONDUCTED BY THE STATES OVER THE PAST FOUR YEARS THAT INCLUDE QUESTIONS ABOUT VIOLENCE AGAINST WOMEN AND PROVIDE DATA ON THE ISSUE

The countries that in the last four years included in their regular surveys questions about violence against women are: Bolivia, Brazil, Dominica, Jamaica, Mexico, Paraguay, Barbados, Chile, El Salvador, Guatemala, Peru, Suriname and Venezuela. Only the first six had indicators that measured violence against women in general, while the last seven concentrated on measuring one or more particular types of violence against women. Venezuela indicated that these surveys are not conducted on a regular basis.

Some countries also have data, which were collected in one survey or another, on women's knowledge of their rights; these countries are: Costa Rica, Dominica and Venezuela. Venezuela said that these surveys are not conducted on a regular basis.

For its part, Dominica has data on women's awareness of available government services, an indicator they included in their regular surveys over the past four years. Although Venezuela said that it had this information, it did not indicate the survey from which the data were drawn, and also stated that these surveys are not conducted on a regular basis.

## COUNTRIES THAT HAVE A PUBLICLY-AVAILABLE RECORD-KEEPING SYSTEM ON THE NUMBER AND CHARACTERISTICS OF CASES OF VIOLENCE AGAINST WOMEN

Some of the States Party to the Convention of Belem do Pará said that such records are kept by their police forces and entities receiving complaints, as is the case in: Bahamas, Belize, Bolivia, Brazil, Chile, Colombia, Dominica, Ecuador, Guyana, Jamaica, Panama, Peru, Saint Vincent and the Grenadines, Suriname, Trinidad and Tobago and Uruguay. Jamaica's records refer only to sexual violence and child abuse. In Dominica and Saint Vincent and the Grenadines, the information is not broken down in accordance with the questionnaire, and/or by sex.

In Barbados and Saint Kitts and Nevis, this type of record is not open to the public, and furthermore, in the case of Barbados, the information is not broken down by sex. While indicating that it does keep such records, Saint Lucia provided no further details about it.

The Group of Experts found the example of the Bahamas to be a positive one, inasmuch as the figures are well organized and are posted on the police Web site.

Some countries indicated that these records are kept by the courts and the prosecutors' offices, as is the case in Argentina, Barbados, Bolivia, Brazil, Chile, Colombia, Dominican Republic, Ecuador, Guatemala, Panama, Paraguay, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, and Trinidad and Tobago. Argentina noted that the courts and prosecutors' offices only record domestic violence, while in Barbados and Saint Kitts and Nevis, this information is not publicly available. Although Saint Lucia indicated that both institutions keep records of this information, it did not provide the Group of Experts with any details. Lastly, in the case of Saint Vincent and the Grenadines, while the records exist, the information is not broken down by sex.

The Group of Experts also asked the States whether records on violence against women were kept in the health care services. Barbados, Belize, Bolivia, Brazil, Colombia, Mexico, Panama, Saint Kitts and Nevis, Saint Lucia and Saint Vincent and the Grenadines reported that they did have this type of record. Barbados and Saint Kitts and Nevis reported that these records are not publicly available. Saint Lucia provided no details about its health care system's records, and in the case of Saint Vincent and the Grenadines, the records are not broken out by sex.

Taking into account the observations made regarding some of the States indicated above, we note that only eight of the countries that are Party to the Convention of Belem do Pará keep parallel sets of records in the three institutions: Barbados, Bolivia, Brazil, Colombia, Panama, Saint Kitts and Nevis, Saint Lucia and Saint Vincent and the Grenadines. And only Ecuador and Trinidad and Tobago reported that they have parallel records in two of the three groups of institutions listed.

## STATES THAT HAVE STATISTICAL DATA BY AGE, MARITAL STATUS, TYPE OF VIOLENCE AND GEOGRAPHIC LOCATION

Eighteen countries said they have data on the numbers of women who have been victims of violence in their countries, namely: Antigua and Barbuda, Belize, Brazil, Chile, Colombia, Dominica, Dominican Republic, Ecuador, El Salvador, Guyana, Mexico, Panama, Paraguay, Peru, Saint Kitts and Nevis, Suriname, Uruguay and Venezuela. The Group of Experts had some difficulty reading the data provided by the following countries because they were not broken down in the way that had been requested: Dominica, El Salvador, Guyana, Panama, Saint Kitts and Nevis and Uruguay.

The Group of Experts noted that Bolivia, Costa Rica, Guatemala and Saint Vincent and the Grenadines reported not having this information.



Six countries, Brazil, Chile, Dominica, Ecuador, Panama and Saint Vincent and the Grenadines, reported having data on the number of prosecutions for violence against women filed in comparison with the number of complaints. Bolivia, Costa Rica, El Salvador, Guatemala and Jamaica indicated that they did not have this information.

The Committee of Experts asked the States to report on the number of convictions compared to the number of complaints: such information was provided only by Brazil, Chile, Dominica, Ecuador and Saint Vincent and the Grenadines. The Bahamas, Barbados, Bolivia, Costa Rica, El Salvador, Guatemala and Jamaica said that they did not have this information.

The States Party to the Convention of Belem do Pará were also asked to provide information on the number of victims of femicide recorded in their jurisdictions; responses were received from Bahamas, Brazil, Chile, Colombia, Costa Rica, Dominica, Dominican Republic, Ecuador, El Salvador, Mexico, Panama, Paraguay, Peru, Saint Vincent and the Grenadines and Uruguay. Brazil and Bahamas stated that femicide does not appear as an offense in their criminal laws, but rather is treated as homicide.

Lastly, the second hemispheric report on implementation of the Convention reports on the request to the countries for information on the number of convictions for femicide compared to the number of cases. Information was provided here by only two countries: Brazil and Dominica, added to which, six States indicated that they did not have this type of information: Bahamas, Barbados, Bolivia, Costa Rica, Guatemala, Jamaica and Saint Kitts and Nevis.

## Recommendations

1. Include in national plans on violence against women studies and research on the topic, and determine the budget allocated, and the dissemination and promotion of the findings, and corresponding publications.

2. Conduct surveys on violence against women, women's knowledge of their rights and of services available, or else include these questions in general population surveys or the census.
3. Keep records in entities receiving complaints, courts and prosecution offices and health services that will provide on the extent of violence against women, while protecting the privacy of the victims, and access to and use of the services by women affected by violence.
4. Gather and publish information broken down by sex, age, marital status and geographic location on the number of women who have been victims of violence, and also on the number of criminal cases brought for violence against women; number of convictions for violence against women, the number of victims of femicide, and the number of convictions for femicide.
5. Institute registries in police stations and in the judiciary, at the national level, to keep statistics on femicides, with data disaggregated by age, marital status and geographic location.
6. Set rules for appropriate coordination among the national statistics offices and women's bureaus.



*Every woman has the right to be valued and educated free of stereotyped patterns of behavior and social and cultural practices based on concepts of inferiority or subordination.*

**The Belém do Pará Convention - Article 6.b**



# *The Istanbul Convention*

# SECTION II

## The Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence

# 1 FULL TEXT OF THE ISTANBUL CONVENTION

The member States of the Council of Europe and the other signatories hereto,

**RECALLING** the Convention for the Protection of Human Rights and Fundamental Freedoms (ETS No. 5, 1950) and its Protocols, the European Social Charter (ETS No. 35, 1961, revised in 1996, ETS No. 163), the Council of Europe Convention on Action against Trafficking in Human Beings (CETS No. 197, 2005) and the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (CETS No. 201, 2007);

**RECALLING** the following recommendations of the Committee of Ministers to member States of the Council of Europe: Recommendation Rec(2002)5 on the protection of women against violence, Recommendation CM/Rec(2007)17 on gender equality standards and mechanisms, Recommendation CM/Rec(2010)10 on the role of women and men in conflict prevention and resolution and in peace building, and other relevant recommendations;

**TAKING** account of the growing body of case law of the European Court of Human Rights which sets important standards in the field of violence against women;

**HAVING** regard to the International Covenant on Civil and Political Rights (1966), the International Covenant on Economic, Social and Cultural Rights (1966), the United Nations Convention on the Elimination of All Forms of Discrimination Against Women (“CEDAW”, 1979) and its Optional Protocol (1999) as well as General Recommendation No. 19 of the CEDAW Committee on violence against women, the United Nations Convention on the Rights of the Child (1989) and its Optional Protocols (2000) and the United Nations Convention on the Rights of Persons with Disabilities (2006);

**HAVING** regard to the Rome Statute of the International Criminal Court (2002);

**RECALLING** the basic principles of international humanitarian law, and especially the Geneva Convention (IV) relative to the Protection of Civilian Persons in Time of War (1949) and the Additional Protocols I and II (1977) thereto;

**CONDEMNING** all forms of violence against women and domestic violence;

**RECOGNISING** that the realisation of de jure and de facto equality between women and men is a key element in the prevention of violence against women;

**RECOGNISING** that violence against women is a manifestation of historically unequal power relations between women and men, which have led to domination over, and discrimination against, women by men and to the prevention of the full advancement of women;

**RECOGNISING** the structural nature of violence against women as gender-based violence, and that violence against women is one of the crucial social mechanisms by which women are forced into a subordinate position compared with men;

**RECOGNISING**, with grave concern, that women and girls are often exposed to serious forms of violence such as domestic violence, sexual harassment, rape, forced marriage, crimes committed in the name of so-called “honour” and genital mutilation, which constitute a serious violation of the human rights of women and girls and a major obstacle to the achievement of equality between women and men;

**RECOGNISING** the ongoing human rights violations during armed conflicts that affect the civilian population, especially women in the form of widespread or systematic rape and sexual violence and the potential for increased gender-based violence both during and after conflicts;

**RECOGNISING** that women and girls are exposed to a higher risk of gender-based violence than men;

**RECOGNISING** that domestic violence affects women disproportionately, and that men may also be victims of domestic violence;

**RECOGNISING** that children are victims of domestic violence, including as witnesses of violence in the family;

**ASPIRING** to create a Europe free from violence against women and domestic violence,

**HAVE** agreed as follows:

## **CHAPTER I: Purposes, definitions, equality and non-discrimination, general obligations**

### **Article 1 – Purposes of the Convention**

1. The purposes of this Convention are to:
  - a. protect women against all forms of violence, and prevent, prosecute and eliminate violence against women and domestic violence;
  - b. contribute to the elimination of all forms of discrimination against women and promote substantive equality between women and men, including by empowering women;
  - c. design a comprehensive framework, policies and measures for the protection of and assistance to all victims of violence against women and domestic violence;
  - d. promote international co-operation with a view to eliminating violence against women and domestic violence;
  - e. provide support and assistance to organisations and law enforcement agencies to effectively co-operate in order to adopt an integrated approach to eliminating violence against women and domestic violence;
2. In order to ensure effective implementation of its provisions by the Parties, this Convention establishes a specific monitoring mechanism.

### **Article 2 – Scope of the Convention**

1. This Convention shall apply to all forms of violence against women, including domestic violence, which affects women disproportionately.
2. Parties are encouraged to apply this Convention to all victims of domestic violence. Parties shall pay particular attention to women victims of gender-based violence in implementing the provisions of this Convention.

3. This Convention shall apply in times of peace and in situations of armed conflict.

### **Article 3 – Definitions**

For the purpose of this Convention:

- a. “violence against women” is understood as a violation of human rights and a form of discrimination against women and shall mean all acts of gender-based violence that result in, or are likely to result in, physical, sexual, psychological or economic harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life;
- b. “domestic violence” shall mean all acts of physical, sexual, psychological or economic violence that occur within the family or domestic unit or between former or current spouses or partners, whether or not the perpetrator shares or has shared the same residence with the victim;
- c. “gender” shall mean the socially constructed roles, behaviours, activities and attributes that a given society considers appropriate for women and men;
- d. “gender-based violence against women” shall mean violence that is directed against a woman because she is a woman or that affects women disproportionately;
- e. “victim” shall mean any natural person who is subject to the conduct specified in points a and b;
- f. “women” includes girls under the age of 18.

### **Article 4 – Fundamental rights, equality and non-discrimination**

1. Parties shall take the necessary legislative and other measures to promote and protect the right for everyone, particularly women, to live free from violence in both the public and the private sphere.
2. Parties condemn all forms of discrimination against women and take, without delay, the necessary legislative and other measures to prevent it, in particular by:
  - embodying in their national constitutions or other appropriate legislation the principle of equality between women and men and ensuring the practical realisation of this principle;
  - prohibiting discrimination against women, including through the use of sanctions, where appropriate;
  - abolishing laws and practices which discriminate against women.
3. The implementation of the provisions of this Convention by the Parties, in particular measures to protect the rights of victims, shall be secured without discrimination on any ground such as sex, gender, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth, sexual orientation, gender identity, age, state of health, disability, marital status, migrant or refugee status, or other status.
4. Special measures that are necessary to prevent and protect women from gender-based violence shall not be considered discrimination under the terms of this Convention.

### **Article 5 – State obligations and due diligence**

1. Parties shall refrain from engaging in any act of violence against women and ensure that State authorities, officials, agents, institutions and other actors acting on behalf of the State act in conformity with this obligation.



2. Parties shall take the necessary legislative and other measures to exercise due diligence to prevent, investigate, punish and provide reparation for acts of violence covered by the scope of this Convention that are perpetrated by non-State actors.

#### **Article 6 – Gender-sensitive policies**

Parties shall undertake to include a gender perspective in the implementation and evaluation of the impact of the provisions of this Convention and to promote and effectively implement policies of equality between women and men and the empowerment of women.

### **CHAPTER II: Integrated policies and data collection**

#### **Article 7 – Comprehensive and co-ordinated policies**

1. Parties shall take the necessary legislative and other measures to adopt and implement State-wide effective, comprehensive and co-ordinated policies encompassing all relevant measures to prevent and combat all forms of violence covered by the scope of this Convention and offer a holistic response to violence against women.
2. Parties shall ensure that policies referred to in paragraph 1 place the rights of the victim at the centre of all measures and are implemented by way of effective co-operation among all relevant agencies, institutions and organisations.
3. Measures taken pursuant to this article shall involve, where appropriate, all relevant actors, such as government agencies, the national, regional and local parliaments and authorities, national human rights institutions and civil society organisations.

#### **Article 8 – Financial resources**

Parties shall allocate appropriate financial and human resources for the adequate implementation of integrated policies, measures and programmes to prevent and combat all forms of violence covered by the scope of this Convention, including those carried out by non-governmental organisations and civil society.

#### **Article 9 – Non-governmental organisations and civil society**

Parties shall recognise, encourage and support, at all levels, the work of relevant non-governmental organisations and of civil society active in combating violence against women and establish effective co-operation with these organisations.

#### **Article 10 – Co-ordinating body**

1. Parties shall designate or establish one or more official bodies responsible for the co-ordination, implementation, monitoring and evaluation of policies and measures to prevent and combat all forms of violence covered by this Convention. These bodies shall co-ordinate the collection of data as referred to in Article 11, analyse and disseminate its results.
2. Parties shall ensure that the bodies designated or established pursuant to this article receive information of a

general nature on measures taken pursuant to Chapter VIII.

3. Parties shall ensure that the bodies designated or established pursuant to this article shall have the capacity to communicate directly and foster relations with their counterparts in other Parties.

#### **Article 11 – Data collection and research**

1. For the purpose of the implementation of this Convention, Parties shall undertake to:
  - a. collect disaggregated relevant statistical data at regular intervals on cases of all forms of violence covered by the scope of this Convention;
  - b. support research in the field of all forms of violence covered by the scope of this Convention in order to study its root causes and effects, incidences and conviction rates, as well as the efficacy of measures taken to implement this Convention.
2. Parties shall endeavour to conduct population-based surveys at regular intervals to assess the prevalence of and trends in all forms of violence covered by the scope of this Convention.
3. Parties shall provide the group of experts, as referred to in Article 66 of this Convention, with the information collected pursuant to this article in order to stimulate international co-operation and enable international benchmarking.
4. Parties shall ensure that the information collected pursuant to this article is available to the public.

### **Chapter III: Prevention**

#### **Article 12 – General obligations**

1. Parties shall take the necessary measures to promote changes in the social and cultural patterns of behaviour of women and men with a view to eradicating prejudices, customs, traditions and all other practices which are based on the idea of the inferiority of women or on stereotyped roles for women and men.
2. Parties shall take the necessary legislative and other measures to prevent all forms of violence covered by the scope of this Convention by any natural or legal person.
3. Any measures taken pursuant to this chapter shall take into account and address the specific needs of persons made vulnerable by particular circumstances and shall place the human rights of all victims at their centre.
4. Parties shall take the necessary measures to encourage all members of society, especially men and boys, to contribute actively to preventing all forms of violence covered by the scope of this Convention.
5. Parties shall ensure that culture, custom, religion, tradition or so-called “honour” shall not be considered as justification for any acts of violence covered by the scope of this Convention.
6. Parties shall take the necessary measures to promote programmes and activities for the empowerment of women.

### **Article 13 – Awareness-raising**

1. Parties shall promote or conduct, on a regular basis and at all levels, awareness-raising campaigns or programmes, including in co-operation with national human rights institutions and equality bodies, civil society and non-governmental organisations, especially women’s organisations, where appropriate, to increase awareness and understanding among the general public of the different manifestations of all forms of violence covered by the scope of this Convention, their consequences on children and the need to prevent such violence.
2. Parties shall ensure the wide dissemination among the general public of information on measures available to prevent acts of violence covered by the scope of this Convention.

### **Article 14 – Education**

1. Parties shall take, where appropriate, the necessary steps to include teaching material on issues such as equality between women and men, non-stereotyped gender roles, mutual respect, non-violent conflict resolution in interpersonal relationships, gender-based violence against women and the right to personal integrity, adapted to the evolving capacity of learners, in formal curricula and at all levels of education
2. Parties shall take the necessary steps to promote the principles referred to in paragraph 1 in informal educational facilities, as well as in sports, cultural and leisure facilities and the media.

### **Article 15 – Training of professionals**

1. Parties shall provide or strengthen appropriate training for the relevant professionals dealing with victims or perpetrators of all acts of violence covered by the scope of this Convention, on the prevention and detection of such violence, equality between women and men, the needs and rights of victims, as well as on how to prevent secondary victimisation.
2. Parties shall encourage that the training referred to in paragraph 1 includes training on co-ordinated multi-agency co-operation to allow for a comprehensive and appropriate handling of referrals in cases of violence covered by the scope of this Convention.

### **Article 16 – Preventive intervention and treatment programmes**

1. Parties shall take the necessary legislative or other measures to set up or support programmes aimed at teaching perpetrators of domestic violence to adopt non-violent behaviour in interpersonal relationships with a view to preventing further violence and changing violent behavioural patterns.
2. Parties shall take the necessary legislative or other measures to set up or support treatment programmes aimed at preventing perpetrators, in particular sex offenders, from re-offending.
3. In taking the measures referred to in paragraphs 1 and 2, Parties shall ensure that the safety of, support for and the human rights of victims are of primary concern and that, where appropriate, these programmes are set up and implemented in close co-ordination with specialist support services for victims.

## **Article 17 – Participation of the private sector and the media**

1. Parties shall encourage the private sector, the information and communication technology sector and the media, with due respect for freedom of expression and their independence, to participate in the elaboration and implementation of policies and to set guidelines and self-regulatory standards to prevent violence against women and to enhance respect for their dignity.
2. Parties shall develop and promote, in co-operation with private sector actors, skills among children, parents and educators on how to deal with the information and communications environment that provides access to degrading content of a sexual or violent nature which might be harmful.

## **Chapter IV: Protection and support**

### **Article 18 – General obligations**

1. Parties shall take the necessary legislative or other measures to protect all victims from any further acts of violence.
2. Parties shall take the necessary legislative or other measures, in accordance with internal law, to ensure that there are appropriate mechanisms to provide for effective co-operation between all relevant state agencies, including the judiciary, public prosecutors, law enforcement agencies, local and regional authorities as well as non-governmental organisations and other relevant organisations and entities, in protecting and supporting victims and witnesses of all forms of violence covered by the scope of this Convention, including by referring to general and specialist support services as detailed in Articles 20 and 22 of this Convention.
3. Parties shall ensure that measures taken pursuant to this chapter shall:
  - be based on a gendered understanding of violence against women and domestic violence and shall focus on the human rights and safety of the victim;
  - be based on an integrated approach which takes into account the relationship between victims, perpetrators, children and their wider social environment;
  - aim at avoiding secondary victimisation;
  - aim at the empowerment and economic independence of women victims of violence;
  - allow, where appropriate, for a range of protection and support services to be located on the same premises;
  - address the specific needs of vulnerable persons, including child victims, and be made available to them.
4. The provision of services shall not depend on the victim's willingness to press charges or testify against any perpetrator.
5. Parties shall take the appropriate measures to provide consular and other protection and support to their nationals and other victims entitled to such protection in accordance with their obligations under international law.

### **Article 19 – Information**

Parties shall take the necessary legislative or other measures to ensure that victims receive adequate and timely information on available support services and legal measures in a language they understand.

## **Article 20 – General support services**

1. Parties shall take the necessary legislative or other measures to ensure that victims have access to services facilitating their recovery from violence. These measures should include, when necessary, services such as legal and psychological counselling, financial assistance, housing, education, training and assistance in finding employment.
2. Parties shall take the necessary legislative or other measures to ensure that victims have access to health care and social services and that services are adequately resourced and professionals are trained to assist victims and refer them to the appropriate services.

## **Article 21 – Assistance in individual/collective complaints**

Parties shall ensure that victims have information on and access to applicable regional and international individual/collective complaints mechanisms. Parties shall promote the provision of sensitive and knowledgeable assistance to victims in presenting any such complaints.

## **Article 22 – Specialist support services**

1. Parties shall take the necessary legislative or other measures to provide or arrange for, in an adequate geographical distribution, immediate, short- and long-term specialist support services to any victim subjected to any of the acts of violence covered by the scope of this Convention.
2. Parties shall provide or arrange for specialist women's support services to all women victims of violence and their children.

## **Article 23 – Shelters**

Parties shall take the necessary legislative or other measures to provide for the setting-up of appropriate, easily accessible shelters in sufficient numbers to provide safe accommodation for and to reach out pro-actively to victims, especially women and their children.

## **Article 24 – Telephone helplines**

Parties shall take the necessary legislative or other measures to set up state-wide round-the-clock (24/7) telephone helplines free of charge to provide advice to callers, confidentially or with due regard for their anonymity, in relation to all forms of violence covered by the scope of this Convention.

## **Article 25 – Support for victims of sexual violence**

Parties shall take the necessary legislative or other measures to provide for the setting up of appropriate, easily accessible rape crisis or sexual violence referral centres for victims in sufficient numbers to provide for medical and forensic examination, trauma support and counselling for victims.

- a.
- b.

## **Article 26 – Protection and support for child witnesses**

1. Parties shall take the necessary legislative or other measures to ensure that in the provision of protection and support services to victims, due account is taken of the rights and needs of child witnesses of all forms of violence covered by the scope of this Convention.
2. Measures taken pursuant to this article shall include age-appropriate psychosocial counselling for child witnesses of all forms of violence covered by the scope of this Convention and shall give due regard to the best interests of the child.

## **Article 27 – Reporting**

Parties shall take the necessary measures to encourage any person witness to the commission of acts of violence covered by the scope of this Convention or who has reasonable grounds to believe that such an act may be committed, or that further acts of violence are to be expected, to report this to the competent organisations or authorities.

## **Article 28 – Reporting by professionals**

Parties shall take the necessary measures to ensure that the confidentiality rules imposed by internal law on certain professionals do not constitute an obstacle to the possibility, under appropriate conditions, of their reporting to the competent organisations or authorities if they have reasonable grounds to believe that a serious act of violence covered by the scope of this Convention, has been committed and further serious acts of violence are to be expected.

## **Chapter V: Substantive law**

### **Article 29 – Civil lawsuits and remedies**

1. Parties shall take the necessary legislative or other measures to provide victims with adequate civil remedies against the perpetrator.
2. Parties shall take the necessary legislative or other measures to provide victims, in accordance with the general principles of international law, with adequate civil remedies against State authorities that have failed in their duty to take the necessary preventive or protective measures within the scope of their powers.

### **Article 30 – Compensation**

1. Parties shall take the necessary legislative or other measures to ensure that victims have the right to claim compensation from perpetrators for any of the offences established in accordance with this Convention.
2. Adequate State compensation shall be awarded to those who have sustained serious bodily injury or impairment of health, to the extent that the damage is not covered by other sources such as the perpetrator, insurance or State-funded health and social provisions. This does not preclude Parties from claiming regress for compensation awarded from the perpetrator, as long as due regard is paid to the victim's safety.
3. Measures taken pursuant to paragraph 2 shall ensure the granting of compensation within a reasonable time.



### **Article 31 – Custody, visitation rights and safety**

1. Parties shall take the necessary legislative or other measures to ensure that, in the determination of custody and visitation rights of children, incidents of violence covered by the scope of this Convention are taken into account.
2. Parties shall take the necessary legislative or other measures to ensure that the exercise of any visitation or custody rights does not jeopardise the rights and safety of the victim or children.

### **Article 32 – Civil consequences of forced marriages**

Parties shall take the necessary legislative or other measures to ensure that marriages concluded under force may be voidable, annulled or dissolved without undue financial or administrative burden placed on the victim.

### **Article 33 – Psychological violence**

Parties shall take the necessary legislative or other measures to ensure that the intentional conduct of seriously impairing a person's psychological integrity through coercion or threats is criminalised.

### **Article 34 – Stalking**

Parties shall take the necessary legislative or other measures to ensure that the intentional conduct of repeatedly engaging in threatening conduct directed at another person, causing her or him to fear for her or his safety, is criminalised.

### **Article 35 – Physical violence**

Parties shall take the necessary legislative or other measures to ensure that the intentional conduct of committing acts of physical violence against another person is criminalised.

### **Article 36 – Sexual violence, including rape**

1. Parties shall take the necessary legislative or other measures to ensure that the following intentional conducts are criminalised:
  - a. engaging in non-consensual vaginal, anal or oral penetration of a sexual nature of the body of another person with any bodily part or object;
  - b. engaging in other non-consensual acts of a sexual nature with a person;
  - c. causing another person to engage in non-consensual acts of a sexual nature with a third person.
2. Consent must be given voluntarily as the result of the person's free will assessed in the context of the surrounding circumstances
3. Parties shall take the necessary legislative or other measures to ensure that the provisions of paragraph 1 also apply to acts committed against former or current spouses or partners as recognised by internal law.

### **Article 37 – Forced marriage**

1. Parties shall take the necessary legislative or other measures to ensure that the intentional conduct of forcing an adult or a child to enter into a marriage is criminalised.
2. Parties shall take the necessary legislative or other measures to ensure that the intentional conduct of luring an adult or a child to the territory of a Party or State other than the one she or he resides in with the purpose of forcing this adult or child to enter into a marriage is criminalised.

### **Article 38 – Female genital mutilation**

Parties shall take the necessary legislative or other measures to ensure that the following intentional conducts are criminalised:

- a. excising, infibulating or performing any other mutilation to the whole or any part of a woman's labia majora, labia minora or clitoris;
- b. coercing or procuring a woman to undergo any of the acts listed in point a;
- c. inciting, coercing or procuring a girl to undergo any of the acts listed in point a.

### **Article 39 – Forced abortion and forced sterilisation**

Parties shall take the necessary legislative or other measures to ensure that the following intentional conducts are criminalised:

- a. performing an abortion on a woman without her prior and informed consent;
- b. performing surgery which has the purpose or effect of terminating a woman's capacity to naturally reproduce without her prior and informed consent or understanding of the procedure.

### **Article 40 – Sexual harassment**

Parties shall take the necessary legislative or other measures to ensure that any form of unwanted verbal, non-verbal or physical conduct of a sexual nature with the purpose or effect of violating the dignity of a person, in particular when creating an intimidating, hostile, degrading, humiliating or offensive environment, is subject to criminal or other legal sanction.

### **Article 41 – Aiding or abetting and attempt**

1. Parties shall take the necessary legislative or other measures to establish as an offence, when committed intentionally, aiding or abetting the commission of the offences established in accordance with Articles 33, 34, 35, 36, 37, 38.a and 39 of this Convention.
2. Parties shall take the necessary legislative or other measures to establish as offences, when committed intentionally, attempts to commit the offences established in accordance with Articles 35, 36, 37, 38.a and 39 of this Convention.

### **Article 42 – Unacceptable justifications for crimes, including crimes committed in the name of so-called “honour”**

1. Parties shall take the necessary legislative or other measures to ensure that, in criminal proceedings initiated

following the commission of any of the acts of violence covered by the scope of this Convention, culture, custom, religion, tradition or so-called “honour” shall not be regarded as justification for such acts. This covers, in particular, claims that the victim has transgressed cultural, religious, social or traditional norms or customs of appropriate behaviour.

2. Parties shall take the necessary legislative or other measures to ensure that incitement by any person of a child to commit any of the acts referred to in paragraph 1 shall not diminish the criminal liability of that person for the acts committed.

#### **Article 43 – Application of criminal offences**

The offences established in accordance with this Convention shall apply irrespective of the nature of the relationship between victim and perpetrator.

#### **Article 44 – Jurisdiction**

1. Parties shall take the necessary legislative or other measures to establish jurisdiction over any offence established in accordance with this Convention, when the offence is committed:

- a. in their territory; or
- b. on board a ship flying their flag; or
- c. on board an aircraft registered under their laws; or
- d. by one of their nationals; or
- e. by a person who has her or his habitual residence in their territory.

2. Parties shall endeavour to take the necessary legislative or other measures to establish jurisdiction over any offence established in accordance with this Convention where the offence is committed against one of their nationals or a person who has her or his habitual residence in their territory.

3. For the prosecution of the offences established in accordance with Articles 36, 37, 38 and 39 of this Convention, Parties shall take the necessary legislative or other measures to ensure that their jurisdiction is not subordinated to the condition that the acts are criminalised in the territory where they were committed.

4. For the prosecution of the offences established in accordance with Articles 36, 37, 38 and 39 of this Convention, Parties shall take the necessary legislative or other measures to ensure that their jurisdiction as regards points d and e of paragraph 1 is not subordinated to the condition that the prosecution can only be initiated following the reporting by the victim of the offence or the laying of information by the State of the place where the offence was committed.

5. Parties shall take the necessary legislative or other measures to establish jurisdiction over the offences established in accordance with this Convention, in cases where an alleged perpetrator is present on their territory and they do not extradite her or him to another Party, solely on the basis of her or his nationality.

6. When more than one Party claims jurisdiction over an alleged offence established in accordance with this Convention, the Parties involved shall, where appropriate, consult each other with a view to determining the most appropriate jurisdiction for prosecution.

7. Without prejudice to the general rules of international law, this Convention does not exclude any criminal jurisdiction exercised by a Party in accordance with its internal law.

#### **Article 45 – Sanctions and measures**

1. Parties shall take the necessary legislative or other measures to ensure that the offences established in accordance with this Convention are punishable by effective, proportionate and dissuasive sanctions, taking into account their seriousness. These sanctions shall include, where appropriate, sentences involving the deprivation of liberty which can give rise to extradition.
2. Parties may adopt other measures in relation to perpetrators, such as:
  - monitoring or supervision of convicted persons;
  - withdrawal of parental rights, if the best interests of the child, which may include the safety of the victim, cannot be guaranteed in any other way.

#### **Article 46 – Aggravating circumstances**

Parties shall take the necessary legislative or other measures to ensure that the following circumstances, insofar as they do not already form part of the constituent elements of the offence, may, in conformity with the relevant provisions of internal law, be taken into consideration as aggravating circumstances in the determination of the sentence in relation to the offences established in accordance with this Convention:

- a. the offence was committed against a former or current spouse or partner as recognised by internal law, by a member of the family, a person cohabiting with the victim or a person having abused her or his authority;
- b. the offence, or related offences, were committed repeatedly;
- c. the offence was committed against a person made vulnerable by particular circumstances;
- d. the offence was committed against or in the presence of a child;
- e. the offence was committed by two or more people acting together;
- f. the offence was preceded or accompanied by extreme levels of violence;
- g. the offence was committed with the use or threat of a weapon;  
the offence resulted in severe physical or psychological harm for the victim;
- h. the perpetrator had previously been convicted of offences of a similar nature.

#### **Article 47 – Sentences passed by another Party**

Parties shall take the necessary legislative or other measures to provide for the possibility of taking into account final sentences passed by another Party in relation to the offences established in accordance with this Convention when determining the sentence.

#### **Article 48 – Prohibition of mandatory alternative dispute resolution processes or sentencing**

1. Parties shall take the necessary legislative or other measures to prohibit mandatory alternative dispute resolution processes, including mediation and conciliation, in relation to all forms of violence covered by the scope of this Convention.
2. Parties shall take the necessary legislative or other measures to ensure that if the payment of a fine is ordered, due account shall be taken of the ability of the perpetrator to assume his or her financial obligations towards the victim.

## **Chapter VI: Investigation, prosecution, procedural law and protective measures**

### **Article 49 – General obligations**

1. Parties shall take the necessary legislative or other measures to ensure that investigations and judicial proceedings in relation to all forms of violence covered by the scope of this Convention are carried out without undue delay while taking into consideration the rights of the victim during all stages of the criminal proceedings.
2. Parties shall take the necessary legislative or other measures, in conformity with the fundamental principles of human rights and having regard to the gendered understanding of violence, to ensure the effective investigation and prosecution of offences established in accordance with this Convention.

### **Article 50 – Immediate response, prevention and protection**

1. Parties shall take the necessary legislative or other measures to ensure that the responsible law enforcement agencies respond to all forms of violence covered by the scope of this Convention promptly and appropriately by offering adequate and immediate protection to victims.
2. Parties shall take the necessary legislative or other measures to ensure that the responsible law enforcement agencies engage promptly and appropriately in the prevention and protection against all forms of violence covered by the scope of this Convention, including the employment of preventive operational measures and the collection of evidence.

### **Article 51 – Risk assessment and risk management**

1. Parties shall take the necessary legislative or other measures to ensure that an assessment of the lethality risk, the seriousness of the situation and the risk of repeated violence is carried out by all relevant authorities in order to manage the risk and if necessary to provide co-ordinated safety and support.
2. Parties shall take the necessary legislative or other measures to ensure that the assessment referred to in paragraph 1 duly takes into account, at all stages of the investigation and application of protective measures, the fact that perpetrators of acts of violence covered by the scope of this Convention possess or have access to firearms.

### **Article 52 – Emergency barring orders**

Parties shall take the necessary legislative or other measures to ensure that the competent authorities are granted the power to order, in situations of immediate danger, a perpetrator of domestic violence to vacate the residence of the victim or person at risk for a sufficient period of time and to prohibit the perpetrator from entering the residence of or contacting the victim or person at risk. Measures taken pursuant to this article shall give priority to the safety of victims or persons at risk.

### **Article 53 – Restraining or protection orders**

1. Parties shall take the necessary legislative or other measures to ensure that appropriate restraining or protection orders are available to victims of all forms of violence covered by the scope of this Convention.

2. Parties shall take the necessary legislative or other measures to ensure that the restraining or protection orders referred to in paragraph 1 are:

- available for immediate protection and without undue financial or administrative burdens placed on the victim;
- issued for a specified period or until modified or discharged;
- where necessary, issued on an ex parte basis which has immediate effect;
- available irrespective of, or in addition to, other legal proceedings;
- allowed to be introduced in subsequent legal proceedings.

Parties shall take the necessary legislative or other measures to ensure that breaches of restraining or protection orders issued pursuant to paragraph 1 shall be subject to effective, proportionate and dissuasive criminal or other legal sanctions.

#### **Article 54 – Investigations and evidence**

Parties shall take the necessary legislative or other measures to ensure that, in any civil or criminal proceedings, evidence relating to the sexual history and conduct of the victim shall be permitted only when it is relevant and necessary.

#### **Article 55 – Ex parte and ex officio proceedings**

1. Parties shall ensure that investigations into or prosecution of offences established in accordance with Articles 35, 36, 37, 38 and 39 of this Convention shall not be wholly dependant upon a report or complaint filed by a victim if the offence was committed in whole or in part on its territory, and that the proceedings may continue even if the victim withdraws her or his statement or complaint.

2. Parties shall take the necessary legislative or other measures to ensure, in accordance with the conditions provided for by their internal law, the possibility for governmental and non-governmental organisations and domestic violence counsellors to assist and/or support victims, at their request, during investigations and judicial proceedings concerning the offences established in accordance with this Convention.

#### **Article 56 – Measures of protection**

1. Parties shall take the necessary legislative or other measures to protect the rights and interests of victims, including their special needs as witnesses, at all stages of investigations and judicial proceedings, in particular by:
- a. providing for their protection, as well as that of their families and witnesses, from intimidation, retaliation and repeat victimisation;
  - b. ensuring that victims are informed, at least in cases where the victims and the family might be in danger, when the perpetrator escapes or is released temporarily or definitively;
  - c. informing them, under the conditions provided for by internal law, of their rights and the services at their disposal and the follow-up given to their complaint, the charges, the general progress of the investigation or proceedings, and their role therein, as well as the outcome of their case;
  - d. enabling victims, in a manner consistent with the procedural rules of internal law, to be heard, to supply evidence and have their views, needs and concerns presented, directly or through an intermediary, and considered;
  - e. providing victims with appropriate support services so that their rights and interests are duly presented and taken into account;
  - f. ensuring that measures may be adopted to protect the privacy and the image of the victim;



- g. ensuring that contact between victims and perpetrators within court and law enforcement agency premises is avoided where possible;
  - h. providing victims with independent and competent interpreters when victims are parties to proceedings or when they are supplying evidence;
  - i. enabling victims to testify, according to the rules provided by their internal law, in the courtroom without being present or at least without the presence of the alleged perpetrator, notably through the use of appropriate communication technologies, where available.
2. A child victim and child witness of violence against women and domestic violence shall be afforded, where appropriate, special protection measures taking into account the best interests of the child.

#### **Article 57 – Legal aid**

Parties shall provide for the right to legal assistance and to free legal aid for victims under the conditions provided by their internal law.

#### **Article 58 – Statute of limitation**

Parties shall take the necessary legislative and other measures to ensure that the statute of limitation for initiating any legal proceedings with regard to the offences established in accordance with Articles 36, 37, 38 and 39 of this Convention, shall continue for a period of time that is sufficient and commensurate with the gravity of the offence in question, to allow for the efficient initiation of proceedings after the victim has reached the age of majority.

### **Chapter VII: Migration and asylum**

#### **Article 59 – Residence status**

1. Parties shall take the necessary legislative or other measures to ensure that victims whose residence status depends on that of the spouse or partner as recognised by internal law, in the event of the dissolution of the marriage or the relationship, are granted in the event of particularly difficult circumstances, upon application, an autonomous residence permit irrespective of the duration of the marriage or the relationship. The conditions relating to the granting and duration of the autonomous residence permit are established by internal law.
2. Parties shall take the necessary legislative or other measures to ensure that victims may obtain the suspension of expulsion proceedings initiated in relation to a residence status dependent on that of the spouse or partner as recognised by internal law to enable them to apply for an autonomous residence permit.
3. Parties shall issue a renewable residence permit to victims in one of the two following situations, or in both:
  - a. where the competent authority considers that their stay is necessary owing to their personal situation;
  - b. where the competent authority considers that their stay is necessary for the purpose of their co-operation with the competent authorities in investigation or criminal proceedings.
4. Parties shall take the necessary legislative or other measures to ensure that victims of forced marriage brought into another country for the purpose of the marriage and who, as a result, have lost their residence status in the country where they habitually reside, may regain this status.

## **Article 60 – Gender-based asylum claims**

1. Parties shall take the necessary legislative or other measures to ensure that gender-based violence against women may be recognised as a form of persecution within the meaning of Article 1, A (2), of the 1951 Convention relating to the Status of Refugees and as a form of serious harm giving rise to complementary/subsidiary protection.
2. Parties shall ensure that a gender-sensitive interpretation is given to each of the Convention grounds and that where it is established that the persecution feared is for one or more of these grounds, applicants shall be granted refugee status according to the applicable relevant instruments.
3. Parties shall take the necessary legislative or other measures to develop gender-sensitive reception procedures and support services for asylum-seekers as well as gender guidelines and gender-sensitive asylum procedures, including refugee status determination and application for international protection.

## **Article 61 – Non-refoulement**

1. Parties shall take the necessary legislative or other measures to respect the principle of non-refoulement in accordance with existing obligations under international law.
2. Parties shall take the necessary legislative or other measures to ensure that victims of violence against women who are in need of protection, regardless of their status or residence, shall not be returned under any circumstances to any country where their life would be at risk or where they might be subjected to torture or inhuman or degrading treatment or punishment.

## **Chapter VIII: International co-operation**

### **Article 62 – General principles**

1. Parties shall co-operate with each other, in accordance with the provisions of this Convention, and through the application of relevant international and regional instruments on co-operation in civil and criminal matters, arrangements agreed on the basis of uniform or reciprocal legislation and internal laws, to the widest extent possible, for the purpose of:
  - a. preventing, combating and prosecuting all forms of violence covered by the scope of this Convention;
  - b. protecting and providing assistance to victims;
  - c. investigations or proceedings concerning the offences established in accordance with this Convention;
  - d. enforcing relevant civil and criminal judgments issued by the judicial authorities of Parties, including protection orders.
2. Parties shall take the necessary legislative or other measures to ensure that victims of an offence established in accordance with this Convention and committed in the territory of a Party other than the one where they reside may make a complaint before the competent authorities of their State of residence.
3. If a Party that makes mutual legal assistance in criminal matters, extradition or enforcement of civil or criminal judgments imposed by another Party to this Convention conditional on the existence of a treaty receives a request for such legal co-operation from a Party with which it has not concluded such a treaty, it may consider this

Convention to be the legal basis for mutual legal assistance in criminal matters, extradition or enforcement of civil or criminal judgments imposed by the other Party in respect of the offences established in accordance with this Convention

4. Parties shall endeavour to integrate, where appropriate, the prevention and the fight against violence against women and domestic violence in assistance programmes for development provided for the benefit of third States, including by entering into bilateral and multilateral agreements with third States with a view to facilitating the protection of victims in accordance with Article 18, paragraph 5.

#### **Article 63 – Measures relating to persons at risk**

When a Party, on the basis of the information at its disposal, has reasonable grounds to believe that a person is at immediate risk of being subjected to any of the acts of violence referred to in Articles 36, 37, 38 and 39 of this Convention on the territory of another Party, the Party that has the information is encouraged to transmit it without delay to the latter for the purpose of ensuring that appropriate protection measures are taken. Where applicable, this information shall include details on existing protection provisions for the benefit of the person at risk.

#### **Article 64 – Information**

1. The requested Party shall promptly inform the requesting Party of the final result of the action taken under this chapter. The requested Party shall also promptly inform the requesting Party of any circumstances which render impossible the carrying out of the action sought or are likely to delay it significantly.

2. A Party may, within the limits of its internal law, without prior request, forward to another Party information obtained within the framework of its own investigations when it considers that the disclosure of such information might assist the receiving Party in preventing criminal offences established in accordance with this Convention or in initiating or carrying out investigations or proceedings concerning such criminal offences or that it might lead to a request for co-operation by that Party under this chapter

3. A Party receiving any information in accordance with paragraph 2 shall submit such information to its competent authorities in order that proceedings may be taken if they are considered appropriate, or that this information may be taken into account in relevant civil and criminal proceedings.

#### **Article 65 – Data Protection**

Personal data shall be stored and used pursuant to the obligations undertaken by the Parties under the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (ETS No. 108).

### **Chapter IX: Monitoring mechanism**

#### **Article 66 – Group of experts on action against violence against women and domestic violence**

1. The Group of experts on action against violence against women and domestic violence (hereinafter referred to as “GREVIO”) shall monitor the implementation of this Convention by the Parties.

2. GREVIO shall be composed of a minimum of 10 members and a maximum of 15 members, taking into account a gender and geographical balance, as well as multidisciplinary expertise. Its members shall be elected by the Committee of the Parties from among candidates nominated by the Parties for a term of office of four years, renewable once, and chosen from among nationals of the Parties.
3. The initial election of 10 members shall be held within a period of one year following the entry into force of this Convention. The election of five additional members shall be held following the 25th ratification or accession.
4. The election of the members of GREVIO shall be based on the following principles:
  - a. they shall be chosen according to a transparent procedure from among persons of high moral character, known for their recognised competence in the fields of human rights, gender equality, violence against women and domestic violence, or assistance to and protection of victims, or having demonstrated professional experience in the areas covered by this Convention;
  - b. no two members of GREVIO may be nationals of the same State;
  - c. they should represent the main legal systems;
  - d. they should represent relevant actors and agencies in the field of violence against women and domestic violence;
  - e. they shall sit in their individual capacity and shall be independent and impartial in the exercise of their functions, and shall be available to carry out their duties in an effective manner.
5. The election procedure of the members of GREVIO shall be determined by the Committee of Ministers of the Council of Europe, after consulting with and obtaining the unanimous consent of the Parties, within a period of six months following the entry into force of this Convention.
6. GREVIO shall adopt its own rules of procedure.
7. Members of GREVIO, and other members of delegations carrying out the country visits as set forth in Article 68, paragraphs 9 and 14, shall enjoy the privileges and immunities established in the appendix to this Convention.

#### **Article 67 – Committee of the Parties**

1. The Committee of the Parties shall be composed of the representatives of the Parties to the Convention.
2. The Committee of the Parties shall be convened by the Secretary General of the Council of Europe. Its first meeting shall be held within a period of one year following the entry into force of this Convention in order to elect the members of GREVIO. It shall subsequently meet whenever one third of the Parties, the President of the Committee of the Parties or the Secretary General so requests.
3. The Committee of the Parties shall adopt its own rules of procedure.

#### **Article 68 – Procedure**

1. Parties shall submit to the Secretary General of the Council of Europe, based on a questionnaire prepared by GREVIO, a report on legislative and other measures giving effect to the provisions of this Convention, for consideration by GREVIO.

2. GREVIO shall consider the report submitted in accordance with paragraph 1 with the representatives of the Party concerned.
3. Subsequent evaluation procedures shall be divided into rounds, the length of which is determined by GREVIO. At the beginning of each round GREVIO shall select the specific provisions on which the evaluation procedure shall be based and send out a questionnaire.
4. GREVIO shall define the appropriate means to carry out this monitoring procedure. It may in particular adopt a questionnaire for each evaluation round, which shall serve as a basis for the evaluation procedure of the implementation by the Parties. This questionnaire shall be addressed to all Parties. Parties shall respond to this questionnaire, as well as to any other request of information from GREVIO.
5. GREVIO may receive information on the implementation of the Convention from non-governmental organisations and civil society, as well as from national institutions for the protection of human rights.
6. GREVIO shall take due consideration of the existing information available from other regional and international instruments and bodies in areas falling within the scope of this Convention.
7. When adopting a questionnaire for each evaluation round, GREVIO shall take due consideration of the existing data collection and research in the Parties as referred to in Article 11 of this Convention.
8. GREVIO may receive information on the implementation of the Convention from the Council of Europe Commissioner for Human Rights, the Parliamentary Assembly and relevant specialised bodies of the Council of Europe, as well as those established under other international instruments. Complaints presented to these bodies and their outcome will be made available to GREVIO.
9. GREVIO may subsidiarily organise, in co-operation with the national authorities and with the assistance of independent national experts, country visits, if the information gained is insufficient or in cases provided for in paragraph 14. During these visits, GREVIO may be assisted by specialists in specific fields.
10. GREVIO shall prepare a draft report containing its analysis concerning the implementation of the provisions on which the evaluation is based, as well as its suggestions and proposals concerning the way in which the Party concerned may deal with the problems which have been identified. The draft report shall be transmitted for comments to the Party which undergoes the evaluation. Its comments shall be taken into account by GREVIO when adopting its report.
11. On the basis of all the information received and the comments by the Parties, GREVIO shall adopt its report and conclusions concerning the measures taken by the Party concerned to implement the provisions of this Convention. This report and the conclusions shall be sent to the Party concerned and to the Committee of the Parties. The report and conclusions of GREVIO shall be made public as from their adoption, together with eventual comments by the Party concerned.
12. Without prejudice to the procedure of paragraphs 1 to 8, the Committee of the Parties may adopt, on the basis of the report and conclusions of GREVIO, recommendations addressed to this Party (a) concerning the measures to be taken to implement the conclusions of GREVIO, if necessary setting a date for submitting information on their implementation, and (b) aiming at promoting co-operation with that Party for the proper implementation of this Convention.

13. If GREVIO receives reliable information indicating a situation where problems require immediate attention to prevent or limit the scale or number of serious violations of the Convention, it may request the urgent submission of a special report concerning measures taken to prevent a serious, massive or persistent pattern of violence against women.

14. Taking into account the information submitted by the Party concerned, as well as any other reliable information available to it, GREVIO may designate one or more of its members to conduct an inquiry and to report urgently to GREVIO. Where warranted and with the consent of the Party, the inquiry may include a visit to its territory.

15. After examining the findings of the inquiry referred to in paragraph 14, GREVIO shall transmit these findings to the Party concerned and, where appropriate, to the Committee of the Parties and the Committee of Ministers of the Council of Europe together with any comments and recommendations.

#### **Article 69 – General recommendations**

GREVIO may adopt, where appropriate, general recommendations on the implementation of this Convention.

#### **Article 70 – Parliamentary involvement in monitoring**

1. National parliaments shall be invited to participate in the monitoring of the measures taken for the implementation of this Convention.
2. Parties shall submit the reports of GREVIO to their national parliaments.
3. The Parliamentary Assembly of the Council of Europe shall be invited to regularly take stock of the implementation of this Convention.

### **Chapter X: Relationship with other international instruments**

#### **Article 71 – Relationship with other international instruments**

1. This Convention shall not affect obligations arising from other international instruments to which Parties to this Convention are Parties or shall become Parties and which contain provisions on matters governed by this Convention.
2. The Parties to this Convention may conclude bilateral or multilateral agreements with one another on the matters dealt with in this Convention, for purposes of supplementing or strengthening its provisions or facilitating the application of the principles embodied in it.



## **Chapter XI: Amendments to the Convention**

### **Article 72 – Amendments**

1. Any proposal for an amendment to this Convention presented by a Party shall be communicated to the Secretary General of the Council of Europe and forwarded by her or him to the member States of the Council of Europe, any signatory, any Party, the European Union, any State invited to sign this Convention in accordance with the provisions of Article 75, and any State invited to accede to this Convention in accordance with the provisions of Article 76.
2. The Committee of Ministers of the Council of Europe shall consider the proposed amendment and, after having consulted the Parties to this Convention that are not members of the Council of Europe, may adopt the amendment by the majority provided for in Article 20.d of the Statute of the Council of Europe.
3. The text of any amendment adopted by the Committee of Ministers in accordance with paragraph 2 shall be forwarded to the Parties for acceptance.
4. Any amendment adopted in accordance with paragraph 2 shall enter into force on the first day of the month following the expiration of a period of one month after the date on which all Parties have informed the Secretary General of their acceptance.

## **Chapter XII: Final clauses**

### **Article 73 – Effects of this Convention**

The provisions of this Convention shall not prejudice the provisions of internal law and binding international instruments which are already in force or may come into force, under which more favourable rights are or would be accorded to persons in preventing and combating violence against women and domestic violence.

### **Article 74 – Dispute settlement**

1. The Parties to any dispute which may arise concerning the application or interpretation of the provisions of this Convention shall first seek to resolve it by means of negotiation, conciliation, arbitration or by any other methods of peaceful settlement accepted by mutual agreement between them.
2. The Committee of Ministers of the Council of Europe may establish procedures of settlement to be available for use by the Parties in dispute if they should so agree.

### **Article 75 – Signature and entry into force**

1. This Convention shall be open for signature by the member States of the Council of Europe, the non-member States which have participated in its elaboration and the European Union.
2. This Convention is subject to ratification, acceptance or approval. Instruments of ratification, acceptance or approval shall be deposited with the Secretary General of the Council of Europe.

3. This Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date on which 10 signatories, including at least eight member States of the Council of Europe, have expressed their consent to be bound by the Convention in accordance with the provisions of paragraph 2.
4. In respect of any State referred to in paragraph 1 or the European Union, which subsequently expresses its consent to be bound by it, the Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date of the deposit of its instrument of ratification, acceptance or approval.

#### **Article 76 – Accession to the Convention**

1. After the entry into force of this Convention, the Committee of Ministers of the Council of Europe may, after consultation of the Parties to this Convention and obtaining their unanimous consent, invite any non-member State of the Council of Europe, which has not participated in the elaboration of the Convention, to accede to this Convention by a decision taken by the majority provided for in Article 20.d of the Statute of the Council of Europe, and by unanimous vote of the representatives of the Parties entitled to sit on the Committee of Ministers.
2. In respect of any acceding State, the Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date of deposit of the instrument of accession with the Secretary General of the Council of Europe.

#### **Article 77 – Territorial application**

1. Any State or the European Union may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, specify the territory or territories to which this Convention shall apply.
2. Any Party may, at any later date, by a declaration addressed to the Secretary General of the Council of Europe, extend the application of this Convention to any other territory specified in the declaration and for whose international relations it is responsible or on whose behalf it is authorised to give undertakings. In respect of such territory, the Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date of receipt of such declaration by the Secretary General.
3. Any declaration made under the two preceding paragraphs may, in respect of any territory specified in such declaration, be withdrawn by a notification addressed to the Secretary General of the Council of Europe. The withdrawal shall become effective on the first day of the month following the expiration of a period of three months after the date of receipt of such notification by the Secretary General.

#### **Article 78 – Reservations**

1. No reservation may be made in respect of any provision of this Convention, with the exceptions provided for in paragraphs 2 and 3.
2. Any State or the European Union may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, by a declaration addressed to the Secretary General of the Council of Europe, declare that it reserves the right not to apply or to apply only in specific cases or conditions the provisions laid down in:

- Article 30, paragraph 2;
- Article 44, paragraphs 1.e, 3 and 4;
- Article 55, paragraph 1 in respect of Article 35 regarding minor offences;
- Article 58 in respect of Articles 37, 38 and 39;
- Article 59.

3. Any State or the European Union may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, by a declaration addressed to the Secretary General of the Council of Europe, declare that it reserves the right to provide for non-criminal sanctions, instead of criminal sanctions, for the behaviours referred to in Articles 33 and 34.

4. Any Party may wholly or partly withdraw a reservation by means of a declaration addressed to the Secretary General of the Council of Europe. This declaration shall become effective as from its date of receipt by the Secretary General.

#### **Article 79 – Validity and review of reservations**

1. Reservations referred to in Article 78, paragraphs 2 and 3, shall be valid for a period of five years from the day of the entry into force of this Convention in respect of the Party concerned. However, such reservations may be renewed for periods of the same duration.

2. Eighteen months before the date of expiry of the reservation, the Secretariat General of the Council of Europe shall give notice of that expiry to the Party concerned. No later than three months before the expiry, the Party shall notify the Secretary General that it is upholding, amending or withdrawing its reservation. In the absence of a notification by the Party concerned, the Secretariat General shall inform that Party that its reservation is considered to have been extended automatically for a period of six months. Failure by the Party concerned to notify its intention to uphold or modify its reservation before the expiry of that period shall cause the reservation to lapse.

3. If a Party makes a reservation in conformity with Article 78, paragraphs 2 and 3, it shall provide, before its renewal or upon request, an explanation to GREVIO, on the grounds justifying its continuance.

#### **Article 80 – Denunciation**

1. Any Party may, at any time, denounce this Convention by means of a notification addressed to the Secretary General of the Council of Europe.

2. Such denunciation shall become effective on the first day of the month following the expiration of a period of three months after the date of receipt of the notification by the Secretary General.

#### **Article 81 – Notification**

The Secretary General of the Council of Europe shall notify the member States of the Council of Europe, the non-member States which have participated in its elaboration, any signatory, any Party, the European Union, and any State invited to accede to this Convention of:

- a. any signature;
- b. the deposit of any instrument of ratification, acceptance, approval or accession;

- c. any date of entry into force of this Convention in accordance with Articles 75 and 76;
- d. any amendment adopted in accordance with Article 72 and the date on which such an amendment enters into force;
- e. any reservation and withdrawal of reservation made in pursuance of Article 78;
- f. any denunciation made in pursuance of the provisions of Article 80;
- g. any other act, notification or communication relating to this Convention.

In witness whereof the undersigned, being duly authorised thereto, have signed this Convention.

Done at Istanbul, this 11th day of May 2011, in English and in French, both texts being equally authentic, in a single copy which shall be deposited in the archives of the Council of Europe. The Secretary General of the Council of Europe shall transmit certified copies to each member State of the Council of Europe, to the non-member States which have participated in the elaboration of this Convention, to the European Union and to any State invited to accede to this Convention.

### **Appendix – Privileges and immunities (Article 66)**

1. This appendix shall apply to the members of GREVIO mentioned in Article 66 of the Convention, as well as to other members of the country visit delegations. For the purpose of this appendix, the term “other members of the country visit delegations” shall include the independent national experts and the specialists mentioned in Article 68, paragraph 9, of the Convention, staff members of the Council of Europe and interpreters employed by the Council of Europe accompanying GREVIO during its country visits.

2. The members of GREVIO and the other members of the country visit delegations shall, while exercising their functions relating to the preparation and the carrying out of country visits, as well as the follow-up thereto, and travelling in connection with those functions, enjoy the following privileges and immunities:

- a. immunity from personal arrest or detention and from seizure of their personal baggage, and immunity from legal process of every kind in respect of words spoken or written and all acts performed by them in their official capacity;
- b. exemption from any restrictions on their freedom of movement on exit from and return to their country of residence, and entry into and exit from the country in which they exercise their functions, and from alien registration in the country which they are visiting or through which they are passing in the exercise of their functions.

3. In the course of journeys undertaken in the exercise of their functions, the members of GREVIO and the other members of the country visit delegations shall, in the matter of customs and exchange control, be accorded the same facilities as those accorded to representatives of foreign governments on temporary official duty.

4. The documents relating to the evaluation of the implementation of the Convention carried by members of GREVIO and other members of the country visit delegations shall be inviolable insofar as they concern the activity of GREVIO. No stoppage or censorship shall be applied to the official correspondence of GREVIO or to official communications of members of GREVIO and other members of the country visit delegations.

5. In order to secure for the members of GREVIO and the other members of the country visit delegations complete freedom of speech and complete independence in the discharge of their duties, the immunity from legal process in respect of words spoken or written and all acts done by them in discharging their duties shall continue to

be accorded, notwithstanding that the persons concerned are no longer engaged in the discharge of such duties.

6. Privileges and immunities are granted to the persons mentioned in paragraph 1 of this appendix in order to safeguard the independent exercise of their functions in the interests of GREVIO and not for their personal benefit. The waiver of immunities of the persons mentioned in paragraph 1 of this appendix shall be made by the Secretary General of the Council of Europe in any case where, in his or her opinion, the immunity would impede the course of justice and where it can be waived without prejudice to the interests of GREVIO.

# 2 ■ ISTANBUL CONVENTION AS A GLOBAL TOOL TO PREVENT AND COMBAT VIOLENCE AGAINST WOMEN AND GIRLS

## 2.1 Strengthening the international legal framework

Acts of violence against women – whether physical violence, sexual abuse, forcing girls into unwanted marriages or female genital mutilation - are neither random misfortunes, nor isolated crimes. They are part of a social mechanism which allows or tolerates discrimination against women. Because of widespread inaction to stop it, violence against women and girls represents perhaps the most pervasive human rights violation of our times.

The concept of violence against women as a form of discrimination and as a human rights violation – first introduced by the global women’s rights movement - has progressively gained acceptance at the international level since the 1990s. In 1992, the CEDAW Committee adopted its trailblazing General Recommendation No. 19, thereby establishing that gender-based violence was a form of discrimination against women and linking the achievement of gender equality to the eradication of violence against women, and vice versa. The United Nations General Assembly Declaration on the Elimination of Violence against Women, adopted a year later in 1993, specified the types and forms of violence against women and the contexts in which it occurs.

The first regional treaty on violence against women, the Inter-American Convention on the prevention, punishment and eradication of violence against women (Belém do Pará) adopted in 1994, recognized violence

against women as a human rights violation in its preamble. The second regional treaty, the Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa, adopted in 2003 by the African Union, linked the eradication of violence against women to the advancement of women in all aspects of life by introducing a prohibition of violence against women within its women’s rights catalogue.

The Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention), the third regional treaty, builds on these landmark developments and moves the international legal framework a step further by establishing a legally-binding definition of violence against women as “a violation of human rights and a form of discrimination against women”. Taken together, CEDAW and the three regional treaties make up a global human rights legal framework to strategically and effectively address all forms of violence against women.

## 2.2 Ground-breaking features of the Istanbul Convention in the international context

The Istanbul Convention is the most far reaching international treaty to tackle violence against women. It breaks new ground by requesting states to criminalize

the various forms of violence against women, including physical, sexual and psychological violence, stalking, sexual harassment, female genital mutilation, forced marriage, forced abortion and forced sterilization.

Building on the jurisprudence of the European and Inter-American Courts of Human Rights, the Istanbul Convention integrates the 'due diligence' standard and defines it as the obligation of states to *"prevent, investigate, punish and provide reparation for acts of violence perpetrated by non-state actors"*.

The Istanbul Convention is the first international treaty to contain a definition of gender as a socially constructed category that differentiates between 'women' and 'men' according to socially assigned roles, behaviours, activities and attributes.

Of particular relevance in the international context, the Istanbul Convention explicitly states that it shall apply in times of peace and in situations of armed conflict.

The Istanbul Convention takes a vital 'cross-border approach', given the transnational nature of some of the forms of violence against women. Forced marriages, for example, often entail crossing borders, because children or adults are taken abroad for this purpose, and the Istanbul Convention makes it clear that such conduct is a crime. To increase prosecution rates, the Istanbul Convention makes it obligatory for states parties to extend their jurisdiction for such crimes committed abroad by their nationals, and even makes it possible to prosecute their *residents*. Conversely, the Istanbul Convention creates the framework for greater access to justice for nationals or residents of states parties who become victims of crimes of violence against women while abroad.

In a fundamental departure from the gender blindness that has often characterized the application of the 1951 Refugee Convention, the Istanbul Convention requires states parties to ensure that gender-based violence may be recognized as a form of persecution when

establishing refugee status or international subsidiary protection for women who may be fleeing from rape used as a weapon of war, female genital mutilation or a life of domestic violence.

Another important feature of the Istanbul Convention in the international context relates to the protection it affords to migrant women. Sensitive to the problems faced by migrant women who are trapped in abusive relationships, the Istanbul Convention introduces a number of protection measures, including the option of granting them an autonomous residence permit, independent of that of their abusive spouse or partner.

## 2.3 A global blueprint: The holistic approach of the Istanbul Convention to ending violence against women and girls

The Istanbul Convention and its provisions stem from the in-depth analysis of problems and solutions tested throughout the Council of Europe member states and beyond: they are good practices brought up to the level of a legally-binding instrument. Practical and detailed, the Istanbul Convention is a global blueprint for laws and policies to end violence against women and domestic violence. It requires states to offer a holistic response to violence against women, through the '4 Ps approach':

- ~ **Prevention** of violence through sustained measures that address its root causes and aim at changing attitudes, gender roles and stereotypes that make violence against women acceptable;
- ~ **Protecting** women and girls who are known to be at risk and setting up specialist support services for victims and their children (shelters, round-the-clock telephone helplines, rape crisis or sexual violence referral centers);



- ~ **Prosecuting** the perpetrators, including by enabling criminal investigations and proceedings to continue, even if the victim withdraws the complaint;
- ~ Adopting and implementing state wide '**integrated policies**' that are effective, co-ordinated and comprehensive, in that they encompass all relevant measures to prevent and combat all forms of violence against women.

When designing and implementing legislation and policies as foreseen by the Istanbul Convention, states are expected to involve the various national agencies, services and actors concerned: the judiciary, the police, the service providers, NGOs, as well as national, regional and local parliaments and authorities. The setting-up of national or relevant co-ordinating bodies is required to ensure the smooth co-operation of all actors and to facilitate international co-operation. Furthermore, states parties have an obligation to co-operate with each other to the widest extent possible in order to prevent, combat and prosecute all forms of violence covered by the Istanbul Convention, and protect and provide assistance to victims.

The Istanbul Convention sets up a mechanism to monitor the implementation of its provisions by the states parties, which includes a group of independent experts called GREVIO. The monitoring mechanism of the Istanbul Convention represents a unique platform to achieve progress both at national and international levels. It is expected to generate very valuable data, advice and support emerging from the in-depth analysis of the various national contexts and the mobilization of expertise and exchange of good practices. Strategizing over problems and their solutions, the monitoring process will offer a vital forum to co-ordinate and to set a global agenda to eliminate violence against women.

## 2.4 How the Istanbul Convention can be used in states that are not members of the Council of Europe

Violence against women and girls is a worldwide phenomenon. The Istanbul Convention was drafted with the understanding that measures to address this global problem should not be limited to a particular geographic area. Once the Convention enters into force, it is open to accession by any country in the world.

As a comprehensive blueprint for an all-encompassing national response to violence against women and domestic violence, the Convention offers guidance and inspiration for any government in the world wishing to address any form of violence against women covered by it, whether they formally become state parties or not. To non-governmental organizations, it provides a sound basis for advocacy for an improved government response to violence against women and serves as a policy document. Recognizing the importance of foreign aid in supporting beneficiary countries to make progress in the reduction of violence, the Istanbul Convention encourages states parties to integrate measures to prevent and combat violence against women and domestic violence in their assistance programmes.

## 2.5 A call to action

No matter how powerful it may be as a standard, the Istanbul Convention is not an end in itself. It is a call to action: for countries to sign and ratify the Convention, for governments to design and implement the policies required by the Convention, for parliaments and parliamentarians to be continuously engaged in reviewing legislation and monitoring the effectiveness of the measures taken and for local authorities and civil society to actively participate in the response to violence against women.

Making the Istanbul Convention a reality requires a dynamic global alliance and a sustained effort to implement its provisions whenever and wherever women and girls suffer gender-based violence, the world over.

*Every woman is entitled  
to the free and full exercise of her civil,  
political, economic, social and cultural rights,*

*The Belém do Pará Convention - Article 5*



# 3 SAFE FROM FEAR, SAFE FROM VIOLENCE: AN OVERVIEW OF THE ISTANBUL CONVENTION

## 3.1 What is the purpose of the convention?

The new Council of Europe Convention on preventing and combating violence against women and domestic violence is the most far-reaching international treaty to tackle this serious violation of human rights. It aims at zero tolerance for such violence and is a major step forward in making Europe and beyond a safer place.

Preventing violence, protecting its victims and prosecuting the perpetrators are the cornerstones of the convention. It also seeks to change the hearts and minds of individuals by calling on all members of society, in particular men and boys, to change attitudes. In essence, it is a renewed call for greater equality between women and men, because violence against women is deeply rooted in the inequality between women and men in society and is perpetuated by a culture of tolerance and denial.

## 3.2 Groundbreaking features of the convention

It recognizes violence against women as a violation of human rights and a form of discrimination. This means that states are held responsible if they do not respond adequately to such violence.

It is the first international treaty to contain a definition of gender. This means that it is now recognized that women and men are not only biologically female or male,

but that there is also a socially constructed category of gender that assigns women and men their particular roles and behaviours. Research has shown that certain roles and behaviours can contribute to make violence against women acceptable.

It introduces a set of groundbreaking criminal offences such as female genital mutilation, forced marriage, stalking, forced abortion and forced sterilization. This means that states will have to introduce important offences which did not before exist in their legal systems.

It calls for the involvement of all relevant state agencies and services so that violence against women and domestic violence are tackled in a co-ordinated way. This means that agencies and NGOs should not act alone but work out protocols for co-operation.

## 3.3 What does the convention require states to do?

### Prevention

- ~ change attitudes, gender roles and stereotypes that make violence against women acceptable;
- ~ train professionals working with victims;
- ~ raise awareness of the different forms of violence and their traumatizing nature;

- ~ include teaching material on equality issues in the curricula at all levels of education;
- ~ co-operate with NGOs, the media and the private sector to reach out to the public.

## Protection

- ~ ensure that the needs and safety of victims are placed at the heart of all measures;
- ~ set up specialized support services that provide medical assistance as well as psychological and legal counselling to victims and their children;
- ~ set up shelters in sufficient numbers and introduce free of charge round-the-clock telephone helplines.

## Prosecution

- ~ ensure that violence against women is criminalized and appropriately punished;
- ~ ensure that excuses on the grounds of culture, custom, religion or so called “honour” are unacceptable for any act of violence;
- ~ ensure that victims have access to special protection measures during investigation and judicial proceedings;
- ~ ensure that law enforcement agencies respond immediately to calls for assistance and manage dangerous situations adequately.

## Monitoring

- ~ set up a specific monitoring mechanism to ensure the implementation of the convention. A group of experts will ensure states’ compliance with the convention to guarantee its long-term effectiveness.

## 3.4 Who is covered by the convention?

The convention covers women and girls, from any background, regardless of their age, race, religion, social origin, migrant status or sexual orientation, to name but a few. The convention recognizes that there are groups of women and girls that are often at greater risk of experiencing violence, and states need to ensure that their specific needs are taken into account.

States are also encouraged to apply the convention to other victims of domestic violence such as men, children and the elderly.

## 3.5 Which offences are covered?

The convention establishes a number of important criminal offences. It ensures that the following behaviours are subject to criminal or other legal sanction:

- ~ physical violence;
- ~ psychological violence;
- ~ stalking;
- ~ sexual violence, including rape;
- ~ sexual harassment;
- ~ forced marriage;
- ~ female genital mutilation;
- ~ forced abortion and forced sterilization.

This sends a clear message that violence against women and domestic violence are not private matters. On the contrary: to emphasize the particularly traumatizing effect of crimes within the family, a heavier sentence can be imposed on the perpetrator when the victim is a spouse, partner or a member of the family.

# 4. 12 STEPS TO COMPLY WITH THE ISTANBUL CONVENTION

- 1. Condemn discrimination against women** and recognize that violence against women is a violation of human rights and a manifestation of historically unequal power relations between women and men.
- 2. Invest in preventive measures** by changing attitudes, gender roles and stereotypes through education, training and awareness raising, by empowering women, by involving men and boys and by creating new partnerships with the media and the private sector.
- 3. Help victims get support** by running a free national telephone hotline, offering shelters, medical, psychological and legal counselling, help with housing and financial issues and in finding employment.
- 4. Protect victims at risk** with the help of emergency barring orders, restraining and protection orders, risk assessment and risk management.
- 5. Change the law** so that it includes specific criminal offences for psychological violence, stalking, physical violence, sexual violence including rape, forced marriage, female genital mutilation, forced abortion and forced sterilization and that it prohibits sexual harassment.
- 6. Enhance the performance** of the police, the prosecution services and the judiciary in handling such cases.
- 7. Empower victims in judicial proceedings** by ensuring they are supported and protected throughout the proceedings, informed on the general progress of the case, their role therein and by enabling victims to be heard and supply evidence without having to confront the perpetrator.
- 8. Design comprehensive policies** for all branches of government to ensure that professionals join forces to better protect and assist victims, to prevent more violence and to end impunity for acts of violence against women or domestic violence.
- 9. Recognize gender-based violence as a form of persecution** when determining refugee status of women asylum seekers and respect the principle of non-refoulement.
- 10. Respond to the special needs of children** as victims or witnesses of domestic violence in all measures of protection and support.
- 11. Recognize and support the role of NGOs and civil society** in combating violence against women and domestic violence by allocating adequate financial and human resources and by establishing effective cooperation with these organizations.
- 12. Collect national data and support research** to expand the knowledge base on violence against women and domestic violence.



*Every woman has the right to have  
the inherent dignity of her person respected*

*The Belém do Pará Convention - Article 4.e*



# 5 SOME FEATURES OF THE ISTANBUL CONVENTION

## 5.1 An instrument to promote greater equality between women and men

### Introduction

Violence against women is both a cause and a consequence of unequal power relations between women and men. Rape, domestic violence, stalking, forced marriage, female genital mutilation, sexual harassment, forced abortion, and forced sterilization are manifestations of male domination over women. It is violence directed against women because they are women and must be considered as structural violence because it is an integral part of a social system which manifests itself in an imbalance of power with accordingly unequal opportunities for women and men. The lower socio-economic status of women in society, patriarchal attitudes and customary practices aimed at controlling women's sexuality help to perpetuate violence against women. Widespread impunity and significant disparities in state responses to such violence leave many women unprotected and without recourse to justice. Consequently, significant numbers of women are barred from fully enjoying their human rights, developing their full potential and leading independent lives. Violence against women is thus a major obstacle to the full advancement of women.

With the aim of breaking this cycle of gender inequality and women's continuous exposure to gender-based violence, the Council of Europe adopted in 2011 its Convention on preventing and combating violence against women and domestic violence, which opened for signature in Istanbul in May 2011 (Istanbul Convention). Its measures are firmly based on the premise that violence against women cannot be eradicated without

investing in greater equality between women and men and that in turn, only real equality between women and men and a change in power dynamics and attitudes can truly prevent violence against women.

The key to combating violence against women is not crime control. It is making sure that women and men are equal partners, have the same rights and responsibilities, the same opportunities and that their contribution to society is equally valued and respected.

### Using the Istanbul Convention to achieve greater equality between women and men

Since the 1990s, the Council of Europe, in particular its Steering Committee for Equality between Women and Men (CDEG), has undertaken a series of initiatives to promote the protection of women from violence and to achieve greater equality between women and men. The Preamble of the Istanbul Convention contains references to these and other international legal standards such as those contained in the United Nations Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW Convention). This is testament to the Istanbul Convention's strong link to the gender equality agenda pursued by the Council of Europe.

The Preamble also contains the drafters' recognition that the "realization of de iure and de facto equality between women and men is a key element in the prevention of violence against women" and that "violence against women is a manifestation of historically unequal power relations between women and men, which have led to domination over, and discrimination against, women by



men and to the prevention of the full advancement of women". The Preamble thus firmly establishes the link between achieving gender equality and the eradication of violence against women.

On the one hand, the drafters affirmed that violence against women, including domestic violence, is a distinctly gendered phenomenon because it is violence targeted at women to control them or their sexuality. On the other hand, the drafters of the Convention recognized that men and boys are not immune to some of the forms of violence covered by the Convention, in particular domestic violence, and that this violence needs to be addressed. Consequently, the Istanbul Convention leaves it to the State Party to decide on the extent to which it chooses to apply its provisions to male, elderly and child victims of domestic violence (see Article 2). In any event, States Parties are encouraged to integrate a gender perspective in all policies and this would help address the reality of gay men in abusive relationships or that of men that do not conform to what society considers to constitute "appropriate behaviour". It should be noted that this expansion of the scope of application, however, in no way lessens the Convention's focus on violence against women as a form of gender-based violence.

Resulting from the established link between achieving gender equality and the eradication of violence against women, the Convention contains a number of provisions that aim at advancing the status of women in society in law and in fact. As legally-binding obligations, they are expected to give new impetus to the pursuit of equality between women and men at national level. Last but not least, these provisions will further the overall aim of non-discrimination against women as required by the CEDAW Convention<sup>104</sup> because they can be grouped under the following three central obligations identified by the CEDAW Committee in its General Recommendation No. 25<sup>105</sup>:

104. All Council of Europe member states are States Parties to the CEDAW Convention.

105. CEDAW Committee General Recommendation 25, paragraphs 6 and 7, which lists the elimination of any direct or indirect discrimination against women by law, the improvement of the de facto position of women through concrete and effective policies and programmes, and the need to address gender relations and gender-based stereotypes that affect women through individual acts and through law and societal structures, as the three central obligations of States Parties to the CEDAW Convention.

## ENDING DIRECT AND INDIRECT DISCRIMINATION AGAINST WOMEN IN LAW

Putting an end to de jure discrimination against women is a fundamental prerequisite for the achievement of true equality between women and men. Article 1 of the Istanbul Convention therefore lists the contribution "to the elimination of all forms of discrimination against women" and the promotion of "substantive equality between women and men, including by empowering women" as among the purposes of the Convention. It is this wider goal of equality between women and men that the drafters wished to achieve and the wide variety of measures contained in the Convention should be seen as contributing to it. Implementing the various measures of the Convention aimed at preventing violence against women, protecting its victims and holding perpetrators accountable will ultimately contribute to overcoming discrimination against women and to more equality between women and men.

In line with this stated purpose of the Convention, Article 4 paragraph 2 requires States Parties to condemn all forms of discrimination against women and to take, without delay, measures to prevent any such discrimination. These measures include:

- a. enshrining the principle of equality between women and men in law and ensuring its practical realization;
- b. prohibiting discrimination against women by law; and
- c. abolishing any discriminatory legislation or practices.

The enjoyment of the right to be free from violence as stipulated in paragraph 1 of Article 4 is interconnected with the States Parties' obligation to secure women's exercise, on an equal footing with men, of all civil, political, economic, social and cultural rights as set out

in the human rights instruments of the Council of Europe, particularly the European Convention on Human Rights and its Protocols, and the European Social Charter and other international instruments to which they are parties, such as the CEDAW Convention. Therefore, laws that discriminate against women and prevent women from the enjoyment of their human rights need to be repealed. The fact that Article 4 paragraph 2 calls for the practical realization of equality shows that what is aimed at is the achievement of substantive equality and not a purely formal legal obligation of equal treatment of women with men. The CEDAW Committee has described substantive equality to mean the achievement of “equality of results”, “overcoming underrepresentation of women and a redistribution of resources and power between women and men”<sup>106</sup>. In Article 4 paragraph 2, the Istanbul Convention affirms this principle of substantive equality and employs it to ensure progress in the achievement of equality in law and in fact with the ultimate aim of reducing violence against women.

## IMPROVING THE DE FACTO POSITION OF WOMEN THROUGH CONCRETE AND EFFECTIVE POLICIES AND PROGRAMMES

Complementing the obligation to end *de iure* discrimination, Article 6 requires States Parties to ensure that policies and programmes to end violence against women do not have a negative impact on women and to implement wider policies that empower women and improve their equality with men.

Concretely, States Parties are required to apply a gender perspective in the design and evaluation of measures taken in implementation of the Convention and to promote policies of equality between women and men. This is intended to ensure that a gender impact assessment of any proposed measure or law is carried out in the planning/drafting stage and that the evaluation

of measures taken to implement the Convention is used to determine whether there is a gender differential in the impact of the provisions. There are many differences that exist in women’s and men’s lives which means that supposedly neutral policies and measures often impact differently on women and men. Assessing their impact based on gender before introducing new measures and rectifying any unintentional inequalities or outcomes as a result of a thorough and gender-sensitive evaluation process will help improve the quality of any measure.

While the Istanbul Convention limits this obligation to gender proof to measures taken in connection with the implementation of the Convention, it is the first of its kind enshrined in an international treaty. This is an important recognition of the benefits and importance of gender proofing and gender impact assessments, and may hopefully be used as a source of inspiration for policy design and evaluation in other areas.

The second obligation contained in Article 6, the obligation to promote policies of equality between women and men and to empower women, aims at achieving one of the overall purposes of the Istanbul Convention listed in Article 1, that of promoting substantive equality. It is only through a real transformation of opportunities, institutions and systems that a meaningful change in the position of women will be achieved. This requires a multitude of policies and measures to enable women to fully enjoy their human rights and fundamental freedoms, to reach parity in public decision-making, to be empowered and, crucially, to ensure that women are free from violence. For these policies to have any real effect, they need to recognize the wide variety of realities that women live with, shaped by factors such as race, colour, religion, political or other opinion, national or social origin, association with a national minority, property, birth, sexual orientation, gender identity, age, state of health, disability, marital status, and migrant or refugee status – all of which are recognized by the Istanbul Convention as grounds for non-discrimination. In addition, gender equality policies need to address the root causes of women’s inequality and the equality of results should be their stated aim. This might require temporary or special measures for the benefit of women, as purely

<sup>106</sup>. CEDAW Committee General Recommendation 25, paragraph 8.

identical treatment may not necessarily help rectify past discrimination or lead to substantive equality between women and men. Special measures to prevent violence against women and protect the victims as mentioned in Article 4 paragraph 4 of the Istanbul Convention are an example of such special measures to accelerate the correction of past and current discrimination against women.

## ADDRESSING GENDER RELATIONS AND THE PERSISTENCE OF GENDER-BASED STEREOTYPES

Patriarchal ideology that often underlies gender relations, the shaping of institutions, organizations and systems according to the life patterns and experiences of men, the widespread sexualization of women's bodies suggesting their permanent sexual availability, and gender-biased customs and traditions all contribute to treating women as subordinate members of the family or society. Prejudices, customs, traditions and other practices based on the inferiority of women or on stereotyped roles for women and men abound. Naturally, they influence gender relations and interpersonal relationships. They also affect how women are treated and perceived by public institutions and societal structures, but also by, for example, the legal system.

Committed to addressing the root causes of violence against women and to promote greater equality between women and men, the Istanbul Convention aims at changing attitudes and eliminating stereotypes not only at the level of individuals, but also at the level of institutions.

With a view to changing mentalities and combating gender bias among individual members of society, Article 12 paragraph 1 requires States Parties to promote changes in the social and cultural patterns of behaviour of women and men in order to eradicate stereotypes, customs and prejudices based on the notion of women's inferiority. To ensure that children grow up free from such prejudice and stereotypes,

Article 14 requires that teaching material systematically addresses, at all levels, issues such as equality between women and men, non-stereotyped gender roles, mutual respect and non-violent conflict resolution in interpersonal relationships.

As far as institutional responses are concerned, the Convention aims at enhancing the knowledge, gender-responsiveness and the level of awareness of all relevant professionals by requiring extensive training, including on the concept of equality between women and men (Article 15 paragraph 1). Professionals, in particular members of the law enforcement agencies and the judiciary need to operate on a gendered understanding of violence against women in order to approach victims with the necessary sensitivity and empathy, rather than displaying tendencies of disbelief and ridicule (Article 49 paragraph 2). The obligation to ensure a prompt and appropriate response of law enforcement agencies to any call for help in relation to the forms of violence covered by the Convention intends to ensure that allegations of violence against women receive the attention of the police they deserve and are acted upon adequately (Article 50).

The Convention also addresses the responsibility of the private sector, in particular the media and information and communication technology sector, to work towards an enhanced respect for women's dignity and to become involved in the prevention of violence against women (Article 17). This can take on many forms, such as supporting employees who are victims of domestic violence and stalking, introducing a company policy against sexual harassment, participating in developing local, regional or national policies against violence or financially contributing to services for victims. In addition, States Parties are asked to encourage the Information and Communication Technology (ICT) sector and the media to adopt self-regulatory standards to refrain from harmful gender stereotyping and from spreading degrading images of women or imagery which associates violence and sex. The influence of how women are portrayed in the mass media and on the Internet on attitudes and mentalities cannot be ignored.

## Conclusion

There are many factors that contribute to the high numbers of women in Europe subjected to one or more of the many forms of gender-based violence. Among these are the discrimination of women by law, the low de facto position of women in society as well as gender relations and gender-based stereotypes. These three areas, identified by the CEDAW Committee as central to eradicating discrimination, require immediate attention in order to achieve de facto equality between women and men. The Istanbul Convention recognizes this and links the eradication of violence against women firmly with the achievement of equality between women and men. In addition to setting out a long list of measures to prevent violence against women, protect its victims and prosecute the perpetrators, it contains a number of strategically placed obligations to empower women and enhance their status in society. It is therefore not only a tool to address violence against women but to achieve greater equality between women and men. As such, it addresses not only governments but every member of society.

## 5.2 Female Genital Mutilation

### Introduction

The Istanbul Convention is the first European legally-binding instrument specifically devoted to violence against women and an important step towards greater gender equality. It covers various forms of gender-based violence, which is defined as “violence that is directed against a woman because she is a woman or that affects women disproportionately” (Article 3 d).

Female genital mutilation (FGM) also happens in Europe, a fact that for long has remained unacknowledged. On our continent, many girls and women are affected or threatened by FGM. They either run the risk of being taken to their parents’ country of origin or of undergoing the procedure in a Council of Europe member state.

For those who have been affected, FGM will lead to serious physical and psychological suffering, most likely causing long-term health consequences. Those at risk of undergoing the practice are often very young and lack the means to say no.

Most Council of Europe member states do not have specific legislation on FGM. Moreover, awareness among professionals is generally low, including that of teachers, social workers, and health professionals who are often the only ones in a position to identify a girl at risk.

The Istanbul Convention recognizes that FGM exists in Europe and that it needs to be sufficiently and systematically addressed. It is hoped that the entry into force of the Convention and its implementation at national level will greatly increase the standards of protection for victims of FGM, provide them with the support they need, and - crucially - bring more perpetrators to justice.

### Female genital mutilation as a criminal offence

The Istanbul Convention recognizes FGM as a form of violence against women and defines it as “excising, infibulating or performing any other mutilation on the whole or any part of a woman’s labia majora, labia minora or clitoris” (Article 38 a). Introducing national legislation on FGM is the first step in recognizing the severity of this practice and ensuring that such acts are appropriately prosecuted. For this reason, the Convention requires all states parties to introduce FGM as a criminal offence when such an act is committed intentionally, whether or not it is performed by medical professionals. This includes the act of pressuring or coercing a girl or a woman to undergo the procedure “voluntarily”.

Although introducing the criminal offence of FGM is essential, sanctions need to be effective, proportionate and dissuasive (Article 45 paragraph 1). Justifications on the basis of culture, religion or tradition may not be used in order to lessen punishment (Article 42). This not only sends a strong message that such acts will

not be tolerated, but also ensures that perpetrators are brought to justice. Given that FGM is deeply rooted in cultural and religious customs and traditions, persons who commit FGM are likely to reoffend. As such, the Convention includes the obligation for sentences to be longer for repeat offenders and in cases where the victim is a child (Article 46).

## Preventing female genital mutilation

In Europe, there is widespread ignorance as to what constitutes FGM and the devastating impact it has on women's lives. Tackling attitudes, prejudices, gender roles and stereotypes that make this practice acceptable is an integral part of the Istanbul Convention (Chapter III). It calls for a series of measures - oriented at the public at large but also at affected communities - that include running awareness-raising campaigns on FGM, providing educational material in formal and informal facilities, and encouraging men and boys to contribute actively to its prevention.

In many cases, lack of knowledge directly translates into the inability of support and health services, law enforcement agencies and the judiciary to fully address the needs of victims. Consequently, states parties are obliged to ensure that professionals in regular contact with victims or girls-at-risk are properly trained on FGM so that they know what it is and how to help. This does not only include police officers, but teachers, social workers and professionals working in child protection services (Article 15). Consequently, the Istanbul Convention aims at encouraging the reporting to the competent authorities and removes any barriers to such a step (Articles 27 and 28).

## Protection and support

Women and girls affected or threatened by FGM must have access to help and support when they need it most; their needs and safety should always be a priority. As such, the Convention requires states parties to set up specialist FGM support services (Article

22), offer legal and psychological counselling, and information on available support services, and assess and manage risks appropriately (Article 51). Protection also includes measures such as the setting up of free of charge round-the-clock telephone helplines (Article 24) and introducing restraining and protection orders for women and girls threatened by FGM (Article 53). In addition, the Convention seeks to enforce international co-operation (Chapter VIII). This is particularly important due to the transnational dimension of FGM. Ensuring effective cross-border co-operation is not only essential in keeping women and girls safe, but also in facilitating investigations and the prosecution of perpetrators.

Girls are particularly vulnerable to FGM, and usually have less possibilities to seek help and support. In cases of FGM, it is usually the parents or close relatives that are willing to subject their daughters to this practice. For this reason the Convention places particular emphasis on the best interest of the child and requires that sanctions include the withdrawal of parental rights if deemed necessary (Article 45 paragraph 2).

## Fear of Female Genital Mutilation as grounds for asylum

In many cases, the fear of being subjected to FGM forces some women and girls to flee their country and apply for asylum in a state party to the Convention. Articles 60 and 61 require states parties to interpret the 1951 Refugee Convention in a more gender-sensitive manner, to recognize persecution on the grounds of gender and not to expel anyone to a country where their life or freedom is under threat. Given the gender specificity of FGM, states parties are required to recognize that - as a form of gender-based violence - it may amount to persecution and may give rise to refugee status or international protection.



# Understanding the scope of Female Genital Mutilation

One of the biggest challenges in preventing and combating FGM is the limited understanding of its extent and evolution in Europe. Mapping the extent of the problem is important in order to ensure that measures addressing FGM are based on evidence and reflect the needs of victims. Article 11 of the Istanbul Convention requires states parties to collect the necessary data and to support research in this field so that the prevalence and trends of FGM are fully understood.

## 5.3 Honour Crimes

### Introduction

The Council of Europe Convention on preventing and combating violence against women, or Istanbul Convention for short, covers various forms of gender-based violence, which is defined as “violence that is directed against a woman because she is a woman or that affects women disproportionately” (Article 3 d).

“So-called honour crimes” are one form of gender-based violence. But if you are looking for an outright criminalization of such crimes, you are searching in vain. The drafters of the Convention very carefully analyzed the elements of so-called “honour crimes”, the reasons they are committed and what perpetrators are trying to achieve with this type of violence. This exercise showed that crimes committed in the name of so-called “honour” are usually crimes that have been part of the criminal law landscape of Council of Europe member states for a very long time: murder, manslaughter, bodily injury, etc. What makes them different is the intent behind them. They are committed to pursue an aim other than or in addition to the immediate effect of the crime. This ulterior aim can be the restoration of family honour, the desire to be seen as respecting tradition or complying with perceived religious, cultural

or customary requirements of a particular community. To capture this, the drafters of the Convention moved away from the original idea of introducing a separate criminal offence for so-called “honour crimes” and agreed instead to ban any attempts to justify criminal behaviour on the basis of culture, custom, religion, tradition or so-called “honour”. This means that family or community members who kill, maim or injure a woman for her real or perceived transgression from cultural, religious or traditional norms can not invoke any of the above grounds in criminal proceedings (Article 42).

### Ending impunity

There are many examples from different countries, mainly from the 1990s, but some even more recent than that, where judges handed down lenient sentences simply because the perpetrator claimed to have acted out of respect for his culture, tradition, religion or custom or to restore his so-called “honour”. This is exactly what the Convention intends to put an end to. Rather than allowing judges to reduce sentences, the Convention actually demands harsher punishment if the crime is committed by a family member or by two or more people acting together. Article 46 calls for aggravating circumstances to be taken into account when determining sentences in such cases. This provision is aimed, among others, at crimes committed in the name of so-called “honour”, which are usually committed by family members, who, in many cases, plot against the victim.

### Instigating a younger member of the family to carry out a crime

The Convention also makes it clear that choosing a younger member of the family, somebody who has not yet reached the age of criminal responsibility, to carry out the crime, still leaves the instigator of the crime, often the head of the family or adult brothers, liable for incitement (Article 42 paragraph 2).

## Restraining and protection orders

Ending impunity for gender-based violence is one of the aims of the Convention. But its provisions are also directed at preventing such violence. That is why, in Article 53, the Convention introduces restraining and protection orders for all forms of gender-based violence, not just domestic violence. This means that, for example, a young woman who has reason to believe her family is plotting her murder because they disapprove of her lifestyle shall be given the possibility of applying for a protection or restraining order against the family members in question. This, of course, must be enforced by the authorities and any transgressions must be sanctioned. In many countries it is, in theory, possible to apply for an injunction to have somebody stop doing something, but this legal instrument is rarely, if at all, applied in this context. To keep women at risk safe from harm, the Convention introduces restraining and protection orders as a new standard in the context of so-called “honour crimes”.

## Support services for victims

There are additional measures which the Convention requires states parties to take to prevent such crimes. For example, the requirement to set up services for women at risk of being murdered by their relatives, which would offer legal and psychological counselling, and a safe place to stay. How this is done is left to the state party to decide, but there needs to be a number that victims can call and that will direct them to a place where they can get help, preferably in several languages (see Articles 22 and 24).

## Alerting authorities

The Convention also acknowledges the special role that professionals can play. Often, a woman at risk will confide in a person she trusts, maybe a teacher, or her doctor, or a friend. Articles 27 and 28 require states parties to encourage all these people to bring this to the attention of the competent authorities so that action

can be taken. However confidentiality rules imposed on some professionals often stand in the way, which is why the Convention calls on states parties to review this in order to strike a balance between much-needed confidentiality and the desire to save lives.

Once a case comes to the attention of the authorities, the Convention requires all authorities, not just the police, to jointly assess the risk for a particular woman under threat, and devise a safety plan for her. Any such risk assessment must, of course, take into account the probability of life-threatening violence and whether or not firearms are involved. The idea is to ensure that a multi-agency network of professionals is set up to protect high-risk victims (Article 51).

## Fear of so-called “honour crimes” as grounds for asylum

Most of the measures of the Istanbul Convention aim at women at risk of “honour crimes” on the territory of a state party to the Convention. There are, however, many women elsewhere in the world who are under threat because of the way they dress, the way they live, the person they want to marry or other choices they have made. For some of these, the risk is so great that they flee their country and apply for asylum in a state party to the Convention. To protect these women from serious harm, states parties are required to recognize that gender-based violence such as so-called “honour crimes” may amount to persecution and may give rise to refugee status or leave to remain in the country. Articles 60 and 61 address this complex issue by requiring states parties to interpret the 1951 Refugee Convention in a more gender-sensitive manner, to recognize persecution on the grounds of gender and not to expel anyone to a country where their life or freedom is under threat.



## 5.4 Stalking

### Introduction

The Council of Europe Convention on preventing and combating violence against women, or Istanbul Convention for short, covers various forms of gender-based violence, which is defined as “violence that is directed against a woman because she is a woman or that affects women disproportionately” (Article 3 d).

A woman who is stalked has no chance at leading a normal life. Fear and anxiety take over every aspect of daily life and trying to cope makes holding down a job, being in a relationship, caring for children, etc. extremely difficult. It is extremely difficult for victims to put an end to the stalking and to seek justice. Most Council of Europe member states do not have specific legislation on stalking, neither in criminal nor in civil law. In many languages, there isn't even a word for stalking, which says a lot about how little accepted the concept is – or was.

The Istanbul Convention recognizes this and offers, for the first time, a set of measures against stalking and to support its victims. It is hoped that once the Convention enters into force and is implemented at national level, it will make a real difference for victims of stalking.

### Stalking as a specific criminal offence

First of all, the Convention makes clear that stalking is a form of violence against women. Although data from Council of Europe member states is patchy, it is well-known that many victims of stalking are female and many perpetrators are male. Often, women are stalked after a relationship, often abusive, has come to an end. This type of stalking clearly has a gendered nature, because it is about dominance and control. But women

are also very frequently stalked by men they never had a relationship with. Usually, however, the stalker is no stranger to the woman but someone she knows from somewhere.

Second, national legislation must be equipped to deal with stalking. Because there can be no penalty without a law, the Convention requires all states parties to introduce the specific criminal offence of stalking. This means that a country that ratifies the Convention will have to criminalize the act of stalking, which is defined as “repeatedly engaging in threatening conduct directed at another person, causing her or him to fear for her or his safety”. However, during the negotiations some member states preferred to attach non-criminal sanctions to stalking, but to nonetheless make it an offence. That is why it is possible to make a reservation to this provision (Article 78 paragraph 3).

- ~ The drafters of the Convention considered it important to phrase all provisions in gender-neutral language, which is why the definition of stalking contains a reference to “his” or “her” safety. This means that, in principle, all provisions of the Convention are applicable to women and men. This is in line with the approach of most member states to criminal law: criminal offences are usually worded in gender-neutral language and are applicable to both men and women.
- ~ The idea behind introducing a specific crime of stalking is to allow criminal courts to capture the pattern of stalking. Taken on their own, the individual elements of stalking, for example, sending someone unwanted messages, showing up at somebody's house or place of work uninvited, calling friends and family, or whatever else it is a stalker does, does not always amount to criminal behaviour. It is the pattern, the intent of the stalker, and the fear the stalker causes, that make up the criminal nature. Existing criminal offences of coercion or trespassing do not capture this. To fill this gap, introducing a specific offence is crucial.

~ A specific criminal offence is no panacea. The success of a new offence very much depends on its implementation. Judges and law enforcement personnel have to be trained on how to deal with cases of stalking. They need to understand what stalking really is. That is why the Convention contains a number of provisions to improve the way investigations are conducted and judicial proceedings carried out. The aim is to place the rights of victims at the heart of criminal proceedings, to make sure the victim is safe and to render investigations and prosecutions more effective (Article 49).

## Restraining and protection orders

Third, the Convention introduces restraining or protection orders for victims of stalking. In most countries, it is technically possible to apply for a civil injunction to stop the behaviour of another person but this instrument has rarely been used against stalkers. The Convention requires states parties to make sure that restraining or protection orders are available to all victims of violence covered by the Convention. This includes stalking. Criminal proceedings may not deter a stalker which is why it is important to ensure the safety of the victim. The Convention makes sure that a court of law can order a stalker to stop his behaviour and stay away from the victim. Any breaches of such orders need to be met with criminal or other legal sanctions.

## Support services for victims

Finally, a word on support services. The Convention requires state parties to set up specialist support services for victims of any type of violence covered by the Convention. This includes services for victims of stalking. Just like there need to be counselling centers for victims of rape, or forced marriage, or any other form of violence, there needs to be help for victims of

stalking. How this is done is left to the state party to decide, but there needs to be a number that victims can call and that will direct them to a place where they can get help (see Articles 22 and 24).

## 5.5 Migration

### Introduction

The Council of Europe Convention on preventing and combating violence against women, or Istanbul Convention for short, covers various forms of gender-based violence, which is defined as “violence that is directed against a woman because she is a woman or that affects women disproportionately” (Article 3 d). The most widespread forms are domestic violence, sexual violence, stalking, sexual harassment, forced marriage, female genital mutilation and forced sterilization.

Migrant women, with or without documents, and women asylum-seekers are particularly vulnerable to gender-based violence. Although their reasons for leaving their country vary, as does their legal status, both groups are at increased risk of violence and face similar difficulties in overcoming it. That is why the Istanbul Convention ensures its provisions are implemented without discrimination on the ground of migrant status, refugee status or other status (Article 4 paragraph 3).

### Specific measures in protection of migrant women

The Istanbul Convention addresses the particular difficulties in relation to their residence status which many migrant women face when they become victims of, for example, domestic violence or forced marriage. It introduces the possibility of granting migrant women an autonomous residence permit if they are trapped in an abusive relationship because their residence status depends on that of their abusive spouse or partner.

This allows a victim of domestic violence to leave the relationship without losing her residence status. For victims of forced marriage, the Convention creates the obligation to allow migrant women to regain their residence status if they left their country of residence for a longer period than legally permitted because they were forced into marriage abroad and unable to return (Article 59). As an opt-out clause, however, states parties may reserve the right not to be bound by this provision.

## Specific measures in protection of women refugees and women asylum-seekers

Asylum law has long failed to address the difference between women and men in terms of why and how they experience persecution. This gender blindness in the establishment of refugee status and of international protection has resulted in situations where claims of women fleeing from gender-based violence have gone unrecognized. In the past decade, however, developments in international human rights law and standards, as well as in case law, have led an increasing number of Council of Europe member states to recognize some forms of violence against women as a form of gender-related persecution within the meaning of Article 1A.2 of the 1951 Convention relating to the Status of Refugees. There is no doubt that rape and other forms of gender-related violence, such as female genital mutilation, dowry-related violence, or trafficking, are acts which have been used as forms of persecution, whether perpetrated by state or non-state actors. That is why the Istanbul Convention requires states parties to ensure that gender-based violence against women may be recognized as a form of persecution within the meaning of the 1951 Refugee Convention (Article 60 paragraph 1).

It also requires states parties to ensure that the grounds for asylum listed in the 1951 Refugee Convention are interpreted in a gender-sensitive manner (Article 60 paragraph 2). Regarding persecution on the grounds

of race or on the grounds of nationality, for example, women may face certain types of persecution that specifically affect them. Examples are sexual violence and control of reproduction in cases of racial and ethnic “cleansing”. In relation to persecution on the grounds of religion, women may be persecuted for not conforming to religious norms and customs of “acceptable behaviour”. This is particularly true in cases of crimes committed in the name of so-called “honour”, which affect women disproportionately. Persecution on the grounds of membership of a particular social group has increasingly been put forward in gender-related claims and has gradually acquired international support. In considering women fleeing from gender-related persecution such as female genital mutilation, forced marriage and even serious domestic violence as forming a “particular social group”, women may be granted asylum. Some women can thus be identified as a particular group that shares a common innate, unchangeable or otherwise fundamental characteristic other than the common experience of fleeing persecution. Finally, persecution on the ground of political opinion can include persecution on the grounds of opinions regarding gender roles. Some women may be persecuted, for example, for not conforming to society’s roles and norms of acceptable behaviour and for speaking out against traditional gender roles.

Women seeking asylum have specific protection concerns and worries that are different to those of men. In particular, women may be fleeing gender-based violence but may be unable or unwilling to disclose relevant information during a refugee determination process that does not respect cultural sensitivities. Furthermore, unaccompanied women are often exposed to sexual harassment and sexual exploitation and are unable to protect themselves. In order to address the particular issues linked to women asylum-seekers, the Istanbul Convention establishes the obligation to introduce gender-sensitive procedures, guidelines and support services in the asylum process (Article 60 paragraph 3). Introducing a gender perspective into procedures allows for differences between women and men to be taken into account.

## Non-refoulement

Another provision that is included in the Istanbul Convention reiterates the obligation to respect a well-established principle of asylum and of international refugee protection, which is the principle of non-refoulement. The Convention establishes the obligation to ensure that victims of violence against women, who are in need of protection, regardless of their status or residence, are not returned to any country where their life would be at risk or where they may be subjected to torture or inhuman or degrading treatment or punishment.

## 5.6 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 sterilization 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 sterilization 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 recognized 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 recognize that most victims of domestic violence are women, it is equally important to recognize 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 emphasize 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 victimization 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 jeopardize 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 criminalizes 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 criminalized, 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 criminalize 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 recognize 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.