



Strasbourg, 04 May 2009

CAHVIO (2009) 5

**AD HOC COMMITTEE ON PREVENTING AND COMBATING
VIOLENCE AGAINST WOMEN AND DOMESTIC VIOLENCE
(CAHVIO)**

REPORT OF THE 1st MEETING

Strasbourg
6-8 April 2009

Document prepared by the
Directorate General of Human Rights and Legal Affairs

MAIN DECISIONS

The Committee :

- decided to elect Ms Dubravka Šimonović (Croatia) and Mr Eric Ruelle (France) as Co-chairs. Given the special nature of the Committee which is mainly composed of national experts representing either the Ministry of Justice or the Ministry of Social Affairs/Gender Equality/Human rights the Committee considered it important that both these areas of expertise be represented by the chair on an equal footing;
- examined paragraph by paragraph the discussion paper prepared by the Secretariat (“Elements for discussion”, CAHVIO (2009)3). It expressed its satisfaction with this document and suggested to re-organise and significantly expand it in certain areas. It thus decided to use this document as a basis for the interim report which the Committee is instructed to submit to the Committee of Ministers by 30 June 2009;
- agreed that the convention should be a human rights instrument with an independent monitoring mechanism focusing on violence against women, including domestic violence, and that the core of the convention would thus cover a wide range of forms of violence typically experienced by women;
- agreed that the chapter related to substantive criminal law should be reconsidered taking account of the discussions held during the meeting, in particular the need to make it clear that criminal offences are to be defined precisely and, in principle, presented in a gender-neutral manner;
- agreed that, as a matter of principle, one single convention on violence against women should be drafted, but considered that in addition to that instrument, possible additional protocols could be prepared at a later stage, if appropriate, to cover other forms of domestic violence, such as violence against the elderly and against children;
- decided to hold its next meeting on 25-27 May 2009.

ITEM 1 OF THE AGENDA: OPENING OF THE MEETING

1. The first meeting of the *Ad Hoc Committee on Preventing and Combating Violence against Women and Domestic Violence (CAHVIO)* was opened by Mr Jan Kleijssen, Director of Standard-Setting, Directorate General of Human Rights and Legal Affairs of the Council of Europe, who highlighted the importance of the work of the Committee and pointed out notably that robust and effective international legal standards to prevent violence against women and domestic violence will make a real difference for those who have so far suffered in silence. Mr Kleijssen also introduced Mr Carlo Chiaromonte, Head of the Criminal Law Division, and Ms Johanna Nelles, Gender Equality Division, as Secretary and Co-Secretary to the Committee.

ITEM 2 OF THE AGENDA: INFORMATION BY THE SECRETARIAT

2. On behalf of the Secretariat, Mr Carlo Chiaromonte, Secretary of the Committee, welcomed the delegates, scientific experts, and observers (see list of participants as it appears in Appendix II) and provided participants with a range of practical information on their future work.

ITEM 3 OF THE AGENDA: ELECTION OF THE CO-CHAIRS

3. The Committee elected Ms Dubravka Šimonović (Croatia) and Mr Eric Ruelle (France) as Co-chairs. Due the special nature of the Committee which is composed of national experts representing mainly the Ministry of Justice and the Ministry of Social Affairs/Gender Equality, the Committee considered it important that both these areas of expertise be represented in the chair on an equal footing. The Committee expressed its confidence that the Co-chairs would find a workable and equitable solution for sharing the responsibility of chairing the sessions. The Co-chairs alternated sharing the sessions.

ITEM 4 OF THE AGENDA: ADOPTION OF THE AGENDA

4. The Committee adopted the agenda as it appears in Appendix I.

ITEM 5 OF THE AGENDA: EXAMINATION OF THE TERMS OF REFERENCE OF THE AD HOC COMMITTEE ON PREVENTING AND COMBATING VIOLENCE AGAINST WOMEN AND DOMESTIC VIOLENCE (CAHVIO)

5. The Secretariat presented the terms of reference [CAHVIO (2009) 1] and recalled that the task of the Committee was the preparation of one or more legally binding instruments to improve the prevention of and combating violence against women and domestic violence. The Committee was informed that the purpose of this initial meeting was to achieve an overview of the different positions of member states on important aspects of the terms of reference. In particular, the Secretariat pointed out that the exchange of views was to be held with a view to achieving agreement on essential

issues such as the scope of the future convention and the question of whether the Committee would consider it necessary to develop one or more legally binding instruments to fulfil its mandate.

6. The Chair invited delegations to express their views on the scope of the future instruments. All delegations agreed on the need for a legally binding instrument, but emphasised the importance of developing an instrument that would add value to the existing legal framework in international human rights law. Regarding the scope of the future instruments, the great majority of delegations expressed their preference for covering all forms of violence against women and for framing the convention in the context of achieving equality between women and men and the full enjoyment of women's human rights. All Committee members agreed that the large majority of victims of domestic violence are women and that the gender dimension of domestic violence needed to be reflected in the instruments. Regarding the structure of the future instrument(s), all delegations agreed that it should follow the "three Ps" approach: Prevention, Protection and Prosecution and that the future instruments should be human rights instruments. Finally, all delegations agreed that the instruments should contain a strong and independent monitoring mechanism.

ITEM 6 OF THE AGENDA: DISCUSSION ON THE DIFFERENT ELEMENTS TO BE INCLUDED IN THE INTERIM REPORT, PARTICULARLY ON THE BASIS OF THE DOCUMENT PREPARED BY THE SECRETARIAT

7. The Committee discussed the background paper "Elements for discussion" [CAHVIO (2009) 3] as prepared by the Secretariat and contained in Appendix III.

Considerations relating to the content of the future instruments

8. Many delegations pointed out the need to place the future instruments squarely within the wider context of achieving substantive equality between women and men. The Committee therefore decided to explain, at the very beginning of the Interim Report, the importance of achieving substantive equality between women and men in preventing and combating violence against women and domestic violence.

9. Furthermore, the majority of delegations agreed that, as a matter of principle, work should consist of drafting a single instrument – a convention – which would focus on the elimination of violence against women and that the core of the convention would thus cover a wide range of forms of violence typically experienced by women. Other forms of violence, in particular domestic violence against the elderly and domestic violence against children, would then be covered by two possible additional protocols, if appropriate.

10. The Committee decided to add to the structure of the "three Ps" a fourth aspect to highlight the importance of integrated, holistic and co-ordinated Policies.

11. The Committee agreed that one of the main purposes of the convention on violence against women is to guarantee the full enjoyment of women's human rights. Its provisions should thus give concrete effect to the state obligation to prevent violence

against women, protect victims of such violence and investigate and appropriately punish acts of violence (due diligence standard).

Prevention

12. The majority of the delegations were of the opinion that all measures to prevent violence against women should be framed in the context of promoting gender equality, changing patriarchal attitudes and eradicating gender stereotypes. They also stressed the importance of the effectiveness of the different preventive activities to be addressed in the future convention, particularly vis-à-vis marginalised, vulnerable populations or populations of different cultures. In this regard, it was also highlighted that the future convention should send a very clear message: human rights of women are universal and custom, religion or tradition may not be invoked to circumvent their implementation.

13. Furthermore, the Committee agreed that the role of the media in preventing violence against women should be emphasised. Similarly, the importance of the role of men as role models in adopting non-violent behaviour and promoting gender equality was agreed upon by the Committee, as was the contribution of “perpetrator programmes” to the prevention of violence against women.

Protection and support for victims

14. As regards measures to protect and support victims of violence, particularly support services for women victims of violence, the Committee was of the opinion that they should be based on human rights principles. Special needs of particularly vulnerable victims such as migrant, disabled or pregnant women, should be adequately responded to. Furthermore, the Committee pointed out that all service providers need to take into account and respond to the heightened risk of lethal violence that women victims of domestic violence face.

15. Many delegations pointed to the need to ensure that support services operate with a view to enabling women to achieve economic independence through, professional (re) training or the provision of social benefits, including housing.

16. The Committee further decided that the role of non-governmental organisations in providing support services to victims needed to be recognised and strongly supported.

Integrated Policies (supportive framework)

17. The Committee decided to integrate an additional section to emphasise that eliminating violence against women requires evidence-based, comprehensive and co-ordinated policies involving various sectors, agencies, and institutions but also civil society at large.

Substantive law

18. The Committee decided that criminal law provisions of the convention should be precise, foreseeable and gender-neutral. Furthermore, the Committee agreed that the violation of civil law measures for the protection of victims (i.e. protection or restraining orders) should trigger criminal sanctions. Finally, the Committee considered

that the issue of compensation for damages suffered deserved particular attention and should be based on national legislation and existing good practice.

Investigation, prosecution and procedural law

19. The Committee decided that the particular vulnerability of victims needs to be taken into account at all stages of the criminal investigation and prosecution. At the same time, the rights of the accused need to be safeguarded as do the principles of a fair and impartial trial as set out in Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

20. Many delegations highlighted the need to find ways of ensuring that the laws on confidentiality for certain professions would not prevent the reporting to competent authorities of suspected instances of violence.

International co-operation in respect of certain kinds of violence

21. The Committee considered that international co-operation in the field of eliminating violence against women should not be limited to judicial co-operation in criminal matters. Rather, it should extend to multi-lateral/bi-lateral co-operation to eliminate violence against women, ensure transnational co-operation between entities that provide services to victims and co-operation in relation to the issue of extra-territorial application of the convention so that victims who are not in the territory of state parties may also benefit from the protection it offers.

Data collection

22. The Committee recognised the importance of collecting comparable data to devise and monitor adequate policies to prevent and combat violence against women. It therefore decided that the identification of common categories for the collection of data that may be compared across Europe form an essential aspect of the future instrument. Attempts to this end should build on existing efforts in this field.

23. Furthermore, the Committee decided that current restrictions on the combination of existing data should be reconsidered with a view to enabling the adequate collection of data while keeping in line with existing data protection obligations.

Monitoring mechanisms

24. The Committee is of the opinion that a strong and independent monitoring mechanism is needed to assess states' willingness to efficiently implement the provisions contained in the future instrument(s) and identify good practices. The form of this mechanism will be examined on the basis of the monitoring systems already in place in other Council of Europe instruments.

ITEM 7 OF THE AGENDA: PLANNING OF THE FUTURE WORK OF THE COMMITTEE

25. The Committee decided that it would adopt, at its next meeting, the Interim Report which it is requested to submit to the Committee of Ministers by 30 June 2009. This report will lay out the structure and content of the future instruments. It therefore instructed the Secretariat to prepare the draft Interim Report on the basis of the Committee's discussion and comments on the paper "Elements for discussion" [CAHVIO (2009) 3]. It was decided that the draft version of the report be sent for comments to all Committee members two weeks prior to the next meeting.

ITEM 8 OF THE AGENDA: OTHER BUSINESS

26. None.

ITEM 9 OF THE AGENDA: DATE OF NEXT MEETING OF THE COMMITTEE

27. The next meeting of the *Ad Hoc Committee on Preventing and Combating Violence against Women and Domestic Violence (CAHVIO)* will be held on 25 to 27 May 2009.

APPENDIX I: AGENDA

Agenda of the first meeting of the Ad Hoc Committee on preventing and combating violence against women and domestic violence, 6-8 April 2009

1. Opening of the meeting by Mr Jan Kleijssen, Director of Standard-Setting, Directorate General of Human Rights and Legal Affairs, Council of Europe
2. Information by the Secretariat
3. Election of the Chair and Vice-Chair
4. Adoption of the agenda
5. Examination of the terms of reference of the Ad Hoc Committee on Preventing and Combating Violence against Women and Domestic Violence
6. Discussion on the different elements to be included in the interim report, particularly on the basis of the document prepared by the Secretariat
7. Planning of the future work of the Committee
8. Other business
9. Date of next meeting of the Committee

APPENDIX II: LIST OF PARTICIPANTS

MEMBER STATES / ETATS MEMBRES

ALBANIA / ALBANIE

Melle Avenilda DOKO *Apologised/ Excusée*
Adjointe au Représentant Permanent auprès du Conseil de l'Europe

ANDORRA / ANDORRE

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Adviser of the Health Department, Ministry of Health and Well-Being

Ms Caterina ALEIX
Integral care to women' team

ARMENIA / ARMÉNIE

Ms Nelly DURIAN *Apologised/ Excusée*
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Ms Olga DAVTYAN *Apologised/ Excusée*
Second Secretary, Department of International Organisation, Ministry of Foreign Affairs,

Ms Nazeli HAMBARDZOUMYAN
Deputy to the Permanent Representative of the Republic of Armenia to the Council of Europe

AUSTRIA / AUTRICHE

Ms Rosa LOGAR
Director Domestic Abuse, Vienna Intervention Centre against violence in the family

AZERBAIJAN / AZERBAÏDJAN

Mr Ismayil ASADOV
First Secretary of the Department of the International Law and Treaty, Ministry of Foreign Affairs,

BELGIUM / BELGIQUE

M. Freddy GAZAN
Conseiller Général adjoint à la politique criminelle, Ministère de la Justice,

Mme Annelies DELEU
Attaché à la Direction générale Législation, Droits fondamentaux et Libertés du SPF Justice,

BOSNIA AND HERZEGOVINA / BOSNIE-HERZEGOVINE

Mr Adnan KADRIBASIC

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BULGARIA / BULGARIE

Ms. Irena BORISOVA

Head of Department "International legal cooperation and legal assistance in criminal matters", Ministry of Justice

CROATIA / CROATIE

Ms Dubravka ŠIMONVIČ

Chair/ Président

Head of Department for International Organizations and Human Rights, Ministry of Foreign Affairs and European Integration of the Republic of Croatia

CYPRUS / CHYPRE**CZECH REPUBLIC / RÉPUBLIQUE TCHÈQUE**

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Mr Michal NESPOR

Legal expert, International Law Department, Ministry of the Interior

Ms Helena LISUCHOVA

Legal Expert, Department for International Organizations and International Cooperation, Ministry of Justice

DENMARK / DANEMARK

Ms Nell Ellinor Brunshøj RASMUSSEN

Senior Consultant, The National Board of Social Services, Ministry of Social Welfare and Gender Equality

Ms Kristine Holst HEDEGAARD

Prosecutor, Director of Public Prosecution (Rigsadvokaten)

Ms Nina RINGSTEED

Apologised/ Excusée

Ministry of Justice

ESTONIA / ESTONIE

Ms Kristiina LUHT

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Apologised/ Excusée

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GEORGIA / GÉORGIE

Mr Zurab MTCHEDLISHVILI
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Mme Lali PAPIASHVILI *Apologised/ Excusée*
 Juge à la Cour Constitutionnelle de Géorgie, Président du Conseil interinstitutionnel sur la mise en oeuvre des mesures visant à prévenir la violence domestique

Mme Ketevan KHUTSISHVILI *Apologised/ Excusée*
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 visant à prévenir la violence domestique.

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Ms Anke BERGMANN
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 Deputy Public Prosecutor at the Court of First Instance

HUNGARY / HONGRIE

ICELAND / ISLANDE

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 Sexual and Gender-based Violence, Department of Justice, Equality and Law Reform

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LIECHTENSTEIN

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* * * *

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Mme Muriel GRIMMEISSEN

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Ms Karin NORDMEYER

Chair of the Gender Equality Transversal Group

* * * * *

EUROPEAN COMMUNITY / COMMUNAUTE EUROPEENNE

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Mme Ingrid BELLANDER-TODINO
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COUNCIL OF THE EUROPEAN UNION / CONSEIL DE L'UNION EUROPEENNE

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MEXICO / MEXIQUE

* * * * *

**INTERNATIONAL INTERGOVERNMENTAL ORGANISATIONS /
ORGANISATIONS INTERNATIONALES INTERGOUVERNEMENTALES**

**UNITED NATIONS DEVELOPMENT FUND FOR WOMEN /
LE FONDS DE DEVELOPPEMENT DES NATIONS UNIES POUR LA FEMME
(UNIFEM)**

**UNITED NATIONS DIVISION FOR THE ADVANCEMENT OF WOMEN /
DIVISION DES NATIONS UNIES POUR L'AVANCEMENT DE LA FEMME
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**UNITED NATIONS CHILDREN'S FUND /
FONDS DES NATIONS UNIES POUR L'ENFANCE (UNICEF)**

**OFFICE OF THE UNITED NATIONS HIGH COMMISSIONER FOR
HUMAN RIGHTS (UNHCHR) /
BUREAU DU HAUT COMMISSAIRE DES NATIONS UNIES POUR LES
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Ms Yakin ERTURK

Apologised/ Excusée

United Nations Special Rapporteur on Violence against Women, its causes and consequences, Professor of Sociology, Middle East Technical University

**UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES (UNHCR) /
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**ORGANISATION FOR SECURITY AND CO-OPERATION IN EUROPE /
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Ms Jamila SEFTAOU

Apologised/ Excusée

Senior Adviser on Gender Issues, Office of the Secretary General, Gender Section

INTERPOL

Apologised/ Excusée

EUROPOL

Apologised/ Excusée

**COMMONWEALTH OF INDEPENDANT STATES (CIS) /
COMMUNAUTE DES ETATS INDEPENDANTS (CEI)**

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APPENDIX III: ELEMENTS FOR DISCUSSION (CAHVIO (2009)3)

Strasbourg, 09 April 2009

CAHVIO (2009) 3

**AD HOC COMMITTEE ON PREVENTING AND COMBATING
VIOLENCE AGAINST WOMEN AND DOMESTIC VIOLENCE
(CAHVIO)**

ELEMENTS FOR DISCUSSION

Secretariat document prepared by the
Directorate General of Human Rights and Legal Affairs

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I. Introduction

1. This document, drafted by the Secretariat, is to serve as a basis for the discussions between committee delegations on the subjects and content of the instrument(s), **hereunder referred to as instruments**¹. It has been written in terms which take into account:

- the usual structure and content of Council of Europe Conventions;
- the feasibility study concerning a Convention on domestic violence, following on from Resolution No. 1 on victims of crime, adopted at the Yerevan Conference of European Ministers of Justice;
- the work of the *Task Force to Combat Violence against Women, including Domestic Violence*.

II. Considerations relating to the content of the future instruments

2. The main aim of this chapter is to provide Committee members with detailed information about the architecture of the instruments, indicating those subjects which should be covered. In line with the Council of Europe's most recent Conventions on the combating of specific forms of violence and abuse (particularly the Convention on Action against Trafficking in Human Beings and the Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse), the structure of the instruments should be based on the "three Ps" which are the priorities: Prevention, Protection of victims and Prosecution of offenders.

A. Purposes of the instruments and definitions

3. The Committee has been instructed to create a solid legal arsenal and a set of social measures to prevent and combat "domestic violence, including specific forms of violence against women, and other forms of violence against women".

4. In this part, the fundamental concepts which will apply to all the instruments should be specified. In particular, the definitions of domestic violence and violence against women should appear here.

B. Prevention

5. Provisions relating to the setting up in all member states of effective preventive measures to eliminate, or at least limit, the problems of domestic violence/violence against

¹ This wording reiterates that used in the Committee's terms of reference in relation to one of the tasks entrusted to it:

"to prepare one or more legally binding instrument(s), as appropriate (...) ". "The Ad hoc Committee shall first consider from the point of view of standard-setting technique, whether it is feasible to fulfil these terms of reference by drafting a single instrument, or whether it is preferable to draft two instruments (such as a convention and a protocol thereto). In the latter case these two instruments shall be drafted so as to form a coherent whole."

women should be of prime importance when instruments are prepared which are intended to combat these forms of violence. Various preventive measures, such as awareness-raising campaigns, training of the professionals who have regular contact with victims, and educational programmes, should be examined in this sub-chapter. It would also be important to raise the question of the effectiveness of the different preventive activities for which the instruments provide, particularly vis-à-vis marginalised, vulnerable populations or populations of different cultures, but also vis-à-vis known or potential perpetrators of this kind of violence.

i. Awareness raising

6. Awareness-raising programmes should be provided for by the instruments and set up in all member States to draw public attention to the problems associated with domestic violence/violence against women, and more specifically to its causes and damaging effects for both the victims and the community. They should also emphasise the fact that these problems are not private matters, but involve civil society as a whole. Awareness-raising activities and/or programmes should, in the long term, pursue the aim of altering ideas, attitudes and prejudices which persist, and which sometimes constitute factors which lead to violence.

ii. Education

7. Educational activities should be carried out mainly in schools, but also as part of the efforts made by institutions responsible for sports, cultural and leisure activities. They should be addressed mainly to young children and adolescents, so that they assimilate the rule fundamental to any civil society according to which all human beings, irrespective of gender, age or sexual orientation, are entitled to live free from any form of violence, and any infringement of this principle constitutes a violation of human rights, and a crime.

iii. Training

8. This part will endeavour to ensure that persons in regular contact with persons likely to be victims of domestic violence/violence against women have appropriate knowledge of the issues associated with these kinds of violence. This training should enable these professionals to acquire appropriate tools for identifying and managing cases of violence, at an early stage, and to take preventive measures accordingly.

iv. Promotion of gender equality

9. The prevention and combating of domestic violence/violence against women are very closely linked to the achievement of true gender equality. In this section, the Committee should consider matters relating to the prevention of domestic violence/violence against women in the broader framework of gender equality, establishing a link with existing national and international legislation based on gender equality (Article 14 of the Convention for the Protection of Human Rights and Fundamental Freedoms and Article 1 of Protocol No. 12 thereto, and UN Convention on the Elimination of All Forms of Discrimination against Women).

C. Protection and support of victims

10. This chapter is to take into account the particular vulnerability of victims, whether children or adults. In practice, the victims of domestic violence/violence against women tend to be isolated and in a situation of economic and/or emotional dependence on their aggressor. This is why the instruments should set up comprehensive measures enabling victims to benefit from support, a sympathetic ear, advice and services, according to their needs.

11. It would also be advisable to address the question of raising the awareness of, and protecting, witnesses, who still, all too frequently, consider these kinds of violence to be “private matters”, and therefore feel little inclination to come forward.

i. Specialised support services (telephone helplines, shelters, emergency centres, medical, psychological and legal advice services)

12. The idea that a wide range of specialised support services needs to be set up in all member states, so as to provide easy access for the victims of domestic violence/violence against women, is broadly shared and generally accepted. This is why the instruments should contain provisions for a raft of appropriate measures to ensure that these services are both effective and efficient. These services should have sufficient resources available to them.

13. Furthermore, coordination and co-operation between these specialised services, and also with the police, are vital in order to provide a comprehensive response to victims’ specific needs in the light of the different kinds of violence suffered.

14. In addition, appropriate legal assistance should be offered to victims before legal proceedings are begun.

ii. General services (social and health services, long-term social and economic support)

15. Doctors (from the public and private sectors), nurses and social workers have an important role to play, not only because they are often the first professionals to come into contact with the victims of acts of domestic violence/violence against women, and therefore to give them the support that they need in times of crisis, but also because, at a subsequent stage, they direct victims towards the specialised services. In this context, they should have perfect knowledge of these services, i.e. the policing, social and medical services, and of the judicial authorities.

16. The Committee should also consider the sensitive matter of responsibility for child victims and witnesses of violent situations.

iii. Programmes for violent offenders

17. Provisions on the setting up or development of programmes for perpetrators of violence could be drawn up by the Committee. Such intervention programmes have been developed in some member states in recent years with the aim of, through individual or group therapy, placing the perpetrators of such violence in a position to realise what they have done and to acknowledge their responsibility.

iv. Powers of public authorities and public order measures to protect victims

18. In view of the highly important task performed by the public authorities, and more particularly the police and judicial authorities, when acts of domestic violence/violence against women are reported to have occurred, it would be useful for the instruments to include provisions designed to ensure immediate and effective protection for victims, making it possible for the responsible public authorities to take a number of measures in this respect.

D. Substantive law

19. As is the case in other Council of Europe Conventions on the combating of specific forms of violence, abuse or ill-treatment, the chapter containing substantive law provisions should form an essential part of the instruments. It is clear from the studies carried out of the national legislation currently in force on domestic violence/violence against women that many gaps remain. It is therefore necessary to incorporate existing good practices into the legislative systems of all member states in order to prevent and combat effectively these forms of violence. The Committee will have to examine the appropriate criminal, civil and administrative-law measures to be introduced, so that the instruments cover the various situations associated with the acts of violence concerned. Thus they should combine punitive measures against perpetrators of violence, compensatory measures for victims and protective measures for the most vulnerable people.

i. Criminal law

20. This part, the aim of which is to criminalise certain acts, should cover all forms of domestic violence/violence against women, whether the violence be physical, psychological or sexual. Chapter III below lists the various forms of violence to which it is desirable for the instruments to provide a response. The Committee should consider whether the introduction of specific provisions will be necessary for certain forms of violence, or whether general provisions will be sufficient to punish the acts concerned. This decision could have consequences, for instance, for the time limit on prosecution, the judicial proceedings, or the requirement for proof of premeditation. The Committee should also consider in this part other provisions relating to substantive law, and which are already present in other recent Council of Europe Conventions, i.e. those on aggravating circumstances, custodial sentences, complicity, attempted crime and jurisdiction.

21. Exchanges of good practice and an examination of the gaps that exist in member states' criminal justice systems should enable the Committee to carry out its task of legislative harmonisation.

ii. Civil law

22. One part of this sub-chapter should be devoted to measures relating to the civil rights of victims of domestic violence/violence against women. It would therefore be appropriate for the Committee to consider the conditions of implementation of victim protection decisions, including those prohibiting the perpetrators of violence from contacting victims or from being present at certain places.

23. Furthermore, measures should be introduced to ensure that victims are compensated for the pecuniary, physical, psychological, non-pecuniary and professional damage suffered.

iii. Administrative law

24. This sub-chapter could also contain provisions in response to the needs of victims of specific forms of domestic violence/violence against women. Thus women and children of foreign nationality who have been, or who are, victims of such violence could be granted a specific legal status in their host country, particularly in respect of the right of residence and the right to work, so as to enable them to lead a life free of violence. Similarly, in cases of crimes committed in the name of honour, or cases of sexual mutilation, the Committee could consider the advisability of granting a form of “humanitarian asylum” or another special residence document to these victims, who suffer from violence so severe that it has similarities with acts of persecution.

E. Investigation, prosecution and procedural law

25. The Committee should examine the question of the introduction of provisions to ensure that procedures take due account of the particular vulnerability of the victims.

Several areas where high added value would accrue should be identified in respect of:

- the adoption of specific investigation measures and procedures enabling account to be taken of victims’ needs (for instance in relation to interviews or the promptness of the investigation);
- the training of those who play a role in the procedures (specialisation of the services or persons in charge of investigations and of the procedures relating to domestic violence/violence against women);
- the protection of victims at every stage of the procedure (ensuring in particular that they are protected from any risk of reprisals and from further violence).

i. Training of those who play a role in procedures

26. The Committee should examine the introduction of provisions for specific training on the problems of domestic violence/violence against women to be available to the professionals working on these subjects. Furthermore, it would be advisable for the instruments to contain the necessary measures to ensure that the persons, units or services in charge of investigations specialise in the combating of domestic violence/violence against women.

27. Bearing in mind the role of the various bodies usually responsible for investigating domestic violence/violence against women (police, prosecution service, health services), the Committee should consider giving thought to measures with a view to the setting up of interdisciplinary services to carry out investigations, mainly so as to spare victims additional suffering caused by repetitive procedures.

ii. Interviews of victims, witnesses and, in particular, children

28. Because of the particularly personal nature of cases of domestic violence/violence against women, it would be appropriate for the instruments to introduce or strengthen particular conditions for interviews of victims or witnesses of such violence, so that these are not felt to be an additional humiliation. In particular, procedural measures should be provided for in respect of the taking of evidence from victims, both during the investigation phase and during the court proceedings. These would be designed to protect the interests of victims, and particularly of children, and to prevent them from suffering further trauma as a result of these interviews.

iii. Judicial proceedings

29. The Committee should consider the advisability of allowing the public authorities to prosecute in respect of offences established by the instruments without any need for a complaint by the victim, so that the perpetrators of domestic violence/violence against women are prosecuted even when the victim refuses to make, or withdraws, a complaint. Thought should be given to the drafting of provisions developing certain principles to be applied to the conduct of proceedings, such as the public nature of the hearing (proceedings *in camera*) and the adversarial nature of the proceedings.

F. *Appropriate international co-operation in respect of certain kinds of violence*

30. Certain forms of domestic violence/violence against women which come within the Committee's terms of reference could have an international dimension necessitating international co-operation, for instance in respect of forced marriages. The Committee could notably consider the issues raised by such situations in relation to transfrontier co-operation and consular aspects. Similarly, transfrontier issues could be involved when immigrant families send their daughters back to their country of origin in order for them to undergo female genital mutilation. The Committee could also consider the adoption of provisions to ensure that the fact that victims are abroad does not constitute an impediment to their participation in the proceedings or to the exercise of their rights.

G. Data collection

31. There is wide recognition of the importance of data to the devising and implementation of policies to prevent and combat domestic violence/violence against women, and to the supervision of their application. Consequently, the Committee should consider the identification of common information which could be used by the States parties. Regulation of this kind could prove necessary in order to make a pertinent assessment of the prevalence and risks of all these forms of violence and to evaluate existing policies.

H. Monitoring mechanisms

32. The effective implementation of its Conventions is an important objective set for itself by the Council of Europe, particularly in recent years. In this context, as the Council of Europe has developed various monitoring mechanisms, a memorandum describing these various mechanisms will be presented to the Committee in order to enable it to choose the one which it considers most appropriate.

III. Types of violence

33. This chapter aims at providing a comprehensive but not necessarily exhaustive list of types of violence which fall within the scope of the terms of reference of the Committee. It begins by listing different forms of domestic violence (points A-C) and forms of violence that are linked to the concept of family honour prevalent in some cultures and communities within Europe (points D-F). It then presents forms of violence outside the domestic sphere typically suffered by women, but which men may experience as well (points G-I). It ends with types of violence which are exclusively experienced by women (points J-L).

34. The typology shows that most types of violence comprise the same form of criminal conduct: physical, sexual or psychological violence. It is important to ensure that the instruments to be developed cover all possible constellations in which such violence is perpetrated and take their specificities into account (violence perpetrated against particularly vulnerable victims such as migrants and the disabled, but also violence perpetrated with the help of date-rape drugs or during courtship and thus outside established relationships). It should also be made clear that the notion of honour as a justification for any criminal act is unacceptable.

A. Child abuse

- physical, sexual and psychological violence or threats of such acts
 - o perpetrated by any family member, household member, guardian or any other person present in the household (friends of the family etc)
 - o perpetrated against children in the domestic unit (not public institutions)

35. Child abuse as a form of domestic violence is limited to physical, sexual or psychological violence of any person below the age of 18 by adults who are part of the

domestic unit irrespective of the duration of legal family bonds or biological relation. It does not cover the abuse of children in institutional settings, nor does it include the abuse of children by adults unknown to them.

B. Intimate-partner-abuse

- physical, sexual and psychological violence or threats of such acts, including rape and marital rape
 - perpetrated by regular or occasional partners or ex-partners, spouses or ex-spouses, cohabitant or non-cohabitant, same-sex or different-sex partners
 - perpetrated against regular or occasional partners or ex-partners, spouses or ex-spouses, cohabitant or non-cohabitant current or former partners, same-sex or different-sex partners

36. While children do not belong to the group of direct victims of intimate-partner violence, the effect of witnessing parental violence has alarming consequences for the psychological development of children. They are therefore indirectly affected by intimate-partner violence.

C. Elder abuse

- Physical, sexual and psychological violence or threats of such acts and financial abuse (extortion of money, financial exploitation)
 - Perpetrated by adult children or members of their family
 - Perpetrated against elders in need of care

37. Aging members of society requiring care are vulnerable to abuse by members of the family and/or household. In addition to physical, sexual and psychological abuse they are often at risk of financial exploitation.

D. Forced marriage

- marriage conducted without the full consent of at least one of the parties involving duress (emotional pressure and/or physical abuse)
 - Perpetrated by family members (mostly parents)
 - Perpetrated against children, adolescents and young adults, mainly female

38. Sometimes a distinction is made between forced and arranged marriages. In a forced marriage, one or both parties do not consent to the marriage or consent is extracted under duress. By contrast, in an arranged marriage, the marriage is entered into freely by both, with family members taking an active role in choosing and introducing the marriage partners.

E. Deprivation of liberty – excessively controlling behaviour

- Psychological and/or physical violence
 - Perpetrated by members of the family or community (mostly male members of the family)
 - Perpetrated against female members of the family or the community

39. Traditional values surrounding women's sexuality and gender roles in some cultures and communities often lead to excessive control of women and, ultimately, their deprivation of liberty. Similarly, many victims of intimate-partner violence suffer from serious restrictions of movement and excessive control by their intimate partners. Some extreme types of controlling behaviour can be considered as reaching the threshold of criminal conduct.

F. Crimes committed in the name of honour

- Psychological and physical violence, including homicide
 - Perpetrated by members of the family or the community (instigated mostly by adult males but often carried out by boys below the age of criminal responsibility)
 - Perpetrated against female members of the family or the community

40. Crimes committed in the name of honour are usually crimes committed against female members of the family or community who are considered to have breached family or community norms – particularly norms concerning sexual conduct. The crimes range from physical assault to duress and murder or attempted murder and are often disguised as suicides or acts of self-harm. Often, perpetrators openly state the need to re-establish family honour as an explanation for their acts. While most crimes committed in the name of honour are carried out by male members of the family, elderly female relatives often plot or approve of the planned crime.

G. Stalking

- Any form of harassment that causes the person being harassed to have a reasonable fear for his or her safety (repeated phone calls, phone messages, or emails that annoy or threaten the individual, attempts at contact through other communication tools, sending the individual unwanted things, following the individual, or his or her friends, family, or anyone else close to them, showing up uninvited at work or home, trying to get private information about the individual from other people, entering the individual's home, vandalism, harming pets, threats or assaults)

H. Sexual harassment

- Unwelcome sexual advances, requests for sexual favours and other verbal or physical conduct of a sexual nature (often in institutional settings such as work or learning environments, but not limited thereto)

I. Sexual violence (sexual assault and rape)

- Acts of a sexual nature without the consent of the victim or the attempt thereof involving the use of force, coercion or deception (sexual intercourse, inappropriate touching, sexual molestation, voyeurism, exhibitionism, forced viewing of pornography etc)
 - o Perpetrated by men and women as private individuals or state officials
 - o Perpetrated against men and women in private life or while in institutional care or custody

41. While sexual assault and rape also frequently occur in the domestic setting and constitute a form of domestic violence (for example intimate partner violence), the acts of sexual violence here refer to sexual assault and rape committed by a person previously unknown to the victim or whom the victim has known but with whom the victim has never had an intimate relationship.

J. Female genital mutilation

- Partial or total removal of the external female genitalia or other injury to the female genital organs for non-medical reasons²
 - o Perpetrated mainly by traditional practitioners, but also medical doctors, midwives and family members
 - o Perpetrated against girls between infancy and adolescence, but also on marriage or during the first pregnancy

K. Traditional practices harmful to women

- Emotional and financial neglect, discrimination in access to education and food, sex-selection during pregnancy (female infanticide)
 - o Perpetrated by members of the family, usually parents
 - o Perpetrated against female children

² Female genital mutilation is classified into four types:

1. Clitoridectomy: partial or total removal of the clitoris (a small, sensitive and erectile part of the female genitals) and, rarely, the prepuce (the fold of skin surrounding the clitoris) as well.
2. Excision: partial or total removal of the clitoris and the labia minora, with or without excision of the labia majora (the labia are "the lips" that surround the vagina).
3. Infibulation: narrowing of the vaginal opening through the creation of a covering seal. The seal is formed by cutting and repositioning the inner, and sometimes outer, labia, with or without removal of the clitoris.
4. Other: all other harmful procedures to the female genitalia for non-medical purposes, e.g. pricking, piercing, incising, scraping and cauterizing the genital area (Source: World Health Organisation, Fact Sheet No.241 on Female Genital Mutilation, May 2008)

L. Violence against women in situations of armed conflict

- Systematic rape, sexual slavery, forced pregnancy, forced sterilisation, taking of hostages and sexual exploitation
 - o Perpetrated by members of the armed forces, police forces or paramilitary groups
 - o Perpetrated against female members of the enemy population

42. Rape and sexual assault also occurs outside of situations of armed conflict (see point 2 and 9). During situations of armed conflict, however, sexual violence may be systematically employed to destabilise the enemy population. It is the systematic nature and the aims with which it is perpetrated that distinguishes it from acts of sexual violence committed in other contexts.

IV. The gender dimension

43. Most types of violence listed in this paper may be perpetrated by and against members of both sexes. However, the statistical reality – in as far as it is known – reveals that the vast majority of these violent acts are carried out by men against women and girls. This violence is both a cause and a consequence of the inequality between women and men.³

44. Consequently, attempts to address these forms of violence need to reflect this reality and encompass a gender-sensitive approach to ensure the full protection of women from violence alongside men.

45. For example, intimate-partner abuse may be perpetrated by women and men in both, heterosexual and homosexual relationships. However, male violence against female partners is a continuation of the historically unequal relationship between women and men, which has traditionally allowed husbands to exercise power and control over their wives. This structural nature of domestic violence against women needs to be taken into consideration when addressing intimate-partner violence in all its manifestations.

46. Similarly, sexual violence experienced outside intimate relationships such as sexual assault, rape, sexual harassment, but also stalking, may be experienced by both women and men. Risk factors and prevalence rates, however, differ significantly for women and men. It is therefore important that measures improving the protection from violence address these differences accordingly.

47. Not only may some forms of violence be typically experienced by women, they also have a different impact on the lives of women and men. While both boys/ young men and girls/young women may be married against their will, most victims of forced marriages are female. In addition, the cultural and traditional attitudes towards women and their sexuality prevalent in some countries and communities often exacerbate the consequences of a forced marriage for girls and women, thus significantly limiting their options to seek help while in the marriage or to re-build their lives. By contrast, male victims of forced marriages often

³ Council of Europe Recommendation Rec(2002)5 on the protection of women against violence, Definition contained in Appendix. It has also been recognised as a “ manifestation of historically unequal power relations between men and women and has led, together with other manifestations of gender-based violence, to domination over, and discrimination against women by men and to the prevention of women’s full advancement”, (see United Nations Beijing Platform for Action, D118).

have more freedom to decide whether or not to consummate the marriage or ask for a divorce. They are more likely to find their way back into the community and society once they have left a forced relationship.

48. Other forms of violence relevant in this context are exclusively experienced by girls and women and are therefore forms of gender-based violence. Female genital mutilation, for example, is a form of violence employed to control women's sexuality and has long-term consequences on their health, sexuality and relationships. Its gravity and impact does not compare to the circumcision of boys for religious or medical reasons. Similarly, sexual violence during armed conflict resulting in forced pregnancies, sexual slavery and the alienation of the female population is targeted at women and girls only. It is employed as a strategy to humiliate and decimate the enemy population and is therefore gender-based.

49. The gender dimension will need to be taken into account in further defining the scope of the instruments as well as their individual provisions. The ways in which the gender dimension can be integrated in the different provisions will have to be identified. To this end, the Committee will need to decide on whether to include specifically gendered provisions concerning the prevention of violence and the protection of its victims only or whether to apply the gender dimension as well to the substantive law provisions of the instruments (criminal, civil and administrative law). The consequences of either solution will then need to be identified and discussed.

APPENDIX

DEFINITIONS OF VIOLENCE AGAINST WOMEN AND DOMESTIC VIOLENCE IN INTERNATIONAL LEGAL INSTRUMENTS

I. Violence against women

50. Several non-binding legal instruments contain definitions of violence against women as gender-based violence.

51. The *Council of Europe Recommendation Rec (2002)5 of the Committee of Ministers to member States on the protection of women against violence* defines violence against women as follows:

52. Violence against women is to be understood as “any act of gender-based violence, which results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion, or arbitrary deprivation of liberty, whether occurring in public or private life. This includes, but is not limited to, the following:

a. violence occurring in the family or domestic unit, including, inter alia, physical and mental aggression, emotional and psychological abuse, rape and sexual abuse, incest, rape between spouses, regular or occasional partners and cohabitants, crimes committed in the name of honour, female genital and sexual mutilation and other traditional practices harmful to women, such as forced marriages;

b. violence occurring within the general community, including, inter alia, rape, sexual abuse, sexual harassment and intimidation at work, in institutions or elsewhere, trafficking in women for the purposes of sexual exploitation and economic exploitation and sex tourism;

c. violence perpetrated or condoned by the state or its officials;

d. violation of the human rights of women in situations of armed conflict, in particular the taking of hostages, forced displacement, systematic rape, sexual slavery, forced pregnancy, and trafficking for the purposes of sexual exploitation and economic exploitation.”

53. The **United Nations Declaration on the Elimination of Violence against Women** (1993) offers the following definitions:

Article 1

“For the purposes of this Declaration, the term ‘violence against women’ means any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life.”

Article 2

“Violence against women shall be understood to encompass, but not be limited to, the following:

(a) Physical, sexual and psychological violence occurring in the family, including battering, sexual abuse of female children in the household, dowry-related violence, marital rape, female genital mutilation and other traditional practices harmful to women, non-spousal violence and violence related to exploitation;

(b) Physical, sexual and psychological violence occurring within the general community, including rape, sexual abuse, sexual harassment and intimidation at work, in educational institutions and elsewhere, trafficking in women and forced prostitution;

(c) Physical, sexual and psychological violence perpetrated or condoned by the State, wherever it occurs.”

54. The **Beijing Platform for Action** adopted at the United Nations Fourth World Conference in 1995 contains the following definition:

“The term ‘violence against women’ means any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or private life. Accordingly, violence against women encompasses but is not limited to the following:

- a. Physical, sexual and psychological violence occurring in the family, including battering, sexual abuse of female children in the household, dowry-related violence, marital rape, female genital mutilation and other traditional practices harmful to women, non-spousal violence and violence related to exploitation;*
- b. Physical, sexual and psychological violence occurring within the general community, including rape, sexual abuse, sexual harassment and intimidation at work, in educational institutions and elsewhere, trafficking in women and forced prostitution;*
- c. Physical, sexual and psychological violence perpetrated or condoned by the State, wherever it occurs.”*

55. The United Nations Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) as a legally binding instrument does not contain a definition of violence against women. However, **General Recommendation 19** adopted by the United Nations Committee on the Elimination of Discrimination against Women (CEDAW Committee) spells out that gender-based violence is a form of discrimination prohibited by the Convention. It contains the following definition:

Gender-based violence is “...violence that is directed against a woman because she is a woman or that affects women disproportionately. It includes acts that inflict physical, mental or sexual harm or suffering, threats of such acts, coercion and other deprivations of liberty.”

II. Domestic violence

56. There is no internationally agreed definition of domestic violence that addresses the issue in its entirety. In the context of violence against women, **Council of Europe Recommendation Rec (2002) 5 on the protection of women against violence** defines domestic violence as *"violence occurring in the family or domestic unit, including, inter alia, physical and mental aggression, emotional and psychological abuse, rape and sexual abuse, rape between spouses, regular or occasional partners and cohabitants"*.

57. Similarly, the definition of violence against women contained in the **United Nations Declaration on the Elimination of Violence against Women** (1993) contains a definition of domestic violence in the context of violence against women only. According to this definition, domestic violence is defined as *"physical, sexual and psychological violence occurring in the family, including battering, sexual abuse of female children in the household, dowry-related violence, marital rape, female genital mutilation and other traditional practices harmful to women, non-spousal violence and violence related to exploitation"* (Article 2 a).

58. These definitions are limited to women as victims and do not include other forms of domestic violence such as child abuse, elderly abuse, same-sex abuse and the abuse of men.

59. Sexual abuse of children by family members or others is covered by the **Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse** (CETS No.201), which defines sexual abuse of children in Article 18 as

- *"engaging in sexual activities with a child who, according to the relevant provisions of national law has not reached the legal age for sexual activities"*

or

- *"engaging in sexual activities with a child where:*
 - *use is made of coercion, force or threats; or*
 - *abuse is made of a recognised position of trust, authority or influence over the child, including within the family; or*
 - *abuse is made of a particularly vulnerable situation of the child, notably because of a mental or physical disability or a situation of dependence"*.