Strasbourg, 15 June 2009

CAHVIO (2009) 31

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

REPORT OF THE 2nd MEETING

Strasbourg
25-27 May 2009

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

EXECUTIVE SUMMARY:

The Committee:

- is of the opinion that the focus of the future convention should be on the elimination of violence against women. Furthermore, the future convention should deal with domestic violence which affects women disproportionally. The convention should also allow for the application of its provisions to all victims of domestic violence;

- agreed as regards the chapter related to substantive criminal law, 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 should be drafted, but considered that in addition to that instrument, other possible legal instruments could be prepared at a later stage, if appropriate;

- is of the opinion that a strong and independent monitoring mechanism is of utmost importance to ensure that an adequate response to this problem is given in all state parties to the convention;

- favours a comprehensive convention which would cover the three "Ps": Prevention, Protection of victims and Prosecution of perpetrators and which would be framed in comprehensive, integrated and co-ordinated policies.

ITEM 1 OF THE AGENDA: OPENING OF THE MEETING

1. The second meeting of the Ad Hoc Committee on Preventing and Combating Violence against Women and Domestic Violence (CAHVIO) was opened by Ms Dubravka Šimonović and Mr Eric Ruelle as Co-Chairs.

ITEM 2 OF THE AGENDA: INFORMATION BY THE CO-CHAIRS

2. The Co-Chairs welcomed the delegates, scientific experts and observers (see list of participants as it appears in Appendix II). Recalling the terms of reference of the Committee, they pointed towards the Committee's main task of adopting the draft Interim Report and invited participants to comment on the draft version with a view to adopting the report by consensus.

ITEM 3 OF THE AGENDA: INFORMATION BY THE SECRETARIAT

3. Mr Jan Kleijssen, Director of Standard-Setting of the Directorate General of Human Rights and Legal Affairs, addressed the Committee and pointed out in particular the fact that the Committee of Ministers had instructed the CAHVIO to identify the scope of the future convention. He also highlighted the importance of reaching a consensus on this issue central for the future work of the Committee. Mr Carlo Chiaromonte, Secretary to the Committee, then proceeded with an overview of the various background and working documents. In particular, he provided a brief introduction of the Draft Interim Report which the Committee was asked to examine and adopt. He recalled that this document had been drafted by the Secretariat, together with the Co-Chairs, on the basis of the document "Elements for discussion" (CAHVIO(2009)3), examined by CAHVIO during its first meeting.

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 DOCUMENT "DRAFT INTERIM REPORT" (CAHVIO (2009)4 PROV)

5. The Committee discussed the Draft Interim Report (CAHVIO (2009) 4 prov) paragraph by paragraph.

6. Beginning with the scope of the convention, the Committee engaged in extensive discussions. While the vast majority of delegations were in favour of a convention that should cover all forms of violence against women, a minority of other delegates considered that the future convention should focus on domestic violence and be applicable to all victims irrespective of gender or age. In a compromise position that was reached by consensus, the Committee finally agreed that the focus of the future convention should be on the elimination of violence against women and that the convention should deal with domestic violence which affects women disproportionally. It also agreed that the convention should allow for the application of its provisions to all victims of domestic violence. Notwithstanding Latvia's agreement with all other delegations on the compromise reached, it expressed some doubts concerning the scope of the future convention.

Purposes of the instrument and definitions

7. The Committee furthermore agreed that the gender dimension should be duly taken into account in the convention. In this respect it agreed that one of its main task when drafting the future convention will be to identify the ways in which to integrate the gender dimension in its provisions, notably in relation to the parts related to the prevention of violence and the protection of victims, while always taking into consideration the different aspects of the instrument and the requirements, as far as possible, of gender-neutral criminal law provisions. To highlight the importance of the gender perspective the Committee decided to move important sections of Part IV ("Integrating the Gender Dimension into the Convention") to the beginning of the report (Part II B "Purposes of the instrument and definitions").

Prevention

8. To avoid over-emphasising at this stage the importance of and need for perpetrator programmes, the Committee decided to merge the two sections on such programmes and place the remaining paragraph under the heading of prevention.

9. Furthermore, the Committee agreed to highlight the important contribution of women's NGOs in preventing violence against women by introducing a new paragraph on the role of such NGOs.

Protection and support for victims

10. In relation to the role of public authorities in protecting victims, the Committee decided to point out the obligation of states to exercise due diligence to prevent, investigate and punish acts of violence, whether those acts are perpetrated by the state or private persons, and provide adequate protection to victims.

Substantive law – criminal law

11. The Committee agreed that this part of the future convention, together with those parts dealing with preventive and protective measures, will represent an important added value. The scope of application of the criminal law provisions will be limited to certain acts of violence. These provisions need to be precise and of a foreseeable nature and should be presented in a gender-neutral manner.

Types of violence

12. Concerning the types of violence to be covered by the future convention, agreement was reached concerning the following aspects:

a. the convention should cover all forms of violence perpetrated against women, whether physical, psychological, sexual or economic in nature;

b. it should comprise not only violence committed in the domestic sphere or within the family, notably intimate partner violence, but also violence committed in the community at large;

c. it should take into account the particular vulnerability of certain victims such as pregnant women, elderly women or women with disabilities and migrant women.

13. Concerning conduct which should be covered by the convention, there was a clear consensus on the fact that the convention should cover 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 the public or private sphere. This would include, but not be limited to, the following:

i. Physical and psychological violence, including stalking

ii. Sexual violence, including sexual assault, rape and sexual harassment

iii. Other forms of violence against women, including:

- Forced marriage;

- Deprivation of liberty;

- Female genital mutilation;

- Crimes committed in the name of honour.

14. Concluding its discussion, the Committee agreed that, as a matter of principle, one single convention should be drafted. It considered, however, that in addition to that instrument, other possible legal instruments could be prepared at a later stage, if appropriate, which could deal, in particular, with issues related to children and elderly as victims of domestic violence.

ITEM 6 OF THE AGENDA: ADOPTION OF THE INTERIM REPORT TO BE PRESENTED TO THE COMMITTEE OF MINISTERS

15. The Committee adopted the Interim Report as it appears in Appendix III.

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

16. On the basis of the Interim Report adopted and pending the approval by the Committee of Ministers, the CAHVIO decided that it would start its drafting work at its next meeting in November 2009. On the basis of a timetable proposed by the Secretariat, it also agreed to hold three meetings in 2010 (March, June and October) to continue its deliberations on the draft convention. However, the Committee remains doubtful whether these meetings will be sufficient to fulfil its terms of reference and to finalise the draft convention.

ITEM 8 OF THE AGENDA: OTHER BUSINESS

17. None.

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

18. The next meeting of the Ad Hoc Committee on Preventing and Combating Violence against Women and Domestic Violence (CAHVIO) will be held in November 2009 (date to be specified).

APPENDIX I: AGENDA

Agenda of the first meeting of the Ad Hoc Committee on preventing and combating violence against women and domestic violence, 25-27 May 2009.

1. Opening of the meeting

2. Information by the co-Chairpersons

3. Information by the Secretariat

4. Adoption of the agenda

5. Examination of the document “Draft Interim Report” (CAHVIO (2009) 4prov)

6. Adoption of the draft Interim Report to be presented to the Committee of Ministers

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*

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Ms Anna XHEKA Apologised/Excusée
Head of Equal Opportunities Policies Department
Ministry of Labour, Social Affairs and Equal Opportunities

Mme Etleva SHESHI
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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, DG Législation, SPF Justice

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Ms Samra FILIPOVIC-HADZIABDIC
Director of the Gender Equality Agency

BULGARIA / BULGARIE
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Ms Ksenija TURKOVIC
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Head of Department for International Organizations and Human Rights,
Ministry of Foreign Affairs and European Integration of the Republic of Croatia

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FINLAND / FINLANDE
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M. Eric RUELLE - Co-Chair/ Co-président
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Ms Karin NORDMEYER
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EUROPEAN COMMUNITY / *COMMUNAUTE EUROPENNE*

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

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* * * * *

INTERNATIONAL INTERGOVERNMENTAL ORGANISATIONS /
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Mr Olivier Guillaume BEER
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ORGANISATION FOR SECURITY AND CO-OPERATION IN EUROPE /
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Ms Jamila SEFTAOUI
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INTERPOL
No nomination / Pas de nomination

EUROPOL
No nomination / Pas de nomination

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

INTERNATIONAL NON-GOVERNMENTAL ORGANISATIONS /
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Ms Christine CHINKIN
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SECRETARIAT DU CONSEIL DE L'EUROPE

Directorate General of Human Rights and Legal Affairs /
Direction Générale des droits de l'Homme et des affaires juridiques

Mr Jan KLEIJSSEN	Director of Standard-Setting / Directeur des activités normatives
Mr Jeroen SCHOKKENBROEK	Head of the Human Rights Development Department / Chef du Service du développement des droits de l'Homme
Mr Jörg POLAKIEWICZ	Head of the Law Reform Department / Chef du Service des réformes législatives
Mr Carlo CHIAROMONTE	*Secretary to the Ad Hoc Committee to Combat Violence against Women and Domestic Violence (CAHVIO) / Secrétaire du Comité ad hoc pour combattre la violence à l'égard des femmes et la violence domestique* Head of the Criminal Law Division / Chef de la division du droit pénal
Ms Johanna NELLES	*Co-Secretary to the Ad Hoc Committee to Combat Violence against Women and Domestic Violence (CAHVIO) / Co-Secrétaire du Comité ad hoc pour combattre la violence à l'égard des femmes et la violence domestique* Gender Equality Division / Division pour l'égalité entre les femmes et les hommes
Ms Sylvie AFFHOLDER	Co-Secretary of the PACE Committee on Equal Opportunities for Women and Men/ Co-Secrétaire de la Commission sur l'égalité des chances pour les femmes et les hommes
Mlle Emilie MONSALLIER	Assistant / Assistante Criminal Law Division/ Division du droit pénal
Ms Lucy ANCELIN	Assistant / Assistante Criminal Law Division / Division du droit pénal

* * * * *

INTERPRETERS / *INTERPRÈTES*

M. Philippe QUAINE
Mme Isabelle MARCHINI
M. Nicolas GUITTONNEAU

APPENDIX III: INTERIM REPORT

I. INTRODUCTION

1. The need for reinforced action by the Council of Europe to prevent and combat violence against women was recognised by the Heads of State and Government in their Action Plan adopted during the 3rd Summit of the Organisation (Warsaw, May 2005). The Council of Europe *Campaign to Combat Violence against Women, including Domestic Violence (2006 – 2008),* which was subsequently carried out, revealed the need for a legally binding instrument to prevent violence against women, protect victims of such violence and punish perpetrators. This proposal was supported by the Parliamentary Assembly and the Congress of Local and Regional Authorities of the Council of Europe.

2. Moreover, the European Ministers of Justice decided during their 27th Conference (Yerevan, Armenia, 12-13 October 2006) to assess the need for a Council of Europe legal instrument on violence against the partner. Following the results of a feasibility study on this issue it was concluded by the European Committee for Crime Problems (CDPC) that such an instrument would be necessary.

3. At their 1044th meeting on 10 December 2008, the Ministers' Deputies adopted the terms of reference for the *Ad Hoc Committee on Preventing and Combating Violence against Women and Domestic Violence* (CAHVIO, hereafter "the Committee") to prepare one or more legally binding instrument[s] "to prevent and combat domestic violence including specific forms of violence against women, other forms of violence against women, and to protect and support the victims of such violence as well as prosecute the perpetrators".

4. The Committee held its first and second meeting on 6-8 April and 25-27 May 2009 respectively.

5. This interim report lays out the views of the Committee on the subjects and content to be covered by the future instrument(s), hereunder referred to as instruments[1], as requested by the Ministers' Deputies[2]. The discussion was facilitated by a document drafted by the Secretariat (CAHVIO (2009)3) which listed a range of elements for discussion drawn up on the basis of:

- 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.*

[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."

[2] "The Committee shall present, by 30 June 2009, an interim report on its position on the subjects and contents of the proposed instruments(s), its working methods and the time table for its work, in order to allow the Committee of Ministers to take a decision, where necessary, on these matters".

II. CONSIDERATIONS RELATING TO THE CONTENT OF THE FUTURE INSTRUMENTS

A. Preliminary remarks

6. The Committee is of the opinion that the focus of the future convention should be on the elimination of violence against women. Furthermore, the future convention should deal with domestic violence which affects women disproportionally. The convention should also allow for the application of its provisions to all victims of domestic violence. This applies to all subsequent paragraphs of the Interim Report.

7. 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 will be based in particular on the "three Ps" which are the priorities: Prevention, Protection of victims and Prosecution of offenders. An additional main element (“P”) will be included to represent the importance of integrated, holistic and co-ordinated Policies in this field, without which measures to eliminate violence against women will be unsuccessful.

B. Purpose of the instruments and definitions

8. In opting for a convention on the elimination of violence against women with, if appropriate, possible additional legally binding instruments, including protocols, the Committee places the future convention squarely within the wider context of achieving substantive equality between women and men and the full enjoyment of human rights by women. In line with other existing legal instruments and declarations, the Committee considers violence against women a human rights violation and an obstacle in achieving full equality between women and men.[3] Recognising the fact that violence against women is the result of an imbalance of power between women and men, the purpose of the convention is thus to guarantee the full enjoyment of women’s human rights such as the right to life, the right to liberty and security of the person, the right to health. Consequently, the provisions of the future convention will put into effect the obligation of the state to prevent violence against women, protect victims of such violence and investigate and appropriately sanction all acts of violence against women – the due diligence standard now widely accepted in international human rights law.

9. The Committee has agreed that the gender dimension should be duly taken into account in the convention. It agreed to identify the ways in which to integrate the gender dimension in the provisions of the convention, notably in relation to the prevention of violence and the protection of victims, while always taking into consideration the different aspects of the instrument and the requirements, as far as possible, of gender neutral criminal law provisions.

10. The Committee recognised that violence against women is a manifestation of historically unequal power relations between men and women, which have led to domination over and discrimination against women by men. This violence is thus both a cause and a

[3] See Council of Europe Recommendation Rec (2002)5 on the protection of women against violence, United Nations Declaration on the Elimination of Violence against Women, CEDAW Committee General Recommendation no. 19.

consequence of the inequality between women and men, linked to a certain perception of their roles in the family and in society.[4] The delegations agreed that existing definitions of gender should be taken into account.

11. Some forms of violence may not only be typically experienced by women, they also have a different impact on the lives of women and men. This is the case, for example, with forced marriages, where cultural and religious attitudes towards women and their sexuality make it more difficult for women than for men to seek help and rebuild their lives.

12. Finally, other forms of violence are exclusively experienced by girls and women, in particular female genital mutilation, which is employed to control women's sexuality and entails particularly severe consequences for victims.

13. Therefore, it appeared necessary to take into account the structural nature of violence against women.

14. Consequently, the Committee is of the opinion that attempts to prevent and combat these forms of violence should reflect this reality and encompass a gender-sensitive approach to ensure that these realities are taken into account and that responses are more suitable, in particular in relation to the prevention of violence and the protection of victims.

15. In negotiating the definitions of domestic violence and violence against women, the Committee will take into account existing definitions as reproduced in the Appendix.

C. Prevention

16. Provisions relating to the setting up in all member states of effective preventive measures aiming at eliminating the problems of violence against women by any person, organisation or enterprise are of prime importance in drafting the convention. Various preventive measures, such as awareness-raising campaigns, training of the professionals who have regular contact with victims, and educational programmes, are examined in this sub-chapter, as is the need to ensure that sufficient financial and other resources are allocated to protect women. Local and regional authorities can be essential actors in implementing these measures by adapting them to specific realities. The Committee would also like to address the issue of the effectiveness of the different preventive activities for which the instruments are to provide, particularly in respect of marginalised, vulnerable populations or populations of different cultures such as members of migrant communities and persons with disabilities, but also vis-à-vis known or potential perpetrators of this kind of violence. Any prevention measures should be evaluated and monitored.

[9] 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).

i. Realisation of gender equality

17. The realisation of de jure and de facto equality between women and men is a key element in the prevention of violence against women. All measures to prevent violence against women should therefore be framed in the context of the promotion and the practical realisation of equality between women and men through eliminating discrimination against women, changing patriarchal attitudes and fighting back gender stereotypes.[5] Preventive measures should also establish a link with existing national legislation and international standards aimed at achieving 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) in order to highlight the state obligation to prevent violence against women. It should be made clear that human rights of women and men are universal and that custom, religion, tradition or honour must not be invoked to circumvent the implementation of the human rights of all.

ii. Awareness raising

18. Awareness-raising programmes and campaigns should be provided for by the future instruments and set up in all member states to draw public attention to violence against women, and more specifically to its causes and damaging effects for both the victims and the community. The Committee emphasised the importance of adequately informing the public in this regard. These awareness raising programmes and campaigns should also emphasise the fact that these problems are not private matters, but are in fact a human rights violation. Awareness-raising activities and/or programmes should, in the long term, pursue the aim of altering ideas, attitudes and prejudices which persist, and which constitute factors which lead to violence.

19. The role of the media in raising awareness of violence against women and in challenging prevailing stereotypes in gender roles should be explored.

iii. Education

20. Educational activities should be addressed to all members of society, so that they assimilate the rule fundamental to any civil society according to which all human beings 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. Respect between girls and boys and the principle of gender equality should be part of the formal and informal educational curriculum. Educational activities should be carried out mainly in any educational facilities, but also as part of the efforts made by institutions responsible for sports, cultural and leisure activities as well as religious institutions and mass media.

iv. Training

21. The Committee considers it vital that professionals in regular contact with persons likely to be victims of violence against women have appropriate knowledge of the issues associated with these kinds of violence, including knowledge on gender equality and human rights of women. Initial vocational training and in-service training should enable

[5] Council of Europe member states are under a legal obligation to change societal and cultural patterns of behaviour (Article 5 of the UN Convention on the Elimination of All Forms of Discrimination against Women).

professionals such as judges, police officers, lawyers, social workers, health care professionals, teachers and media professionals, to acquire appropriate tools for identifying and managing cases of violence, at an early stage, and to take preventive measures accordingly. Training should be on-going and sustained with appropriate follow-up to ensure that newly acquired skills are adequately applied. Consequently, the necessary resources should be made available for co-ordinated, comprehensive and multi-agency training purposes.

v. The role of men

22. Men and boys need to be fully engaged in the attempt to change the culture and the social environment that tolerate and perpetuate violence against women. By speaking out against violence, engaging other men in activities to promote gender equality and acting as role models by actively taking on a caring role and family responsibilities they have an important contribution to make.[6]

vi. The role of women's NGOs

23. Women's NGOs as part of civil society have played and continue to play an important role in preventing and eliminating violence against women. Their work in raising awareness and bringing about social change needs to be recognised and supported.

vii. Perpetrator programmes

24. Perpetrator programmes promoting non-violent behaviour are an important contribution to the prevention of violence against women and the protection of victims if these programmes are devised and implemented in a co-ordinated way and run in close co-operation with specialist women's services. Research has shown that the results of these programmes are substantially influenced by the level of cooperation between the police, the judiciary and women's or social services. Many good examples exist across Council of Europe member states but they are often lacking in sufficient resources, inadequately evaluated and are small in scale. Such intervention programmes have been developed in some member states in recent years with the aim of placing the perpetrators of such violence in a position to acknowledge their responsibility and to ultimately change their behaviour. The future convention could thus emphasise the importance of these programmes for the prevention of further violence and promote their implementation.

D. Protection and support of victims

25. This chapter should set out protection and support measures which take into account the particular vulnerability of victims. Violence against women is a violation of their human rights and women victims have a right to protection, support services and access to justice and economic assistance. This is why the instruments should set up comprehensive measures enabling victims to benefit from support, advice and services, according to their needs. Services (immediate, long-or short-term) for all the types of violence to be covered by the future convention shall be offered with a view to enabling the enjoyment of human rights of

[6] The Council of Europe has carried out extensive work on the role of men in combating violence against women. Recommendation Rec(2002)5 spells out the importance of engaging men in the endeavour to end violence against women.

all individuals.[7] Where support and protection of victims before and during criminal proceedings is concerned, existing standards should be taken into account.[8] Special attention should be paid to the process of re-victimisation. Likewise, special needs of particularly vulnerable victims such as migrant, and pregnant women or women with disabilities need to be adequately catered for by all types of services. In cases where children are the victims of a criminal offence or are affected by the violence in some other way, special attention must be given to their particular needs, rights and capabilities.

26. It would also be advisable to address the question of raising the awareness of, and protecting, witnesses, who all too frequently do not come forward.

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

27. The need for a wide range of specialised and safe support services to be set up in all member states, so as to provide easy access for all victims of violence against women, is broadly shared and generally accepted. This is why the instruments will need to contain provisions for a raft of appropriate measures to ensure that these services are available and both effective and efficient. These services should have sufficient financial resources available and should take into account the heightened risk of life-threatening violence that women victims of domestic violence may face.

28. Furthermore, coordination and co-operation between these specialised services, and also with the police, the judiciary as well as health and social welfare services, are vital in order to provide a comprehensive response to victims' specific needs in the light of the different kinds of violence suffered.

29. The role of non-governmental organisations and their extensive experience in providing specialist services for women victims of violence needs to be recognised and supported.

30. In addition, appropriate legal assistance should be offered to victims before and during legal proceedings and should not depend on their willingness to press charges.

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

31. Health care professionals, social workers and other professionals such as teachers 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 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 and support. In this context, they should have good knowledge of these services, i.e. the policing, social and medical services, and of the judicial authorities.

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[7] See the Council of Europe publication "*Combating violence against women: minimum standards for support services"*, which devises quality standards for services and links these to the existing human rights obligations of Council of Europe member states (EG-VAW-CONF(2007) Study rev, Strasbourg, 2007)

[8] See Council of Europe Recommendation No. R (85) 11 on the position of the victim in the framework of criminal law and procedure and European Council Framework Decision on the standing of victims in criminal proceedings (adopted on 15 March 2001).

32. Social welfare and long-term housing services as well as services for professional (re-) training should also aim at empowering women victims of violence by achieving economic independence. The provision of social benefits, in particular social housing, should be in line with existing obligations under the European Social Charter, the International Covenant on Economic, Social and Cultural Rights and the United Nations Convention on the Elimination of all Forms of Discrimination against Women.

33. The sensitive matter of responsibility for child victims and witnesses of acts of violence should be adequately dealt with.

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

34. In view of the highly important task performed by the public authorities, and more particularly the police and judicial authorities, when acts of violence against women are reported to have occurred, it would be essential for the instruments to include provisions designed to ensure immediate and effective prevention and protection for victims, making it possible for the responsible public authorities to take a number of measures in this respect. States have an obligation to exercise due diligence to prevent, investigate and punish acts of violence, whether those acts are perpetrated by the state or private persons, and provide protection to victims.

E. Integrated policies

35. The Committee is of the opinion that eliminating violence against women requires evidence-based, comprehensive and coordinated policies involving all decision-making levels of the state (governments, parliaments and local and regional authorities), various sectors, agencies and institutions, including the civil society at large and women's NGOs. These policies should focus on the needs of the victims and cover all aspects relevant to the prevention of violence and protection of victims as well as the improvement of multi-agency co-operation between the different areas and actors and the promotion of networking at national and international level. Legislation to protect and support victims is an essential part of a co-ordinated strategy to combat violence against women. Taking into account the need to maintain the effectiveness of the respective fields of law (criminal law, civil law, family law, immigration law etc), it is of utmost importance to bring them into line to ensure a comprehensive and co-ordinated legal approach. Furthermore, building the capacity of all professionals to adequately respond to cases of violence against women, individually or in the framework of multi-agency co-operation through education and training is vital in ensuring the implementation of co-ordinated policies. Finally, part and parcel of such an effective and holistic response to violence against women is the sufficient allocation of resources.

F. Substantive law

36. As is the case in other Council of Europe Conventions on the combating of specific forms of violence, abuse or ill-treatment, substantive law provisions form an essential part of the instruments. It is clear from the studies carried out of the national legislation currently in force on violence against women that many gaps remain. It is therefore necessary to strengthen legal protection and redress and to take into account existing good practice when introducing changes into the legislative systems of all member states in order to prevent and combat effectively these forms of violence. The Committee examined 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. A distinction should be made between forms of violent behaviour that require a criminal law response and those that require a different type of response. Thus the instruments should combine punitive measures against perpetrators of violence as well as preventive, protective and compensatory measures for all victims.

i. Criminal law

37. This part aims at addressing certain forms of violence against women, whether the violence be physical, psychological or sexual. The Committee agreed that the scope of application of the criminal law provisions could be limited to certain acts of violence.

38. The Committee agreed that criminal law provisions of the future convention need to be precise and of a foreseeable nature.

39. Furthermore, the Committee agreed that, in principle, all criminal law provisions of the future convention should be presented in a gender-neutral manner; the sex of the victim or perpetrator should thus, in principle, not be a constitutive element of the crime. However, this should not prevent member states from introducing gender-specific provisions. It was also agreed that this general principle should not prevent the possibility of making exceptions in the future convention should this be necessary, for example in relation to female genital mutilation. In this respect, the Committee agreed that general provisions covering the different forms of violence – without consideration of gender - constitute an adequate response to the obligation to criminalise certain acts as are to be set out in the convention.

40. The Committee emphasised that care should be taken when drafting instruments so as to avoid, as far as possible, covering the same conducts already contained in other Council of Europe conventions, in particular the Convention on Action against Trafficking in Human Beings (ETS 197) and the Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (ETS 201).

41. The future convention should contain in this part other provisions relating to substantive law, which are already present in other recent Council of Europe Conventions, i.e. those on aggravating circumstances, custodial sentences, complicity, attempted crime and jurisdiction.

42. 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

43. One part of this sub-chapter should be devoted to measures relating to the rights of victims of violence against women under civil law. 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. The possibility of criminal law sanctions for any violations of a protective measure such as a protection order against the perpetrator should be considered in the future convention.

44. Furthermore, measures should be introduced to ensure that victims are compensated for the physical, psychological, pecuniary and non-pecuniary damage suffered. This section deserves particular attention and should be based on national legislation and existing good practices in many member states as well as relevant international instruments.

iii. Administrative law

45. This sub-chapter could also contain provisions in response to the needs of victims of specific forms of 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.

G. Investigation, prosecution and procedural law

46. The question of the introduction of provisions to ensure that procedures take due account of the particular vulnerability of the victims shall be a key element of the future instruments. Nevertheless, these provisions should take into account the rights of the defendant and 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. The rights of perpetrators cannot supersede women's human rights to physical and mental integrity. It is therefore necessary to adopt a balanced approach that takes due account of the different interests at stake, that is protecting the rights of the victims on the one hand and safeguarding the rights of the defendant on the other hand.

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

a. 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 provisions which are already covered by other relevant international instruments, of the Council of Europe in particular, should be used as a basis when defining the role and the place of the victim in judicial procedures;

b. 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 violence against women);

c. 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).

The creation of specific provisions aimed at protecting the victim throughout the whole procedure is essential, especially due to the victim's particular vulnerability at the various stages of the criminal process. Indeed, statistics from certain member states of the Council of Europe show that many women suffer violent reprisals for having reported the crime. As a result, specific measures could be introduced in the instruments, such as the possibility to be informed of the temporary or definitive release of the person prosecuted or convicted;

d. the confidentiality rules imposed by internal law on certain professionals working with victims of violence against women which should not constitute an obstacle to the possibility of their reporting to the competent authority any situation where they have reasonable grounds for believing that an individual is the victim of physical, psychological or sexual violence. This could include the possibility, under certain conditions established in national law, of lifting the obligation to professional secrecy under certain conditions;

e. the conditions under which the legal proceedings are carried out, including the questions concerning evidence;

f. the possibility of establishing jurisdiction allowing for prosecution of perpetrators who have committed crimes outside the territory of state parties;

g. the extension or modification of the statute of limitations for initiating proceedings in relation to certain offences such as female genital mutilation or forced marriages.

i. Training of those who play a role in procedures

48. Provisions for specific training on the problems of violence against women to be available to the professionals working on these subjects should be included in the instruments. Furthermore, the instruments should contain the necessary measures to ensure that the persons, units or services in charge of investigations specialise in the combating of violence against women.

49. Taking account of the role of the various bodies usually involved in investigating violence against women, an interdisciplinary approach to carrying out investigations, mainly so as to spare victims additional suffering caused by repetitive procedures and to provide additional support, could be envisaged.

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

50. Because of the particularly personal nature of some types of 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. The relevant and innovative provisions of the Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse and those of other relevant

international instruments could give some guidance in the drafting of provisions concerning ways of interviewing victims, including children, for inclusion in the future instrument and its possible additional protocols.

iii. Judicial proceedings

51. The Committee is of the opinion that the future convention should contain the possibility 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 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.

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

52. This chapter shall include international co-operation provisions which are not limited to judicial co-operation in criminal matters but also concern co-operation in the area of the prevention of different forms of violence against women and the assistance of victims.

53. As regards judicial co-operation in the criminal sphere, the Council of Europe already disposes of a substantial body of standard-setting instruments. In particular, the European Convention on Extradition (ETS 24), the European Convention on Mutual Assistance in Criminal Matters (ETS 30) and their Additional Protocols (ETS 86, 98, 99 and 182) are cross-sector instruments applicable to a large number of offences. These instruments can be implemented to permit judicial co-operation in criminal matters in relation to procedures dealing with the offences established in the future convention and its possible additional protocols.

54. Furthermore, certain forms of violence against women may have an international dimension, which requires that special provisions concerning international co-operation be introduced, for instance in respect of forced marriages. Hence, issues in relation to transborder co-operation and consular aspects need to be covered by the convention. 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.

55. 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 could be envisaged.

56. Other aspects of international co-operation could also be covered by specific provisions of the future convention, such as:

- judicial co-operation in a wider sense;
- provisions destined at making the fight against violence against women a priority within the framework of bilateral and multilateral legal co-operation between state parties;
- the question of extra-territorial application of the convention so that victims outside the territory of the states parties can also benefit from its protection provisions;

- the promotion of transnational co-operation between support services for victims.

I. Data collection

57. There is wide recognition of the importance of data to the devising and implementation of policies to prevent and combat violence against women, and to the supervision of their application. Yet, the systematic collection of administrative or population-based data is scant in most Council of Europe member states and the data that are available are rarely comparable across countries nor over time. Consequently, the Committee considers the identification of common categories for the collection of data so that it can be compared across Europe an essential aspect of the future instruments. Such an objective is necessary in order to make a pertinent assessment of the prevalence and risks of all these forms of violence and to evaluate existing policies. Attempts to develop harmonised categories of data collection for both administrative data and population-based data (surveys) should build on existing efforts in this field.[9] 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. In addition, the importance of data currently being collected by NGOs should be recognised.

J. Monitoring mechanisms

58. The Committee is of the opinion that a strong, independent and adequately resourced monitoring mechanism is needed to assess states' willingness to efficiently implement the provisions contained in the future instrument(s) and identify good practices in order to assist States to implement the obligations of the convention. The form this mechanism should take is to be discussed during the negotiating phase on the basis of the monitoring systems already in place in other Council of Europe instruments.

59. The concept of establishing a parliamentary monitoring mechanism in state parties to the convention remains to be further discussed.

[9] For example the work of the United Nations Expert Group on indicators to measure violence against women, the Statistical Commission of the United Nations Economic Commission for Europe, the International Violence against Women Surveys (IVAWS), the World Health Organization Multi-Country Study on Women's Health and Domestic Violence as well as a range of good practices at national level on how to collect data in this sensitive field.

III. TYPES OF VIOLENCE

A. General remarks

60. As indicated in paragraph 6 of the present report, the Committee agreed that the convention should focus on the elimination of violence against women and deal with domestic violence which affects women disproportionally. The Committee also agreed that the convention should allow for the application of its provisions to all victims of domestic violence.

61. Agreement was reached concerning the following aspects:

a. the convention should cover all forms of violence perpetrated against women, whether physical, psychological, sexual or economic in nature;

b. it should comprise not only violence committed in the domestic sphere or within the family, notably intimate partner violence, but also violence committed in the community at large;

c. it should take into account the particular vulnerability of certain victims such as pregnant women, elderly or women with disabilities and migrant women.

62. In relation to criminal law provisions, the delegations have agreed on general characteristics as laid out in paragraphs 37 to 42 of the present report.

63. On the basis of these general remarks, the following types of conduct have been identified.

B. Conduct that should be covered by the convention

64. There is wide consensus that the convention should cover 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 the public or private sphere. This includes, but is not limited to, the following:

i. Physical and psychological violence, including stalking

ii. Sexual violence, including sexual assault, rape and sexual harassment

iii. Other forms of violence against women, including:

- Forced marriage;

- Deprivation of liberty;

- Female genital mutilation;

- Crimes committed in the name of honour.

65. The delegations agreed that the definitions of these forms of violence should be drafted during the preparation of the convention, while duly taking account of international law and the definitions contained in Recommendation (2002)5 as well as the Convention on the Elimination of All Forms of Discrimination against Women and General Recommendation No. 19 of the CEDAW Committee.

66. It remains to be further discussed whether the convention should cover specific forms of violence against women in situations of armed conflict and child abuse. In any event, the delegations agreed that any existing legal instrument in this field should be taken into account while drafting the convention.

67. The delegations generally deem that the inclusion in the convention of physical, sexual and psychological violence and threats of such acts suffered by children in the family, notably as witnesses will be discussed further. When drafting the convention, the Committee should consider the specific nature of these forms of violence and the existence of other international legal instruments in this field (notably the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse).

IV. CONCLUSION

68. The Committee is of the opinion that the focus of the future convention should be on the elimination of violence against women. Furthermore, the future convention should deal with domestic violence which affects women disproportionally. The convention should also allow for the application of its provisions to all victims of domestic violence.

69. It agreed as regards the chapter related to substantive criminal law, that criminal offences are to be defined precisely and, in principle, presented in a gender-neutral manner.

70. It agreed that, as a matter of principle, one single convention should be drafted, but considered that in addition to that instrument, other possible legal instruments could be prepared at a later stage, if appropriate.

71. The Committee is of the opinion that a strong and independent monitoring mechanism is of utmost importance to ensure that an adequate response to this problem is given in all state parties to the convention.

72. Finally, the Committee favours a comprehensive convention which would cover the three “Ps”: Prevention, Protection of victims and Prosecution of perpetrators and which would be framed in comprehensive, integrated and co-ordinated policies.

73. On the basis of the views contained in this report, the Committee will start its drafting work according to the following timetable:

- 3rd meeting: November 2009
- 4th meeting: March 2010
- 5th meeting: June 2010
- 6th meeting: October 2010

74. The Committee considered that these four meetings will probably not be sufficient to fulfil entirely its terms of reference and to finalise the draft convention.

APPENDIX

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

I. VIOLENCE AGAINST WOMEN

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

76. 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:

77. 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."

78. 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."

79. 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."

80. 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

81. 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"*.

82. 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).

83. 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.

84. 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 o trust, authority or influence over the childe, 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"*.