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

ELEMENTS FOR DISCUSSION

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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 women should be of prime importance when instruments

[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."

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
    - perpetrated by any family member, household member, guardian or any other person present in the household (friends of the family etc)

- 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)
    - Perpetrated by men and women as private individuals or state officials
    - 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 reasons[2]
    - Perpetrated mainly by traditional practitioners, but also medical doctors, midwives and family members
    - 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)
    - Perpetrated by members of the family, usually parents
    - 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
    - Perpetrated by members of the armed forces, police forces or paramilitary groups
    - 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

[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).

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 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 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"*.