

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

An instrument to promote greater equality between women and men

Introduction

- Violence against women is both a cause and a consequence of unequal power relations between women and men. Rape, domestic violence, stalking, forced marriage, female genital mutilation, sexual harassment, forced abortion, and forced sterilisation are manifestations of male domination over women. It is violence directed against women because they are women and must be considered as structural violence because it is an integral part of a social system which manifests itself in an imbalance of power with accordingly unequal opportunities for women and men. The lower socio-economic status of women in society, patriarchal attitudes and customary practices aimed at controlling women's sexuality help to perpetuate violence against women. Widespread impunity and significant disparities in state responses to such violence leave many women unprotected and without recourse to justice. Consequently, significant numbers of women are barred from fully enjoying their human rights, developing their full potential and leading independent lives. Violence against women is thus a major obstacle to the full advancement of women.

With the aim of breaking this cycle of gender inequality and women's continuous exposure to gender-based violence, the Council of Europe adopted in 2011 its Convention on preventing and combating violence against women and domestic violence, which opened for signature in Istanbul in May 2011 (Istanbul Convention). Its measures are firmly based on the premise that violence against women cannot be eradicated without investing in greater equality between women and men and that in turn, only real equality between women and men and a change in power dynamics and attitudes can truly prevent violence against women.

The key to combating violence against women is not crime control. It is making sure that women and men are equal partners, have the same rights and responsibilities, the same opportunities and that their contribution to society is equally valued and respected.

Using the Istanbul Convention to achieve greater equality between women and men

- Since the 1990s, the Council of Europe, in particular its Steering Committee for Equality between Women and Men (CDEG), has undertaken a series of initiatives to promote the protection of women from violence and to achieve greater equality between women and men. The Preamble of the Istanbul Convention contains references to these and other international legal standards such as those contained in the United Nations Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW Convention). This is testament to the Istanbul Convention's strong link to the gender equality agenda pursued by the Council of Europe.

The Preamble also contains the drafters' recognition that the "realisation of de jure and de facto equality between women and men is a key element in the prevention of violence against women" and that "violence against

women is a manifestation of historically unequal power relations between women and men, which have led to domination over, and discrimination against, women by men and to the prevention of the full advancement of women". The Preamble thus firmly establishes the link between achieving gender equality and the eradication of violence against women.

On the one hand, the drafters affirmed that violence against women, including domestic violence, is a distinctly gendered phenomenon because it is violence targeted at women to control them or their sexuality. On the other hand, the drafters of the Convention recognised that men and boys are not immune to some of the forms of violence covered by the Convention, in particular domestic violence, and that this violence needs to be addressed. Consequently, the Istanbul Convention leaves it to the State Party to decide on the extent to which it chooses to apply its provisions to male, elderly and child victims of domestic violence (see Article 2). In any event, States Parties are encouraged to integrate a gender perspective in all policies and this would help address the reality of gay men in abusive relationships or that of men that do not conform to what society considers to constitute "appropriate behaviour". It should be noted that this expansion of the scope of application, however, in no way lessens the Convention's focus on violence against women as a form of gender-based violence.

Resulting from the established link between achieving gender equality and the eradication of violence against women, the Convention contains a number of provisions that aim at advancing the status of women in society in law and in fact. As legally-binding obligations, they are expected to give new impetus to the pursuit of equality between women and men at national level. Last but not least, these provisions will further the overall aim of non-discrimination against women as required by the CEDAW Convention¹ because they can be grouped under the following three central obligations identified by the CEDAW Committee in its General Recommendation No. 25²:

1. Ending direct and indirect discrimination against women in law

Putting an end to de jure discrimination against women is a fundamental prerequisite for the achievement of true equality between women and men. Article 1 of the Istanbul Convention therefore lists the contribution "to the elimination of all forms of discrimination against women" and the promotion of "substantive equality between women and men, including by empowering women" as among the purposes of the Convention. It is this wider goal of equality between women and men that the drafters wished to achieve and the wide variety of measures contained in the Convention should be seen as contributing to it. Implementing the various measures of the Convention aimed at preventing violence against women, protecting its victims and holding perpetrators accountable will ultimately contribute to overcoming discrimination against women and to more equality between women and men.

In line with this stated purpose of the Convention, Article 4 paragraph 2 requires States Parties to condemn all forms of discrimination against women and to take, without delay, measures to prevent any such discrimination. These measures include:

- (a) enshrining the principle of equality between women and men in law and ensuring its practical realisation;
- (b) prohibiting discrimination against women by law; and
- (c) abolishing any discriminatory legislation or practices.

The enjoyment of the right to be free from violence as stipulated in paragraph 1 of Article 4 is interconnected with the States Parties' obligation to secure women's exercise, on an equal footing with men, of all civil, political, economic, social and cultural rights as set out in the human rights instruments of the Council of Europe, particularly the European Convention on Human Rights and its Protocols, and the European Social Charter and other international instruments to which they are parties, such as the CEDAW Convention. Therefore, laws that discriminate against women and prevent women from the enjoyment of their human rights need to be repealed. The fact that Article 4 paragraph 2 calls for the practical realisation of equality shows that what is aimed at is

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1. All Council of Europe member states are States Parties to the CEDAW Convention.
 2. CEDAW Committee General Recommendation 25, paragraphs 6 and 7, which lists the elimination of any direct or indirect discrimination against women by law, the improvement of the de facto position of women through concrete and effective policies and programmes, and the need to address gender relations and gender-based stereotypes that affect women through individual acts and through law and societal structures, as the three central obligations of States Parties to the CEDAW Convention.

the achievement of substantive equality and not a purely formal legal obligation of equal treatment of women with men. The CEDAW Committee has described substantive equality to mean the achievement of “equality of results”, “overcoming underrepresentation of women and a redistribution of resources and power between women and men”³. In Article 4 paragraph 2, the Istanbul Convention affirms this principle of substantive equality and employs it to ensure progress in the achievement of equality in law and in fact with the ultimate aim of reducing violence against women.

2. Improving the de facto position of women through concrete and effective policies and programmes

Complementing the obligation to end de jure discrimination, Article 6 requires States Parties to ensure that policies and programmes to end violence against women do not have a negative impact on women and to implement wider policies that empower women and improve their equality with men.

Concretely, States Parties are required to apply a gender perspective in the design and evaluation of measures taken in implementation of the Convention and to promote policies of equality between women and men. This is intended to ensure that a gender impact assessment of any proposed measure or law is carried out in the planning/drafting stage and that the evaluation of measures taken to implement the Convention is used to determine whether there is a gender differential in the impact of the provisions. There are many differences that exist in women’s and men’s lives which means that supposedly neutral policies and measures often impact differently on women and men. Assessing their impact based on gender before introducing new measures and rectifying any unintentional inequalities or outcomes as a result of a thorough and gender-sensitive evaluation process will help improve the quality of any measure.

While the Istanbul Convention limits this obligation to gender proof to measures taken in connection with the implementation of the Convention, it is the first of its kind enshrined in an international treaty. This is an important recognition of the benefits and importance of gender proofing and gender impact assessments, and may hopefully be used as a source of inspiration for policy design and evaluation in other areas.

The second obligation contained in Article 6, the obligation to promote policies of equality between women and men and to empower women, aims at achieving one of the overall purposes of the Istanbul Convention listed in Article 1, that of promoting substantive equality. It is only through a real transformation of opportunities, institutions and systems that a meaningful change in the position of women will be achieved. This requires a multitude of policies and measures to enable women to fully enjoy their human rights and fundamental freedoms, to reach parity in public decision-making, to be empowered and, crucially, to ensure that women are free from violence. For these policies to have any real effect, they need to recognise the wide variety of realities that women live with, shaped by factors such as race, colour, religion, political or other opinion, national or social origin, association with a national minority, property, birth, sexual orientation, gender identity, age, state of health, disability, marital status, and migrant or refugee status – all of which are recognised by the Istanbul Convention as grounds for non-discrimination. In addition, gender equality policies need to address the root causes of women’s inequality and the equality of results should be their stated aim. This might require temporary or special measures for the benefit of women, as purely identical treatment may not necessarily help rectify past discrimination or lead to substantive equality between women and men. Special measures to prevent violence against women and protect the victims as mentioned in Article 4 paragraph 4 of the Istanbul Convention are an example of such special measures to accelerate the correction of past and current discrimination against women.

3. Addressing gender relations and the persistence of gender-based stereotypes

Patriarchal ideology that often underlies gender relations, the shaping of institutions, organisations and systems according to the life patterns and experiences of men, the widespread sexualisation of women’s bodies suggesting their permanent sexual availability, and gender-biased customs and traditions all contribute to treating women as subordinate members of the family or society. Prejudices, customs, traditions and other practices based on the inferiority of women or on stereotyped roles for women and men abound. Naturally, they influence gender

3. CEDAW Committee General Recommendation 25, paragraph 8.

relations and interpersonal relationships. They also affect how women are treated and perceived by public institutions and societal structures, but also by, for example, the legal system.

Committed to addressing the root causes of violence against women and to promote greater equality between women and men, the Istanbul Convention aims at changing attitudes and eliminating stereotypes not only at the level of individuals, but also at the level of institutions.

With a view to changing mentalities and combating gender bias among individual members of society, Article 12 paragraph 1 requires States Parties to promote changes in the social and cultural patterns of behaviour of women and men in order to eradicate stereotypes, customs and prejudices based on the notion of women's inferiority. To ensure that children grow up free from such prejudice and stereotypes, Article 14 requires that teaching material systematically addresses, at all levels, issues such as equality between women and men, non-stereotyped gender roles, mutual respect and non-violent conflict resolution in interpersonal relationships.

As far as institutional responses are concerned, the Convention aims at enhancing the knowledge, gender-responsiveness and the level of awareness of all relevant professionals by requiring extensive training, including on the concept of equality between women and men (Article 15 paragraph 1). Professionals, in particular members of the law enforcement agencies and the judiciary need to operate on a gendered understanding of violence against women in order to approach victims with the necessary sensitivity and empathy, rather than displaying tendencies of disbelief and ridicule (Article 49 paragraph 2). The obligation to ensure a prompt and appropriate response of law enforcement agencies to any call for help in relation to the forms of violence covered by the Convention intends to ensure that allegations of violence against women receive the attention of the police they deserve and are acted upon adequately (Article 50).

The Convention also addresses the responsibility of the private sector, in particular the media and information and communication technology sector, to work towards an enhanced respect for women's dignity and to become involved in the prevention of violence against women (Article 17). This can take on many forms, such as supporting employees who are victims of domestic violence and stalking, introducing a company policy against sexual harassment, participating in developing local, regional or national policies against violence or financially contributing to services for victims. In addition, States Parties are asked to encourage the Information and Communication Technology (ICT) sector and the media to adopt self-regulatory standards to refrain from harmful gender stereotyping and from spreading degrading images of women or imagery which associates violence and sex. The influence of how women are portrayed in the mass media and on the Internet on attitudes and mentalities cannot be ignored.

Conclusion

- There are many factors that contribute to the high numbers of women in Europe subjected to one or more of the many forms of gender-based violence. Among these are the discrimination of women by law, the low de facto position of women in society as well as gender relations and gender-based stereotypes. These three areas, identified by the CEDAW Committee as central to eradicating discrimination, require immediate attention in order to achieve de facto equality between women and men. The Istanbul Convention recognises this and links the eradication of violence against women firmly with the achievement of equality between women and men. In addition to setting out a long list of measures to prevent violence against women, protect its victims and prosecute the perpetrators, it contains a number of strategically placed obligations to empower women and enhance their status in society. It is therefore not only a tool to address violence against women but to achieve greater equality between women and men. As such, it addresses not only governments but every member of society.

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