

A practical guide to the Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention)

SUMMER 2020

The Istanbul Convention is the first legally binding human rights and criminal law treaty in Europe on violence against women and domestic violence. This briefing note outlines the framework of the Convention and the obligations of States Parties under the Convention.

STATUS OF THE CONVENTION

- 1** The Convention came into force on 1 August 2014. To date, 34 States have ratified it.¹ The EU was the first international organisation to sign the Convention in May 2017. The Convention acknowledges that the realisation of 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.” (Convention Preamble)

DEFINITIONS

- 2** Under the Convention, **violence against women (VAW)** is recognised as a violation of human rights and a form of discrimination against women and defined as all acts of gender-based violence that result in, or are likely to result in, physical, sexual, psychological or economic harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life (Article 3(a)).
- 3** Under the Convention, **domestic violence (DV)** is defined as all acts of physical, sexual, psychological or economic violence that occur within the family or domestic unit or between former or current spouses or partners, whether or not the perpetrator shares or has shared the same residence with the victim (Article 3(b)). Significantly, the Convention adopts a gendered understanding of domestic violence, recognising that domestic violence affects women disproportionately (Article 2).

PURPOSE OF THE CONVENTION

- 4** The purposes of the Convention are set out in Article 1:
 - a. To protect women against all forms of violence, and prevent, prosecute and eliminate violence against women and domestic violence;
 - b. To contribute to the elimination of all forms of discrimination against women and promote substantive equality between women and men, including by empowering women;
 - c. To design a comprehensive framework, policies and measures for the protection of and assistance to all victims of violence against women and domestic violence;
 - d. To promote international co-operation with a view to eliminating violence against women and domestic violence;
 - e. To provide support and assistance to organisations and law enforcement agencies to effectively co-operate in order to adopt an integrated approach to eliminating violence against women and domestic violence.

¹ As at 4 September 2020, the following States have ratified the Convention: Albania, Andorra, Austria, Belgium, Bosnia and Herzegovina, Croatia, Cyprus, Denmark, Estonia, Finland, France, Georgia, Germany, Greece, Iceland, Ireland, Italy, Luxembourg, Malta, Monaco, Montenegro, Netherlands, North Macedonia, Norway, Poland, Portugal, Romania, San Marino, Serbia, Slovenia, Spain, Sweden, Switzerland and Turkey.

GENDER EQUALITY

- 5** States Parties to the Convention are required to condemn all forms of discrimination against women and take legislative and other measures to prevent discrimination, in particular by:
- + incorporating in their national constitutions or other legislation the principle of equality between women and men and ensuring the practical realisation of this principle;
 - + prohibiting discrimination against women, including through the use of sanctions, where appropriate;
 - + abolishing laws and practices which discriminate against women.

STATE OBLIGATIONS AND DUE DILIGENCE

- 6** State Parties and all state authorities, officials, institutions and other actors acting on behalf of the State must not perpetrate any act of violence against women. State Parties must also take legislative and other measures to exercise due diligence to prevent, investigate, punish and provide reparation for acts of violence perpetrated by non-State actors (Article 5).
- 7** The Istanbul Convention establishes principles and standards on VAW based on 4 pillars **(the 4 Ps)**:

- Prevention
- Protection
- Prosecution
- Co-ordinated Policies

i. Prevention (Articles 12 – 17)

State obligations to prevent VAW include taking the following measures:

- + Promote changes in the social and cultural patterns of behaviour of women and men with a view to eradicating prejudices, traditions and practices based on the idea of the inferiority of women or on stereotyped roles of women and men
- + Awareness raising campaigns
- + Education on gender equality and gender-based violence
- + Training of professionals working with victims or perpetrators
- + Setting standards for the media and the private sector

ii. Protection (Articles 18 – 28)

State Parties are required to take measures to protect and support victims of VAW and DV, including providing victims access to:

- + Information on their rights
- + Specialist support services
- + Local shelters
- + Rape crisis or sexual violence centres
- + Regional and international complaints mechanisms
- + Protection or restraining orders
- + Telephone helplines

iii. Investigation and Prosecution

Legislation criminalising VAW

States Parties to the Convention are required to **criminalise** the following forms of VAW:

- + Domestic violence
- + Sexual violence, including rape (Article 36)
- + Stalking (Article 34)
- + Forced marriage of children or adults (Article 37)
- + Female genital mutilation (Article 38)
- + Forced abortion and forced sterilisation (Article 39)

States must take the necessary measures to ensure that investigations into or prosecution of these offences are not wholly dependant upon a report or complaint filed by a victim (Article 55).

States have the discretion to criminalise or apply other sanctions to **sexual harassment**, defined as any form of unwanted verbal, non-verbal or physical conduct of a sexual nature, with the purpose or effect of violating the dignity of a person, in particular when creating an intimidating, hostile, degrading, humiliating or offensive environment (Article 40).

Civil remedies

State Parties are also required to take the necessary measures to provide victims with adequate **civil remedies** against the perpetrator, including the right to claim compensation; ensuring that in the determination of custody and visitation rights of children, incidents of violence are taken into account (Articles 29 - 32); and access to emergency barring orders (Article 52) and appropriate restraining or protection orders (Article 53).

Effective investigations and prosecutions (Articles 50 - 58)

State Parties are required to take measures to ensure criminal justice agencies:

- + respond to all forms of violence covered by the Convention
- + provide adequate and immediate protection to victims
- + carry out risk assessments and risk management
- + respect victims at all stages and refrain from victim-blaming
- + effectively investigate all allegations of VAW
- + provide special protection measures for child victims and witnesses (Article 56(2))

iv. Co-ordinated Policies

State Parties must put in place comprehensive and co-ordinated policies encompassing all relevant measures to prevent and combat all forms of violence covered by the Convention and offer a holistic response to violence against women. Policies must place the rights of the victim at the centre of all measures and are implemented by way of effective co-operation among all relevant agencies, including the judiciary, public prosecutors, law-enforcement agencies, local and regional authorities and parliaments, national human rights institutions, NGOs and civil society (Article 7).

State Parties are required to designate or establish one or more official bodies responsible for the co-ordination, implementation, monitoring and evaluation of policies and measures to prevent and combat all forms of violence covered by the Convention. These bodies are required to co-ordinate the collection of data and support research on VAW and DV (Articles 10 and 11) .

MONITORING MECHANISM (ARTICLES 66 – 69)

- 8 The Convention establishes the Group of experts on action against violence against women and domestic violence (GREVIO), composed of 10 – 15 members, to monitor the implementation of the Convention. State Parties must submit reports (based on a questionnaire prepared by GREVIO) on the legislative and other measures it has adopted to implement the provisions of the Convention for consideration and evaluation by GREVIO. GREVIO may receive information on the implementation of the Convention from National Human Rights Institutions, NGOs and civil society.