

United Nations  Nations Unies

United Nations Office on Drugs and Crime
United Nations Division for the Advancement of Women

Expert Group Meeting on good practices in legislation on violence against women
United Nations Office at Vienna, Austria
26 to 28 May 2008

Good Practices and Challenges in Legislation on Violence against Women

Expert Paper prepared by:

Rosa Logar*

Member of the Council of Europe Task Force to Combat Violence against Women,
including Domestic Violence
Wiener Interventionsstelle gegen Gewalt in der Familie
Domestic Abuse Intervention Centre Vienna and WAVE-Network
Vienna, Austria

** The views expressed in this paper are those of the author and do not necessarily represent those of the United Nations.*

Violence against women always affects their children as well, as it is still mostly women who take care of children. No matter which form of violence it is that women have endured, sexual violence in the context of wars or armed conflicts, sexual harassment at work or rape by their partners: their children will always suffer, too, and it is an important aspect for women to get help for their children as well. In the case of domestic violence, children are very strongly affected: the violent husband or partner often also abuses the children. The severer the violence against the wife, the more massive the violence against the children will be, and often will not stop even after the mother has left her violent husband or partner (Hester 2005). For children, witnessing violence against their mother is also violence against themselves, and vice versa, abusing children is a form of psychological violence against women. A woman who is dependent on a violent partner, either financially or because her right of residence is linked to him, will live in fear not only of violence but also of jeopardising her own, and her children's, subsistence.

These specific characteristics of violence against women, i.e. gender-based violence, from which women of every age group and in all fields of society may suffer and which at the same time also affects their children, have to be taken into account in all measures that aim to prevent violence against women otherwise there is the risk that they might not be effective. Furthermore, the corresponding interventions have to be oriented towards the specific form of violence, its effects on victims and the social context in which it occurs. For instance, in the case of sexual harassment at the workplace, victims often risk being fired, especially if the violence is committed by superiors. In intimate relationships or domestic contexts, women have often experienced violence by their partners over many years, which involves the danger of chronic trauma and the woman's identifying with the perpetrator.1e

ENGLISH only

children were opened (Logar 2004). At that time, many acts of violence against women, e.g., spousal rape, were not punishable, or violence against women was not prosecuted by the authorities. There were hardly any laws protecting women from violence, and it was a priority matter for women's organisations to establish safe places for women.

The police and judicial authorities were not regarded as cooperating partners but from a feminist point of view they were rather part of the problem than of the solution, as they were dominated by men and showed little sensitivity or even hostility towards the interests and needs of women who had become victims of violence. It was not before the 1980s and 1990s that women's organisations all over the world began to demand justice and protection from violence, and the world-wide Women's Rights Are Human Rights campaign launched during the United Nations Conference on Human Rights held in Vienna in 1993 was an outstanding event in the international movement to combat violence against women (Bunch/Reilly 1994). This campaign was an important contributing factor to the recognition of violence against women as a violation of human rights (United Nations 1993). Step by step, it has also been acknowledged at national level that violence against women, even if committed in the "private sphere", is not a private matter and that it is the duty of governments to prevent violence and to protect women affected by it.

In 1994, in the context of the preparations for the 1995 World Conference on Women in Beijing, activists from women's shelters and women's centres in Europe founded the WAVE (Women Against Violence Europe) network in order to back activities undertaken in all regions of Europe to stop violence against women. Research has shown that transnational networks play important roles in the prevention of violence against women and that states with great numbers of active women's NGOs have taken more effective steps to counteract violence against women than states with small numbers of women's NGOs (Johnson/Brunell 2006).

Measures against violence from the victims' perspective

In the following sections I will deal with the development of statutory measures to counteract violence against women,

ENGLISH only

predominant position of the legal system, which often leads to a competition between the interests of victims and manifold other interests (Römkens 2007). At the same time, I want to highlight the importance of legal provisions on the prevention of violence and protection of victims, not only in the fields of civil law and criminal law but also in other areas.

However, a difficulty in any attempt to take the victims' perspective when looking at measures to counteract violence against women of course is that not all women who have experienced violence have the same interests: their needs and wishes may be diverse and also contradictory. For instance, not every victim of violence wants the perpetrator to be punished, in particular if he is part of the family. Victims who have been chronically traumatised and have not been supported by their families need other types of measures than victims who have experienced violence once and may count on support by their families.

Although women who have suffered from violence may have different needs and interests, my experience gathered over several decades of work with and support of victims shows that there are a few central needs that all victims have in common: they want the violence to stop, they do not want to become victims again³ and they need assistance and support.

For prevention of violence against women to be effective, governments must take distinct measures against any form of violence and protect women from violence. In addition, it must be ensured that as a consequence of these interventions, women affected by violence are not objectified anew and denied self-determination. Thus, any measures to stop violence against women have to focus on giving control back to the victim. This is not an easy undertaking, also because women are often dependent on the perpetrator in manifold ways and legal protection measures alone are not enough.

I will give a brief outline of central statutory measures I think are needed to realise the right of victims to live free of violence. I will not follow the order in which legal measures are typically described, which usually starts with criminal law, as for those affected by violence; criminal law may not always be the most important instrument.

³ Any theories according to which victims want, or even seek, violence have ceased to be of relevance, and tend to be regarded as victim-blaming. Still, victims continue to be confronted with the prejudice, also in court contexts, that they have endured violence voluntarily or even wanted it; especially in cases of violence committed by an intimate partner when the woman concerned has not left him. Not all actors have become fully aware of the fact that these women have stayed with their partners not because of, but in spite of, the violence they have experienced.

ENGLISH only

- The right for victims to take part in the evaluation of measures that aim to counteract violence against women and their participation as experts in the preparation of such measures.

Austria has laid down a number of fundamental social and economic rights for women who have become victims of violence, but considerable gaps still exist. All Austrian nationals without incomes of their own are entitled to quick financial support in the form of welfare assistance (as of 2009 in the form of basic minimum income), but for immigrants this right is restricted. The network of kindergartens and day care centres is insufficient to considerable degrees. In Austria, children have not yet been granted the right to affordable places in kindergartens or day care centres. In order to meet the Barcelona target⁴ Austria needs another 49 000 places in care centres for children under 3 and around 10 000 places for children aged between 3 and 5.

Massive problems also exist with regard to income security through gainful employment. Although the emp

ENGLISH only

be an integral part of assistance measures. A good practice in this field is found in the manual published by Women's Aid England: Professionals by experience. A guide to service user participation and consultation for domestic violence services (Hague/Mullender/Aris 2002).

Any social and economic measures to assist women who have become victims of violence should be laid down as statutory provisions in order to ensure that such assistance is an enforceable right and not just a charitable gift.

ble gift.

ENGLISH only

victims first talk to friends and relatives as well as colleagues at work when they need help. Therefore it is of central importance that everybody is sensitised to and has knowledge about the problem to be able eventually to help those affected and inform them about existing support structures. Another important aspect is to raise awareness among and train health-care staff because many victims turn to these services (Bundesministerium für Familie, Senioren, Frauen und Jugend 2004).

Summary: The right to information for victims of violence should be based on statutes, and governments should be obliged by law to launch information campaigns regularly. In Austria, the right to information for victims of violence in the context of criminal proceedings has been realised under the new Code of Criminal Procedure that entered into force in 2006 (see also next section). This is an important improvement, but still, information and education in this field are needed already at an earlier stage and must be an integral part in training programmes for teachers and other occupational groups.

ENGLISH only

effective prevention of violence against women. The right to help can only be realised if governments are obliged by law to provide assistance to all victims of violence at a nation-wide level.

ENGLISH only

- 3 Legal protection measures taken upon application by the victim as well as assistance in the enforcement of legal protection measures
- 4 Prevention of secondary traumatic stress in court proceedings, right to assistance and being party to legal action as well as right to damages

EGM/GPLVAW/2008/EP.10

20 May 2008

ENGLISH only

ENGLISH only

Domestic Violence Act of 1997. Since the Austrian Anti-Stalking Act entered into force in July 2006, the police has also been able to protect victims of stalking by orders barring perpetrators from her place of residence. On the basis of a risk prognosis, perpetrators may be ordered to leave the flat and stay away for 10 days. This order is issued by the police and does not require approval on the part of the victim. If victims want to extend the protection period, they have to take action themselves and may turn to a civil court and apply for a protection order.

In order to support the victims, the police closely cooperate with intervention centres: the report on the corresponding police action is sent to the local intervention centre, which then contacts the victim and offers active assistance. In cases of trafficking in women, the police cooperate with the intervention centre for victims of trafficking in women. The victims are not arrested but live in an emergency flat and receive counselling and assistance by the intervention centre. From 1997 to 2007 barring orders were issued by the police in 45 000 cases of domestic violence. This measure has turned out to be very important, but its long-term effects cannot yet be assessed.

Protection measures under civil law

Protection measures under civil law for which the victims may apply are important instruments of prevention and should be available in every legal system. They help to protect from violence those victims who do not want to turn to the police or criminal courts and enable them to take active steps against violence themselves. In Europe, various types of protection order have been established in recent years, and now the question has arisen whether only the victims themselves, or also other persons or institutions, should have the right to apply for protection orders. My experience is that provisions under which third parties are entitled to apply for protection orders involve the risk that the victim is treated as if she were a minor. Therefore, I think that it is sensible only in cases where the victims are children that agencies in charge of child protection are granted the right to apply for protection orders under civil law.

Civil law protection measures should not serve as instruments that replace measures under criminal law to prevent perpetrators from committing further acts of violence. This would mean that the state imposes on the victim the obligation to prevent further violence.

Protection orders under civil law should be available to all women who have experienced violence and thus are impaired in their personal sphere. This group includes victims of domestic violence and victims of stalking, but also victims of sexual violence in the public sphere or sexual harassment at the workplace, if the perpetrator continues to harass them. The right to apply for protection under civil law should be an individual right and should not depend on one's marital status. There are many examples

ENGLISH only

of civil law protection measures in Europe that obviously are not comprehensive enough and do not protect all victims. Almost all protection orders were introduced in the context of domestic violence or violence in partnerships, and it was not taken into account to a sufficient degree that as a consequence, the legal definition of family or partnership, which may be very narrow, is the basis of the decision

ENGLISH only

their children; a woman should have the right to obtain a protection order on behalf of her children. Special attention needs to be given to women and children experiencing domestic violence during the process of separation, since violence tends to escalate in this period. Most homicides are committed when the victim tries to leave the violent partner, and often children are severely affected or murdered too.

Fathers' rights movements have gained growing public attention and influence in court in the last few

ENGLISH only

family or partner violence. Leaving the initiative for prosecution to the women subjected to violence not only places unbearable pressure on the victim, but also jeopardises the victim's safety. In order to fulfil the obligation to prevent violence and to protect victims, mandatory prosecution by the state must be a principle, as recommended in the United Nations General Assembly resolution of 1997 on measures to eliminate violence against women.¹⁵

In Austria, rape in marriage became a crime in 1989, and forms of violence against women that had not been criminalised prior to that time were written into the penal code: the Anti-Stalking Law came into force in July 2006, and female genital mutilation and forced marriage as a form of aggravated coercion were penalised as well. An initiative to improve the protection from violence was started by the Minister of Justice in 2007, also in response to the recommendation of the CEDAW Committee concerning the two cases submitted to it by the Viennese Domestic Abuse Intervention Centre and the Association for Women's Access to Justice¹⁶. Already in 2006, as a response to the communication of the two cases to CEDAW, the government had changed the article regarding dangerous threats: the regulation that, in cases of violence in the family, the victims had to consent to prosecution was abolished. This is a good example of how international conventions can positively influence the situation at the national level and improve women's enjoyment of their human rights. In May 2008, a new draft law was published containing among other measures substantial improvements for victims in the civil law protection order. Furthermore, a new article defining repeated violent acts against a person as a crime will be introduced into the penal code.

The fact that violent acts against women are punishable does not always mean that they will be punished. Under-reporting, high attrition and low conviction rates mean that the vast majority of violent acts against women remain unsanctioned. According to a study in Northern England, of 869 cases of domestic violence recorded by the police, only 31 ended in the conviction of the perpetrator and only four resulted in custodial sentences (Hester 2003, quoted in Humphreys/Charter et al 2006:18). High attrition and low conviction rates are a problem of concern in Austria too. Although there is mandatory prosecution of all violent acts, a high percentage of proceedings are quickly dismissed, even if the victim testifies, because the assault is not deemed punishable (Humphreys 2006:18).

¹⁵ United Nations General Assembly resolution 52/86 (1997), Annex, II (b) "The primary responsibility for initiating prosecutions lies with prosecution authorities and does not rest with women subjected to violence".

¹⁶ See CEDAW decisions Nos. 5 and 6 of 2005

ENGLISH only

This represents a serious obstacle to the state's obligation to punish violence against women and contributes to the high rates of revictimisation. Moreover, the pot Tw:9656e statsmodern crtion stysyste414 -0.2 TD 0 Tc

- The right of all victims, including victims from migrant or minority groups and other

References

Bunch, Charlotte / Reilly, Niamh (1994): Demanding Accountability. The Global Campaign and Vienna Tribunal for Women's Rights, New York

Bundesministerium für Familie, Senioren, Frauen und Jugend (2004): Lebenssituation, Sicherheit und Gesundheit von Frauen in Deutschland. Eine repräsentative Untersuchung zu Gewalt gegen Frauen in Deutschland. Hauptstudie des Bundesministeriums für Familie, Senioren, Frauen und Jugend, verfasst vom Projektteam am Interdisziplinären Zentrum für Frauen- und Geschlechterforschung der Universität Bielefeld (Leitung: Prof. Dr. Ursula Müller, Dr. Monika Schröttle)

Council of Europe (2002): Recommendation Rec(2002)5 of the Committee of Ministers to member States on the protection of women against violence adopted on 30 April 2002 and Explanatory Memorandum, Strasbourg

Council of Europe (2006): Combating Violence against women. Stocktaking study on the measures and actions taken in Council of Europe member States, prepared by Carol Hagemann-White with the assistance of Judith Katenbrink und Heike Rabe/University Osnabrück, on behalf of the Gender Equality, and Anti-Trafficking Division/Directorate General of Human Rights and Legal Affairs, Strasbourg

Council of Europe (2007a): Protecting women against violence. Analytical study on the effective implementation of Recommendations Rec(2002)5 on the protection of women against violence in Council of Europe member States, prepared by Carol Hagemann-White and Sabine Bohne/University Osnabrück, on behalf of the Gender Equality, and Anti-Trafficking Division/Directorate General of Human Rights and Legal Affairs, Strasbourg

Council of Europe (2007b): Legislation in the Member States of the Council of Europe in the Field of Violence against Women, Volume I: Albania to Ireland, Strasbourg

Council of Europe (2007

ENGLISH only

Hague, Gill / Mullender, Audrey / Aris, Rosemary (2002): Professionals by experience. A guide to service user participation and consultation for domestic violence services, publication by Women's Aid England

Hanmer, J./ Gloor, D./ Meier, H. et al. (2006): Agencies and evaluation of good practice: domestic violence, rape and sexual assault, Report within the Research Project CAHRV (Co-ordination Action on Human Rights Violations), funded by the European Commission's Sixth Framework Programme, Osnabrück

ENGLISH only

SEESAC -South Eastern and Eastern Europe Clearinghouse for the Control of Small Arms and Light Weapons (Ed.) (2007):
Firearms Possession and Domestic Violence in the Western Balkans: A Comprehensive Study of Legislation and
Implementation Mechanisms, Belgrade/Serbia

Statistik Austria (2007): Frauen und Männer in Österreich Statistische Analysen zu geschlechtsspezifischen Unterschieden,
Wien

United Nations (1989): Convention on the Rights of the Child, General Assembly resolution 44/25 of 20 November 1989,
New York

United Nations (1992): General Recommendation No. 19 on Violence against Women, Committee 505sn No.