UN Special Rapporteur on violence against women,

its causes and consequences

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Stakeholder consultation on the adequacy of the international legal framework on violence against women

Replies submitted by the Council of Europe Group of action against violence against women and domestic violence (GREVIO)

General comment:

While GREVIO appreciates any initiative that further enhances the international framework on violence against women, it would like to recall that it is a monitoring body that has only recently been set up and that is yet to embark on its core task of evaluating the level of implementation of the Istanbul Convention by its state parties. Given the early stage of its work and its regional limitation, it is not in a position to offer a full assessment of whether or not legally binding standards are warranted at global level. GREVIO is fully aware of the fact that it operates in a region of the world which has chosen to develop very advanced legally binding standards which other regions may or may not aspire to. The following replies are fully anchored in this awareness and were provided in the spirit of adding one voice to many in an on-going debate.

Questions by the UN Special Rapporteur on violence against women, its causes and consequences; and replies reflecting GREVIO's position:

1. **Do you consider that there is a need for a separate legally binding treaty on violence against women with its separate monitoring body?**

GREVIO recalls that several regional treaties on violence against women (VAW) exist already:

- the Inter-American Convention on the prevention, punishment and eradication of violence against women (Convention of Belém do Pará), adopted in 1994 by the Organisation of American States;

- the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, adopted in 2003 by the African Union; and

- as of 11 May 2011, date of its opening for signature, the Council of Europe Convention on preventing and combating violence against women and domestic violence (the Istanbul Convention), open for ratification by Council of Europe member states, and for accession to non-member states who might wish to participate in the convention and/or relate to it as a source of inspiration. More comprehensive in nature than the instruments which preceded it, the Istanbul Convention complements and expands the standards set by the other regional human rights instruments and organisations in this field, thereby reflecting the evolution of norms as well as significantly reinforcing action to prevent and combat VAW and domestic violence at world level[[1]](#footnote-1).

The development of any further new legally binding treaty on VAW, especially at a global level, would entail the risk of bringing about possible conflicting treaty obligations with the existing regional instruments. It may also result in diluting existing standards.

More importantly, the state of affairs and the current perspective on VAW are established and universally accepted through the standards set by CEDAW and its GR19. They are already routinely monitored by the CEDAW Committee. To create another global convention on VAW would likely entail inconsistent or even conflicting standards in the area and the creation of an additional monitoring body would surely add to states parties’ monitoring fatigue.

While legally binding standards at the global level might offer an opportunity for enhanced action against VAW in all parts of the world, GREVIO notes that the current international political climate and economic situation is not conducive to a global drafting exercise in the area of women's rights. In fact, it contains a foreseeable risk of falling behind the existing standards established by CEDAW and its GR19 at the global level, let alone those of the more advanced Istanbul Convention (the CSW57 on VAW and the difficulties in reaching any global consensus on an outcome document can be cited as an example).

In light of the above, GREVIO considers that international efforts and resources, at this stage, should focus on the implementation of existing global and regional standards.

1. **Do you consider that there is an incorporation gap of the international or regional human rights norms and standards?**

While GREVIO observes that on the international scale, a global implementation gap has been attested on several instances[[2]](#footnote-2), GREVIO notes that, in fact, the Istanbul Convention is an attempt to incorporate the existing international women’s human rights, norms, and standards of CEDAW and GR19 in a regional instrument. It also elaborates and transforms them into legally binding treaty rights.

It breaks new ground by requesting states to criminalise the various forms of VAW, including physical, sexual and psychological violence, stalking, sexual harassment, female genital mutilation, forced marriage, forced abortion and forced sterilisation.

Building on the jurisprudence of the European and Inter-American Courts of Human Rights, the Istanbul Convention integrates the “due diligence” standard and defines it as the obligation of states to “*prevent, investigate, punish and provide reparation for acts of violence perpetrated by non-state actors*”.

Owing to these qualities, the Istanbul Convention is recognised as the most far-reaching international treaty to tackle VAW. While the Istanbul Convention was primarily drafted with a view to ratification by Council of Europe member states, it is also open for ratification/accession on a global level. It has, to date, been ratified by 21 of the 47 member states of the Council of Europe and signed by 19 more.

No accession request has yet been received from any state on the global playing field.

We are thus aware that the Istanbul Convention, as of yet, has not reached the level of global acceptance which it potentially has.

It is our view that in the case of the Istanbul Convention and at the European level, “an incorporation gap of the international norms and standards” is not the problem. To the extent that such a gap exists, it is in the context of the relationship between regional and national laws and practices.

Additionally we would note that although the existence of an incorporation gap between the standards of the Istanbul Convention and national laws at the European level may exist, it is too early to judge the extent and nature of this gap in Europe.

We believe the introduction of another instrument, albeit at a global level, at this stage, would be premature and further complicate the implementation of existing norms by states. Priority should be given to ensuring full implementation of the treaties and other instruments which already exist rather than creating new standards.

1. **Do you believe that there is a lack of implementation of the international and regional legislation into the domestic law?**

The very existence of the Istanbul Convention as a comprehensive set of legally binding standards to prevent and combat violence against women and its monitoring mechanism points to a lack of integration of the international norms  into the domestic law.  At the same time, as the Istanbul Convention has only recently entered into force (1 August 2014) and its monitoring has not even fully begun yet[[3]](#footnote-3)[1], GREVIO considers that it would be premature to comment on **its** level of implementation into national legislation in the states which have ratified it. At this time, there are no evaluation reports on which to base an official GREVIO position.

1. **Do you think that there is a fragmentation of policies and legislation to address gender-based violence?**

GREVIO views the multiplicity of international and regional instruments addressing gender-based violence not as a reflection of “fragmentation” but as presence of instruments complementing and influencing each other mutually.

The Istanbul Convention is exemplary from this perspective: it draws on the CEDAW’s GR19 on VAW and on the case-based views developed under CEDAW Optional Protocol. As such, the Istanbul Convention, in many respects, “codifies” the “soft law” of GR19 and the existing case-based positions into legally-binding treaty rights.

CEDAW, in turn, has been drawing on the more advanced formulations contained in the Istanbul Convention both in its routine monitoring of implementation by state parties as well as in developing its own position, notably within the framework of the updating of GR19 that the CEDAW Committee is currently undertaking.

This process of cross-fertilisation is underpinned by increased efforts on the part of the concerned monitoring bodies to stay abreast of each other’s agenda, in the shared conviction that consistency is key to effectiveness.

1. **Could you also provide your views on measures needed to address this normative and implementation gap and to accelerate prevention and elimination of violence against women?**

As mentioned in the response to the earlier questions, particularly Question No. 4, GREVIO is of the opinion that challenge lies mostly in the gap between national and supranational frameworks and between laws and implementation. In this context,

a) the gap between existing norms (international and regional) and national laws; and

b) the gap between legal frameworks and their implementation

need to be the primary focus of attention.

To this end, GREVIO is committed to and encourages close interaction between all relevant international and regional monitoring bodies working in the field of violence against women. By co-operating and fostering synergies, the monitoring mechanisms established under the various existing instruments will not only guarantee consistency, but they will enhance the potential of the global human rights legal framework in place to strategically and effectively address all forms of violence against women at national levels.

1. To be mentioned additionally, although not legally binding: the ASEAN Declaration on the Elimination of Violence against Women and Elimination of Violence against Children in ASEAN addresses violence against women and covers another geographic region of the world. [↑](#footnote-ref-1)
2. To this end, reference can be made, *inter alia*, to the UN Special Rapporteur on violence against women at the Council of Europe [Conference on monitoring the implementation of the Istanbul Convention: new synergies](http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=16705&LangID=E), October 2015; the [Agreed Conclusions of the CSW57 on the Elimination and prevention of all forms of violence against women and girls](https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000168063bc33), paragraph 33, March 2013; the UN Women report [Progress of the World's Women 2015/2016](http://progress.unwomen.org/en/2015/download/index.html#report), page 50; the conclusions of the [Analytical study of the results of the 4th round of monitoring the implementation of Recommendation Rec(2002)5 on the protection of women against violence in Council of Europe member states](https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=0900001680465f71) , based on data from 2013. [↑](#footnote-ref-2)
3. [1] Following the adoption by GREVIO, at its 5th meeting on 11 March 2016, of the questionnaire for the baseline evaluation, the monitoring of the implementation of the Istanbul Convention officially began with the launching on 22 March 2016 of the evaluation procedure in respect of Austria and Monaco. As for the dates on which other states party are scheduled to undergo monitoring, an indicative timeline is provided in the annex to document IC/Inf(2016)2, [Steps in the first evaluation procedure](http://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000168063dde7), available on the public website of the Istanbul Convention. [↑](#footnote-ref-3)