

Regional Approaches to Combating Violence against Women: the Istanbul Convention

By Christine Chinkin¹

At the event to mark the coming into force of the Istanbul Convention² held in Rome in September 2014, the Council of Europe especially noted its comprehensive and holistic approach in seeking to effectively combat violence against women. I thought I would take this as the basis for my short remarks on the Convention. First though a couple of preliminaries – the Convention was adopted in May 2011, came into force in August 2014 and to date has 20 States parties, all to date from the Council of Europe although there is provision for non-CoE member states and the EU to become parties. The UK to date is not a party although it signed over three years ago. The monitoring committee GREVIO has been convened and is now meeting – some members are here today.

So how does the Convention offer a holistic approach? A holistic approach is one that looks at the system as a whole – the entire architectural structure constructed under international and national law. Thus what the Istanbul Convention does is form part of a system that is internally consistent, comprehensive in its coverage and combines a legal framework and practical measures for addressing violence against women. The interlocking and interdependent parts of the system must thus be understood with respect to how they contribute to the overall structure. I will briefly outline four ways that together give the Convention its distinctive, comprehensive character.

First, in negotiations an explicit commitment was made to incorporate the 3 ‘P’ approach of other Council of Europe Conventions, for instance the Convention on Trafficking: it thus has provisions from three perspectives for combating violence against women. It requires:

- Prevention of such acts
- Protection against such acts
- Prosecution of those accused of committing such acts

Each of these is dealt with fully, combining detailed legal and practical measures, including most importantly commitment to resources. In recognition that an effective response requires more than measures in these three fields, the drafters from the outset added another P – integrated Policies. And included in these policies and among the purposes of the Convention is promotion of substantive equality between women and men, including through women’s empowerment. This cannot be achieved except through another P word - participation in decision-making on all positions that impact upon women’s lives.

Second the Istanbul Convention combines human rights principles and practical requirements for implementation into domestic criminal law and proceedings. It thus has a dual nature in that it is both a human rights treaty and a criminal law treaty; another aspect of its dual nature is it is also both

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² The Council of Europe Convention on preventing and combating violence against women and domestic violence.

innovative and rooted in existing international law. As an aside this duality was reflected in the composition of many of the delegations – criminal law experts and gender/human rights experts, not always co-existing easily and clear where the hierarchy was located.

As a human rights treaty, the Convention had a wealth of material to draw upon - the CEDAW Convention and the regional human rights treaties, the range of resolutions, declarations and also jurisprudence notably from the ECtHR and IACtHR and opinions of the CEDAW Committee. It thus reasserts the need to condemn discrimination as an immediate state obligation and emphasises substantive equality between women and men, thereby setting out the legal link between gender equality and combatting violence against women. It has the most inclusive non-discrimination clause in international law requiring non-discrimination in the application of the Convention against an extensive list of categories including sexual orientation, gender identity, migrants and women with disabilities (Article 4 (3)). It puts victims' rights at the centre of all measures (Article 7 (2)).

It is however not simply a classic human rights treaty, but rather a treaty that incorporates the advances in human rights conceptualisation that have taken place since the early 1990s but which have previously been primarily located in soft law – non legally binding – instruments or in human rights jurisprudence, crafted according to the particular case. It thus provides for both the state's negative obligation to ensure that its agents refrain from engaging in any act of violence against women and its positive obligation to exercise due diligence to prevent, investigate, punish and provide reparation for acts of violence perpetrated by non-State actors – a surprisingly controversial provision in negotiation. It thus both asserts state responsibility for failure to comply with either the negative or positive obligation and gives effect to the understanding that violence against women is structural, a crucial social mechanism by which women are forced into a subordinate position compared with men. Among such positive obligations and especially innovative is the requirement that a state undertakes an assessment of the lethality risk in a situation and takes measures to manage that risk (Article 51), including taking into account, at all stages of the investigation and application of protective measures, the fact that perpetrators of acts of violence possess or have access to firearms.

The Convention is also holistic in its commitment to transformative equality; the obligation to take preventive measures to transform gender relations, including through special measures – reflecting CEDAW Article 4, and to 'promote changes in the social and cultural patterns of behaviour of women and men with a view to eradicating prejudices, customs, traditions and all other practices which are based on the idea of the inferiority of women or on stereotyped roles for women and men' (Article 12).

As a criminal law treaty it both defines gender-based violence against women in a holistic way that encompasses its sites – the family, the community, the state - and perpetrators – states and non-state actors and identifies its multiple forms through listing and providing definitions of a range of specific criminal offences - forced marriage, psychological violence, stalking, physical violence, sexual violence, including rape, female genital mutilation, forced abortion and forced sterilisation, sexual harassment demonstrating both the breadth and diversity yet commonality of the many manifestations of violence against women. It thus brings coherence to the concept, highlighting that such violent acts are not random or chance but are rooted in inequality and gender bias. This is furthered through its broad scope, providing for its application in situations of armed conflict as well as in times of peace (Article 2 (3)). States parties must criminalise these acts and ensure jurisdiction over them (on a number of grounds) (Article 44), prosecute and impose sanctions on those found guilty that are effective, proportionate and dissuasive, taking into account their seriousness. Defences based in culture, custom, religion, tradition, or so-called "honour" shall not be accepted, covering in particular, claims that the

victim has transgressed cultural, religious, social or traditional norms or customs of appropriate behaviour. It thus requires internalisation, attitudinal change and incorporation of international standards and definitions, and, where necessary, reform of national criminal law. This takes the Istanbul Convention beyond the jurisprudence of the ECtHR and the CEDAW Committee in their application of their respective treaties; these bodies determine on the facts before them if the actions of a particular state are in violation of the relevant Convention; they cannot require legislation or specify its content. Third, it is comprehensive in that it is both gender-specific, targeted at combating violence against women and girls, as experienced by women and girls, for instance in its inclusion of economic and psychological violence, in its recognition of the fear caused by stalking and the unwanted nature of sexual harassment. But it is also gender-neutral in recognising the need to take account of other victims of domestic violence and thus encourages states to apply the Convention to all victims of gender-based violence (Article 2 (2)).

Fourth, the Istanbul Convention is holistic in that it recognises that a combination of efforts from many sources is required for success. It therefore provides for domestic proceedings and remedies in both criminal and civil courts; it is multidisciplinary and rooted in sociological understandings of the prevalence and causes of violence against women. It requires social and educational measures; it brings in diverse players across diverse government departments and agencies, parliamentarians, national human rights institutions, the private sector – the information technology sector, the media, professionals and civil society (Article 9), men and boys (Article 12).

The comprehensive substantive coverage of the Convention is supported throughout by the fourth ‘P’ – government policies. These must be gender-sensitive (Article 6) and subject to scrutiny at the national level by the official government body that the government must create or designate (Article 10). This body has a paramount role in securing the holistic approach with its four tasks of coordinating, implementing, monitoring and evaluating the policies and measures devised by the government to give full effect to the Convention. It is also at the centre of ensuring research and collection of disaggregated data are undertaken and assessed. It must have the capacity to co-ordinate with its counterparts in other parties. Its designation – and proper resourcing - is thus one of the core undertakings for the implementation of the Convention and ensuring coordination across states parties; the holistic approach would be seriously weakened without provision for such coordination. In turn the state’s actions in implementing the Convention are subject to review and monitoring at the regional level by the Committee of experts, GREVIO. Most importantly victims and civil society shall have access to all such mechanisms (Articles 21 and 68).

What is the significance of this holistic approach? It brings together emerging standards with respect to violence against women from a range of other sources into a single legally binding instrument, combining legal processes – in civil and criminal law – with social and educational measures. It is very detailed – with attention to such issues as provision of shelters, telephone helplines, custody and visitation rights and safety, aggravating factors for sentencing, ex officio complaints and many others. It could be viewed through a linear lens: from important pre-emptive measures, through emergency protective procedures, to processes for individual accountability to long term structural and systemic transformation of government agencies, and of social attitudes – through education and training based upon reliable research and data. But this is not just linear but also cyclic. It is holistic in its own terms (Article 7) and forms part of a wider regional and international system, supplementing the work of the European Court of Human Rights, the CEDAW Committee and even the UN Security Council in its women, peace and security agenda, in their recommendations to states. Its overall objective is set out in the preamble: Aspiring to create a Europe free from violence against women and domestic violence.