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The Istanbul Convention: A New Chapter in Preventing and Combating Violence against Women

Introduction

Violence against women (VAW) is a global problem, which continues to affect millions of women and girls worldwide. A recent study on violence against women in the EU shows that an estimated 13 million women in the EU (i.e. 7% of women aged 18-74) have experienced physical violence in the course of the 12 months before the survey interviews.¹ Furthermore, one in three women (33%) has experienced physical and/or sexual violence since she was 15 years old.² The Council of Europe Convention on preventing and combating violence against women and domestic violence 2011 (the Istanbul Convention) is the most recent treaty to directly address the issue of VAW in Europe.

In the last few decades, various steps have been taken at the international and UN levels to address the causes and consequences of various forms of VAW, including the creation of an office of the Special Rapporteur on Violence against Women, its Causes and Consequences in 1994. Whilst it is now generally accepted that VAW may amount to a violation of human rights, there is no UN treaty specifically addressing the issue. The Convention on Elimination of All Forms of Discrimination Against Women 1979 (CEDAW; often referred to as “The Women’s Convention”) explicitly prohibits all forms of discrimination against women (Article 2), but it does not define VAW or gender-based violence, nor does it establish positive obligations on parties to CEDAW to prohibit, prevent and punish acts of VAW.

However, legislative steps to combat VAW have been more successful on a regional level. In 1994, the Organisation of American States paved the way to the recognition of VAW as a human rights violation in the Belém do Pará Convention.³ 20 years later, in August 2014, the Istanbul Convention⁴ came into force. The Istanbul Convention, which opened for signature in Istanbul on 11 May 2011, is the newest treaty to address VAW. It directly prohibits VAW and outlines states’ obligations with respect to protecting women from gender-based violence as well as preventing and prosecuting VAW.

Although it is a treaty made in Europe, the convention has strong potential to become a global norm-setting instrument. Not only does it develop and strengthen the legal regime regarding gender-based violence, the treaty can also be made accessible to third countries, including Australia, which are not members of the Council of Europe: Article 76(1).

¹ European Union Agency for Fundamental Rights, *Violence against women: an EU-wide survey. Results at a glance* (March 2014) < http://fra.europa.eu/sites/default/files/fra-2014-vaw-survey-at-a-glance-oct14_en.pdf > accessed 24 June 2015, 15.

² Ibid.

³ The Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women 1994 (Belém do Para Convention).

⁴ The Council of Europe Convention on preventing and combating violence against women and domestic violence 2011 (the Istanbul Convention), CETS No: 210.

VAW and International Law

It is now commonly accepted that VAW is a form of discrimination against women and it may amount to a violation of human rights when states fail to fulfil their obligations under human rights treaties to prevent, prosecute and protect women from acts of violence ('the 3 Ps'). Even where acts of violence are committed by private actors, states have positive obligations to punish such acts and to prevent their recurrence in the future.⁵

The jurisprudence of regional human rights courts as well as decisions of the CEDAW Committee have been fundamental in developing international human rights standards in relation to preventing and redressing VAW, particularly the due diligence obligations. The 'due diligence' standard and its requisite obligations have been widely recognized in international law in the context of attributing state responsibility for the wrongful acts of non-state actors. Due diligence obligations, as Crawford notes, are relative, not absolute.⁶ Therefore, "obligations of prevention are not warranties or guarantees that an event will not occur; rather, they are inherently obligations to take all reasonable or necessary measures to ensure that the event does not occur".⁷ Nonetheless, the due diligence standard places the state (and its representatives, including the law enforcement agencies and officials) under an obligation to treat VAW in the same manner as reported criminal offences under the state's jurisdiction, irrespective of whether they have been committed by public or private actors.

Although the term 'due diligence' rarely features in treaty law (in fact, Article 7 of Belém do Pará Convention and Article 5 of the Istanbul Convention are among few examples to date), the duty of due diligence has been confirmed in the jurisprudence of the European Court of Human Rights (ECtHR),⁸ the Inter-American Court of Human Rights (IACtHR),⁹ the CEDAW Committee,¹⁰ the UN Human Rights Council¹¹ as well as in the Beijing Platform for Action¹² and in annual reports of the Special Rapporteur on Violence Against Women.¹³ The landmark decision of the

⁵ CEDAW General Recommendation No.19 on Violence Against Women (1992), para.9; CEDAW General Recommendation No.28 on the Core Obligations of States Parties under Article 2 of the Convention on the Elimination of All Forms of Discrimination against Women (2010), para.13;

⁶ James Crawford, *State Responsibility* (2013), 227.

⁷ Crawford, 227.

⁸ *Opuz v Turkey* (Application No.33401/02), Judgment, 9 June 2009.

⁹ *Gonzalez et al (Cotton Field) v Mexico*, Inter-American Court of Human Rights, Preliminary Objection, Merits, Reparations and Costs, Series C No. 205, Judgment, 16 November 2009.

¹⁰ *Yildirim v Austria*, CEDAW Communication No.6/ 2005 (6 August 2007), *Goecke v Austria*, CEDAW Communication No.6/ 2005 (6 August 2007); *A.T. v Hungary*, CEDAW Communication No.2/2003 (26 January 2005); CEDAW General Recommendation No.28 on the Core Obligations of States Parties under Article 2 of the Convention on the Elimination of All Forms of Discrimination against Women (2010).

¹¹ UN Human Rights Council Resolution 17/11, 'Accelerating Efforts to Eliminate All Form of Violence against Women', A/HRC/17/L.6 (17 June 2011).

¹² Fourth World Conference on Women, Declaration and Platform for Action (15 September 1995) UN Doc. A/CONF.177/20, para.124 (b).

¹³ Special Rapporteur on Violence against Women, *2006 Annual Report*, 'Standards of Due Diligence' (20 January 2006) E/CN.4/2006/61; Special Rapporteur on Violence against Women, *2013 Annual Report*, 'State responsibility for eliminating violence against women' (14 May 2013) A/HRC/23/49.

Inter-American Court of Human Rights in *Velasquez Rodriguez v Honduras* established that ‘an illegal act which violates human rights and which is initially not directly imputable to a State (for example, because it is the act of a private person or because the person responsible has not been identified) can lead to international responsibility of the State, not because of an act itself, but because of the lack of due diligence to prevent the violation or to respond to it as required by the Convention’.¹⁴ The ECtHR also confirmed in *Opuz v Turkey* and further in *Ebcin v Turkey* that states are bound to exercise due diligence obligations in preventing, punishing and investigating acts of violence against women.¹⁵ As recently as March 2013, the Commission on the Status of Women reaffirmed that “all states [...] must exercise due diligence to prevent, investigate, prosecute and punish the perpetrators of violence against women and girls and end impunity, and to provide protection as well as access to appropriate remedies for victims and survivors”.¹⁶

Furthermore, the regional human rights courts have recognised that acts of VAW (including acts of sexual violence) can be successfully challenged under the general provisions of human rights treaties, such as the European Convention on Human Rights and the IACtHR. In cases where acts of VAW have been committed, the ECtHR and the IACtHR have found states responsible for violating provisions in relation to the prohibition of torture, cruel inhumane and degrading treatment, right to life or prohibition of discrimination.¹⁷ The human rights courts also emphasized the importance of the right to an effective remedy in cases involving VAW, especially when it is of sexual nature.

In *Rantsev v Cyprus and Russia*, a case involving the death of a trafficked Russian woman in Cyprus, the ECtHR held that Cyprus failed to fulfil its obligations to carry out an effective investigation into Ms Rantseva’s death.¹⁸ Furthermore, the court emphasized that Cyprus had knowledge of the widespread and long-term problem of young women from the former USSR entering Cyprus to work as cabaret ‘artistes’, with many women (including Ms Rantseva) being sexually exploited as victims of trafficking in human beings (THB).¹⁹ Once in Cyprus, women were often subjected to physical and psychological violence and forced into prostitution. In addition to human rights obligations set out in the ECHR, Cyprus had international obligations in relation to prevention of VAW as well as trafficking of women stemming from Article 6 CEDAW 1979, the Protocol to Prevent, Suppress and Punish Trafficking in Persons,

¹⁴ *Velasquez Rodriguez v Honduras*, Inter-American Court of Human Rights, Series C No. 4 (1988), Judgment, 29 July 1988, para.172.

¹⁵ *Opuz v Turkey* (Application No.33401/02), Judgment, 9 June 2009; *Ebcin v Turkey* (Application no. 19506/05), Judgment, 1 February 2011.

¹⁶ UN Commission on the Status of Women, Report on the fifty-seventh session (4-15 March 2013), E/CN.6/2013/11, para.16.

¹⁷ *MC v Bulgaria* (Application No.39272/98), Judgment, 4 December 2003; *Aydin v Turkey* (Application No.23178/94), Judgment, 27 September 1997; *Opuz v Turkey* (Application No.33401/02), Judgment, 9 June 2009; *Raquel Martí de Mejía v Peru*, Inter-American Commission on Human Rights, Case 10.970, Report No. 5/96, 1 March 1996; *O’Keeffe v Ireland* (Application No.35810/09), Judgment, 28 January 2014.

¹⁸ *Rantsev v. Cyprus and Russia* (Application No.25965/04), Judgment, 7 January 2010.

¹⁹ The word artiste became synonymous with ‘prostitute’ (para.83).

in Particular Women and Children of the UN Convention against Transnational organised Crime 2000 and the Council of Europe Convention on Action Against Trafficking in Human Beings 2005. The ECtHR held that Cyprus was in violation of its obligations under Article 4 of the ECHR for failing to carry out an effective investigation into Ms Rantseva's death, failing to afford to Ms Rantseva practical and effective protection against trafficking and exploitation in general and by not taking the necessary specific measures to protect her.

More recently, in January 2014, the ECtHR held, in *O'Keefe v Ireland*, that sexual abuse of the applicant as a schoolgirl amounted to a violation of Article 3 ECHR.²⁰ Ireland had failed to fulfil its positive obligations under Article 3 ECHR to protect Ms O'Keefe from ill-treatment demonstrated by repeated sexual abuse by a school teacher.²¹ Furthermore, the court held Ireland in violation of its human rights obligation under Article 13 because the state failed to provide Ms O'Keefe with an effective remedy for sexual abuse to which she was repeatedly subjected in school.²²

The ECtHR decisions in *Rantsev* and in *O'Keefe* demonstrate that acts of VAW can be successfully prosecuted under the general provisions of human rights treaties. Additionally, the judgments confirm that VAW takes various forms and may be committed by state and non-state actors equally. Furthermore, as shown by the jurisprudence of human rights courts and international human rights treaty bodies, acts of VAW often do not happen in isolation and may also play a major part in the commission of transnational crimes, such as trafficking in human beings (as illustrated in *Rantsev*). Therefore, human rights courts can (and where applicable, should) address acts of VAW within the core provisions of non-VAW specific human rights treaties.

The Istanbul Convention: An Overview

The Istanbul Convention is a treaty of dual nature: it contains both human rights and criminal law provisions relevant to VAW and domestic violence. It also represents a victim-centred approach to preventing and combating VAW: victim's rights, safety, support and well-being are some of the key objectives of the convention.

At the very core of the Istanbul Convention lie two key human rights principles: the principle of equality and the principle of non-discrimination: Preamble; Art 4. The treaty asserts that the lack of substantive equality between men and women is a root cause of VAW, which (in line with developments in international human rights law) is also seen as a form of discrimination against women and a violation of their human rights: Art 3(a). Art 4(3) of the convention contains the most inclusive non-discrimination clause in international law to date. It outlines an extensive list of prohibited grounds for discrimination, including sexual orientation, gender identity, migrant or refugee status and disability. The convention is only the second treaty after the Rome Statute of the International Criminal Court to define gender in international law. Art 3(c) describes gender as "socially constructed roles,

²⁰ *O'Keefe v Ireland* (Application No.35810/09), Judgment, 28 January 2014.

²¹ *O'Keefe*, para.168-169.

²² *O'Keefe*, para.187.

behaviours, activities and attributes that a given society considers appropriate for women and men”. As such, the Istanbul Convention offers a more comprehensive understanding of the term ‘gender’ in treaty law, departing from the limited understanding of gender as “two sexes, male and female, within the context of society” present in the ICC Statute.²³

Violence against women and domestic violence

Furthermore, gender is placed at the centre of the treaty, particularly in relation to the definition of VAW, which is viewed as a gender-based form of violence in that it is “violence which is directed against a woman because she is a woman or that affects women disproportionately”.²⁴ It includes

“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”.²⁵

Importantly, the formulation of the definition of VAW in gender-specific terms codifies the soft-law developments at an international level, which have long called for the recognition of the gender-based nature of VAW. In particular, the Convention gives effect to General Recommendation no.19 of the CEDAW Committee, in which the Committee outlined various forms of VAW and noted that VAW is a form of discrimination against women and that it affects women disproportionately i.²⁶ However, the Preamble to the Istanbul Convention recognises the fact that, whilst domestic violence affects women disproportionately, men and boys may also be victims of domestic violence.

Furthermore, the treaty includes specific provisions on various forms of VAW, including sexual violence (Art 36), forced marriage (Art 37), psychological violence (Art 33), stalking (Art 34), FGM (Art 38), forced abortion and forced sterilisation (Art 39). The comprehensive approach towards including various forms of VAW within the scope of the convention has particularly far-reaching impact in that it moves towards a uniform approach across European countries in recognising and criminalising diverse forms of VAW. Whilst offences like rape, sexual assault and domestic violence are generally recognized in jurisdictions of the majority of Council of Europe states, the more specific offences such as FGM or forced marriage are not universally criminalised. For example, as of June 2014 only 13 out of 28 EU member states had specific national criminal laws prohibiting and punishing FGM.²⁷ Set against this context, ratification of the Istanbul Convention places parties to the convention under an obligation to, at the very least, include offences such as FGM

²³ Article 7(3) Rome Statute of the International Criminal Court 1998.

²⁴ Article 3(d).

²⁵ Article 3(a).

²⁶ CEDAW Committee, General Recommendation No.19 on Violence Against Women (1992), paras.1, 4, 6.

²⁷ European Institute for Gender Equality, *Estimation of girls at risk of female genital mutilation in the European Union* (1 June 2015), p.19 < <http://eige.europa.eu/content/document/estimation-of-girls-at-risk-of-female-genital-mutilation-in-the-european-union-report> > accessed 24 June 2015.

within their domestic criminal laws, thereby promoting a uniform approach to these offences.

VAW and socio-cultural factors

The broad and inclusive understanding of VAW under the convention is strengthened by substantive provisions regarding jurisdiction over crimes of violence committed against women.

The convention addresses two major challenges to preventing and punishing VAW: firstly, the intersection between socio-cultural factors, customs, traditions, gender stereotypes and VAW and secondly, jurisdiction over acts of violence committed against women.

Articles 12(1) and 12(5) oblige parties to the convention to “take the necessary measures 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” and to “ensure that culture, custom, religion, tradition or so-called “honour” shall not be considered as justification for any acts of violence covered by the scope of this Convention”.²⁸ The wording of Art 12(1) reiterates obligations under Arts 2(f) and 5(1) of the CEDAW, which requires parties to tackle gender stereotypes which lay the ground for gender discrimination and impair the achievement of *de facto* equality between men and women.²⁹ The discriminatory effect of customs and practices based on gender stereotypes and prejudices was also stressed by the Committee on Economic, Social and Cultural Rights (CESCR) as the key obstacle in obstacle to the equal fulfilment of economic, social and cultural rights of women.³⁰

For many years, the CEDAW Committee has reasserted, especially in General Recommendation No.3 (1987) and No.25 (2004), the importance of duties under Art 5 to tackle systemic and structural discrimination against women as well as gender stereotypes.³¹ The Committee also noted that whilst gender in itself is a product of

²⁸ The latter is also reflected in Article 42(1) of the Istanbul Convention.

²⁹ Article 2(f) CEDAW 1979:

States Parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women and, to this end, undertake:

(f) To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women;

Article 5(a) CEDAW 1979:

“States Parties shall take all appropriate measures:

To modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women; (...).”

³⁰ CESCR, General Comment No.20 (2009), UN Doc E/C.12/GC/20, para.20.

³¹ CEDAW, General Recommendation No.3 on education and public information programmes (1987); CEDAW, General Recommendation No.25 on article 4, paragraph 1, of the Convention on the

society and culture, it equally “can be changed by culture, society and community”.³² Despite its transformative potential, this particular provision of CEDAW has less effect than it might because reservations may be made with regard to it. A number of parties entered reservations in relation to the scope of Art 5(1) on the basis of religion (particularly in relation to the Islamic Sharia law) or custom. This practice, whilst permitted by the treaty (and generally accepted in treaty law), was later criticised by the CEDAW Committee for being incompatible with the object and purpose of the Convention under Article 28(2) CEDAW. Furthermore, the CEDAW Committee noted that reservations to the convention could not be justified on the basis of tradition and religion.³³ This is particularly significant as various forms of violence against women continue to take place in the name of culture, tradition or religion. Examples of such acts include, but are by no means limited to, honour killings, FGM and dowry-related violence.

The problematic nature of reservations to human rights treaties based on culture, customs and religion is addressed in the Istanbul Convention. Art 78 generally prohibits parties from entering reservations to the convention, with a narrow exception of seven provisions listed in Art 78(2-3). Nonetheless, none of the listed provisions refers to forms of VAW underpinned by socio-cultural factors or religious practices. As such, the convention ensures that parties cannot justify VAW based on cultural, societal, religious or traditional norms and customs.

Jurisdiction

Article 78, which strictly limits the power of states to make reservations to the treaty (combined with Arts 12 and 42), has paramount practical importance in addressing such offences across a diverse and multicultural Europe. The legislative provisions aiming at a ‘zero tolerance policy’ towards violence against women motivated by culture, religion or traditions provide a solid base for the prevention of such crimes and the protection of women from these forms of violence. However, jurisdiction, or the lack thereof, over such acts has proven to be a passport to impunity for the perpetrators. This is particularly the case in situations where the act is committed on the territory of a state which does not prohibit or criminalise certain type of offences. Furthermore, offences such as FGM or forced marriage often take place outside Europe, where these acts may be more likely not to be criminalised under local laws. However, victims of such acts (and in many cases, perpetrators too) may often be European citizens or persons permanently residing in Europe. This jurisdictional conundrum has been addressed by some European states by establishing extra-territorial jurisdiction over certain offences. Most recently, in the UK the Serious Crime Act 2015 introduced substantive changes in relation to prosecution and punishment of acts of FGM.³⁴ The new legislation amends the

Elimination of All Forms of Discrimination against Women, on temporary special measures (2004), para.7.

³² CEDAW, General Recommendation No.28 on the Core Obligations of States Parties under Article 2 of the Convention on the Elimination of All Forms of Discrimination against Women (2010), para.5.

³³ CEDAW Concluding Observations (Israel), A/52/38, 17th session (1997), para.157; CEDAW General Statement on the Impact of Reservations’ UN Doc A/53/38, 19th session (1998), part II, para.17.

³⁴ Section 70(2) of the Serious Crime Act 2015 makes equivalent amendments to the Prohibition of Female Genital Mutilation (Scotland) Act 2005.

provisions of the Female Genital Mutilation Act 2003 by introducing extra-territorial jurisdiction in relation to acts of FGM performed outside the UK by a UK national or person who is a resident in the UK. Equally, the UK may assert extra-territorial jurisdiction when the victim of FGM is a UK national or a person residing in the UK.

The Istanbul Convention contributes to the strengthening of the pan-European system of accountability for acts of VAW by introducing substantial legislative provisions in relation to jurisdiction over such acts. Art 44(1) places an obligation on parties to establish jurisdiction over offences listed in the convention on the basis of territoriality and nationality. In addition, Art 44(3) requires parties to ignore the principle of dual criminality, thereby enabling prosecution of acts of VAW even if such acts are not criminalised in the territory where they were committed. This provision is particularly relevant in cases of FGM, and forced marriage where, as discussed above, jurisdictional problems have often acted as a bar to successful prosecution.

Remedies for acts of VAW

The convention emphasizes the right to an effective remedy for women and girls who have suffered from acts of violence. This includes effective criminal investigations and prosecution of perpetrators of such acts as well as civil remedies against the perpetrator and the state.³⁵ It provides a series of provisions outlining procedural and protective guarantees for victims of VAW and domestic violence. Parties are placed under a positive obligation to ensure the effective and timely investigation as well as prosecution of acts of VAW by their law enforcement agencies.³⁶ Under the convention, criminal investigations and prosecutions of cases involving physical violence, sexual violence (including rape), forced marriage, FGM, forced sterilisation or forced abortion can take the form of *ex parte* and *ex officio* proceedings.³⁷ As such, investigation and judicial proceedings relative to these offences are not solely reliant upon the victim's report or complaint and may continue even if the victim withdraws their statement or complaint. Furthermore, the convention prohibits mandatory alternative dispute resolution processes in relation to all offences listed in the treaty (Art 48), recognising that such processes do not necessarily ensure equal standing between the victim and the perpetrator. Importantly, it also gives recognition to the fact that acts of violence against women are criminal acts, which ought to be effectively prosecuted before national courts.

States are also required to take the necessary measures to ensure that a gendered understanding of violence is applied to the process of investigation and prosecution of offences under the convention (Art 49(2)). To that end, such measures should include ensuring that the evidence relating to the past sexual history and conduct of the victim is permitted in the proceedings only in limited circumstances (i.e. when it is relevant and necessary) (Art 54). The significance of such measures was emphasized by the CEDAW Committee in *VK v Bulgaria* and in *Vertido v Philippines*, where the Committee concluded that gender stereotyping in investigations and in

³⁵ Article 29, Article 30.

³⁶ Article 49, Article 50.

³⁷ Article 55.

judicial proceedings affects women's right to a fair trial and precludes women who are victims of gender-based violence from receiving an effective remedy.³⁸

Finally, the convention places positive obligations on parties to undertake risk assessments in cases involving VAW and domestic violence (Art 51). The assessments need to be carried out in relation to three matters: the lethality risk, the seriousness of the situation and the risk of repeated violence (Art 51(1)). This ground-breaking provision demonstrates the innovative aspect of the Istanbul Convention in relation to placing significant emphasis on the practical aspect of the state's obligations in relation to preventing violence against women and taking steps to ensure non-repetition of acts of gender-based and domestic violence.

The Impact of the Convention

The Istanbul Convention comprehensively and holistically sets out normative standards in relation to preventing and combating violence against women. However, what is its actual significance?

Interdisciplinarity

The Istanbul Convention is not an 'average' human rights treaty. It represents efforts to create a holistic treaty with a strong interdisciplinary perspective. For instance, it gives recognition to the sociological understanding of roots and causes of VAW and places emphasis on educational measures to promote equality, non-violence, conflict resolution and to teach about gender-based violence.³⁹ It is acknowledged that efforts to fulfil the '3 Ps' (prevention, protection and prosecution) require involvement of a multitude of players, including all members of society (especially men and boys), government, non-governmental organisations, but also actors beyond the public and law enforcement sector.⁴⁰ In particular, Art 17 requires parties to co-operate with representatives of the private sector - especially with media, information and communication technology sector - to set guidelines and self-regulatory standards aimed at preventing VAW. This provision is particularly timely given the increase of online communication offences of a misogynistic nature. Twitter trolling, which often involves posting misogynistic content or even sexually explicit threats to women and girls, as well as the rise of revenge pornography, illustrate the pressing need to address this problem and to view it as a form of discrimination against women.⁴¹ Thus far, despite the prevalence of the problem, there has been little in the way of a coherent legal response to this issue.⁴²

³⁸ *VK v Bulgaria*, Communication No.20/2008, CEDAW/C/49/D/20/2008, 17 August 2011, paras.9.11, 9.12; *Vertido v Philippines*, Communication No.18/2008, CEDAW/C/46/D/18/2008, 1 September 2010, paras.8.4, 8.6.

³⁹ Article 14 Istanbul Convention 2011.

⁴⁰ Article 9 Istanbul Convention 2011; Article 12(4) states: "Parties shall take the necessary measures to encourage all members of the society, especially men and boys, to contribute actively to preventing all forms of violence covered by the scope of this Convention".

⁴¹ Revenge pornography is now a criminal offence in England and Wales under s.33 Criminal Justice and Courts Act 2015 ('Disclosing private sexual photographs and films with intent to cause distress').

⁴² *R v Nimmo and Sorley* [2014] <<https://www.judiciary.gov.uk/judgments/r-v-nimmo-and-sorley-judgment/>> accessed 24 June 2015; Although the judgment refers to examples of messages received by the claimants that were of misogynistic nature, the judgment does not contain references to such

VAW in the context of asylum, migration and armed conflicts

The convention extends the scope of states' obligations in relation to acts of VAW committed in the context of asylum and migration and in armed conflict. As such, it recognises a variety of perspectives and contexts in which women may become particularly susceptible to gender-based violence. The convention requires parties to implement gender-sensitive procedures in the asylum process and to recognize that gender-based violence may be a form of persecution within the meaning of Article 1A(2) of the 1951 Refugee Convention, and that it may constitute 'serious harm' giving rise to an entitlement to subsidiary protection.⁴³ As such, it codifies the key soft law developments in this area, namely the 2002 *UNHCR Guidelines on International Protection (Gender-Related Persecution)* and the 2008 *UNHCR Handbook for the Protection of Women and Girls*.⁴⁴ These standards have also been recently endorsed by the CEDAW Committee, which noted "that violence against women that is a prohibited form of discrimination against women is one of the major forms of persecution experienced by women in the context of refugee status and asylum" and called for an intersectional approach to the determination of persecution.⁴⁵ The Committee also emphasized the need to incorporate gender-sensitive reception procedures and support for asylum seekers, which are included in Art 60(3) of the convention.⁴⁶

Article 2(3) states that the treaty "shall apply in times of peace and in situations of armed conflict". Therefore, the convention provides for the dual protection of women from gender-based violence in armed conflict, comprised of international human rights law (present in the convention) and the existing provisions of international humanitarian law. Furthermore, it is recognised that there exists a link between VAW committed in armed conflict and the lack of substantive equality between men and women and patterns of VAW existing before the conflict. In this context, the convention provides for the continuity of state obligations with regard to VAW from peacetime to the times of internal disturbances, armed conflict and post-conflict situations when gender-based violence continues to be prevalent.⁴⁷

acts amounting to a form of discrimination against women. 'Revenge porn: the world is moving on while Australia stands still' (20 March 2015) <<http://www.news.com.au/technology/online/revenge-porn-the-world-is-moving-on-while-australia-stands-still/story-fnjwnfzw-1227269712703>> accessed 4 July 2015

'Interviews with the trolls: "We go after women because they are easier to hurt"' (27 February 2015) <<http://www.news.com.au/technology/online/interviews-with-the-trolls-we-go-after-women-because-they-are-easier-to-hurt/story-fnjwnhzhf-1227241099083>> accessed 4 July 2015.

⁴³ Article 60.

⁴⁴ *UNHCR Guidelines on International Protection (Gender-Related Persecution)*, HCR/GIP/02/01, 7 May 2002; *UNHCR Handbook for the Protection of Women and Girls*, January 2008, <<http://www.refworld.org/docid/47cfc2962.html>> accessed 24 June 2015.

⁴⁵ CEDAW Committee, General Recommendation No.32. on the gender-related dimensions of refugee status, asylum, nationality and statelessness of women (2014), paras.15-16.

⁴⁶ CEDAW Committee, General Recommendation No.32. on the gender-related dimensions of refugee status, asylum, nationality and statelessness of women (2014), para.34.

⁴⁷ See generally: CEDAW Committee, General Recommendation No.30 on women in conflict prevention, conflict and post-conflict situations (2013).

Despite substantive developments in the field of international criminal law, the accountability for acts of sexual violence committed in armed conflict remains problematic, especially at a national level. Furthermore, in modern armed conflicts which are predominantly of a non-international nature and waged by non-state actors, it is increasingly difficult to distinguish whether acts of gender-based violence happened ‘in’ or ‘outside’ non-international armed conflict. Whilst the Istanbul Convention certainly is not a replacement for IHL provisions dealing with the protection of women in armed conflicts, it may act as an ancillary instrument in providing continuous protection from violence to women and girls and in fighting impunity for these acts. In particular, the convention has the potential to be binding extra-territorially, for instance when acts of violence against women are committed by armed forces of a party to the Convention or on territory which is under the effective control of that party. The CEDAW Committee noted (in relation to CEDAW) that

“in conflict and post-conflict situations, States parties are bound to apply the Convention and other international human rights and humanitarian law when they exercise territorial or extraterritorial jurisdiction, whether individually, for example in unilateral military action, or as members of international or intergovernmental organizations and coalitions, for example as part of an international peacekeeping force”.⁴⁸

The extraterritorial application of human rights obligations has also been recognised in relation to a state’s obligations under the ECHR, especially in the context of overseas military action or military occupation by a party to the ECHR. The ECtHR confirmed in *Al-Skeini v United Kingdom* and *Al-Jedda v United Kingdom* that the UK’s human rights obligations arising from Article 1 of the ECHR (obligation to “secure to everyone within their jurisdiction the rights and freedoms defined in Section I of this Convention”) applied to its acts committed in Iraq.

Finally, the applicability of the convention in peacetime and in armed conflict links to the Women, Peace and Security (WPS) agenda set out by the United Nations Security Council. The WPS agenda, which originates from UNSC Resolution 1325, addresses the need to combat all forms of discrimination and violence against women in armed conflict and in peacetime. It recognizes the long-term impact of armed conflict on women, especially in relation to widespread and systematic sexual violence, and calls for equal and full participation of women in prevention and resolution of conflicts, peacebuilding and peacekeeping. The scope of the Istanbul Convention obliges states to fulfil these goals, particularly in relation to the prevention and punishment of VAW before, during and after armed conflict.

Monitoring

The wide-ranging and comprehensive scope of the substantive provisions of the Istanbul Convention is reinforced by the monitoring mechanism. The Group of

⁴⁸ CEDAW Committee, General Recommendation No.30 on women in conflict prevention, conflict and post-conflict situations (2013), para.9.

experts on action against violence against women and domestic violence (GREVIO), created under chapter IX of the Convention, is tasked with overlooking parties' compliance with the convention. The team of experts is intended to possess multidisciplinary expertise (Art 66(2)) and is to be elected by the Committee of the Parties composed of the representatives of the Parties to the Convention (Art 67(1)). The operation of GREVIO is modelled on the equivalent monitoring mechanism (GRETA), which has been successfully operating in relation to the Council of Europe Convention on Action against Trafficking in Human Beings 2005. The key objectives of GREVIO are to monitor parties' implementation of the convention and their compliance with it. GREVIO is also responsible for producing a report and conclusions concerning measures taken by each state party to implement the Convention.

In addition to the monitoring mechanism, the convention places an obligation on parties to create a government body with a mandate to coordinate, implement, monitor and evaluate policies and measures aimed at combatting and preventing VAW in accordance with the obligations under the treaty.⁴⁹ Such body should also collect research and disaggregated data concerning violence against women and domestic violence (Art 11) as well as cooperate with its counterparts in other state parties (Ar 10(3)). This approach is intended to encourage efficient implementation of the convention and ensure international coordination of such efforts.

Conclusion

The Istanbul Convention opens a new chapter in preventing and combatting violence against women at the international level. By codifying soft law standards and jurisprudence of the international human rights bodies with innovative provisions regarding states' positive obligations regarding the '3 Ps' (prevention, protection and prosecution), it sets modern normative standards in preventing and combating violence against women in various contexts and across jurisdictions.

However, the convention is not a magic instrument - it requires time, resources and combined interdisciplinary efforts to start a meaningful change. Ultimately, ending violence against women and domestic violence is dependant on the achievement of substantive gender equality and elimination of discrimination against women, both in the public and private spheres. Ratification is only a first step to being bound by the treaty; the true transformative potential of the Istanbul Convention lies in its effective implementation and parties' compliance with their obligations.

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⁴⁹ Article 10 Istanbul Convention 2011.