

FEASIBILITY STUDY
TO ASSESS THE POSSIBILITIES,
OPPORTUNITIES AND NEEDS
TO STANDARDISE
NATIONAL LEGISLATION
ON VIOLENCE AGAINST WOMEN,
VIOLENCE AGAINST CHILDREN AND
SEXUAL ORIENTATION
VIOLENCE

Feasibility study to assess the possibilities, opportunities and needs to

**standardise national legislation
on violence against women,
violence against children and
sexual orientation violence**



European Commission



**Feasibility study to assess the possibilities,
opportunities and needs to standardise
national legislation on violence against
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sexual orientation violence**

ANNEXES



European Commission



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Legal provisions	Total	Countries																												
		AT	BE	BG	CY	CZ	DE	DK	EE	EL	ES	FI	FR	HU	IE	IT	LT	LU	LV	MT	NL	PL	PT	RO	SE	SI	SK	UK		
Separate legal representation and/or support worker	20																													
Statute of limitations does not begin until adulthood	17			(2)							(3)			(5)					(4)				(5)							
Family/child protection law proceedings																														
Separate legal representation and/or support worker	25																													
Duty to hear child	23																													
Specialised courts dealing with child protection	14								(6)														(7)							
Corporal punishment																														
Corporal punishment penalised under certain circumstances	27																													
Corporal punishment penalised in any case	0																													
Corporal punishment in schools/institutions prohibited	24	(8)																												(8)
All corporal punishment forbidden	17																													
Neglect																														
Threshold for penalisation of neglect:																														
significant harm to or endangerment of the child	24																													
persistent failure	6																													
breach of legal duty to care for the child	5																													

Legal provisions	Total	Countries																											
		AT	BE	BG	CY	CZ	DE	DK	EE	EL	ES	FI	FR	HU	IE	IT	LT	LU	LV	MT	NL	PL	PT	RO	SE	SI	SK	UK	
Protective interventions																													
Authorities empowered to remove child from home for immediate protection:																													
child protection authority/ social worker	23																												
courts	20																												
police	13																												
prosecutors	8																												
Interventions prioritised:																													
counselling/educating to foster or care placement/ removal of the child	16																	(13)											
least intrusive	10																								(14)				
foster care to institutional care placement	6																	(13)											
Periodic review of intervention measures is required	24																												

- (1) At the age of 16 and 17, no placement of a child in foster or institutional care if in need of protection or at risk of harm.
- (2) No period of limitations in the law.
- (3) For sexual abuse.
- (4) Expires not earlier than five years after adulthood.
- (5) Begins not before age 23.
- (6) Family courts adopted by law but not implemented.
- (7) Not in every courthouse.
- (8) Prohibited in civil law or school law but not penalised.
- (9) Duty based on guidelines.
- (10) For personnel in NGOs in child and youth welfare, mandatory under narrow circumstances.
- (11) Except for felonies.
- (12) Duty to report overruled by rules of confidentiality.
- (13) Not by law.
- (14) Voluntary.

Table 2: Commercial sexual exploitation of children (CSEC)

Legal provisions	Total	Countries																											
		AT	BE	BG	CY	CZ	DE	DK	EE	EL	ES	FI	FR	HU	IE	IT	LT	LU	LV	MT	NL	PL	PT	RO	SE	SI	SK	UK	
Age where illegal to appear in porn/sell sex:	23																												
15-17	23																												
18	0																												
Offences:																													
to offer a child to third party	27																												
procurement	27																												
to control a child for gain	27																												
to produce child pornography	27																												
to distribute child pornography	27																												
to possess child pornography	27																												
to sell pornography	27																												
to import/export child pornography	27																												
to live on the earnings of a child sold for sex	26																												
to pay/offer benefit for sex with a child	24								(1)																				
Offences in another jurisdiction can be prosecuted under national law	24								(2)																(2)				

(1) Only if child is under 14.

(2) Depends on the nationality of victim/perpetrator.

Legal provisions	Total	Countries																											
		AT	BE	BG	CY	CZ	DE	DK	EE	EL	ES	FI	FR	HU	IE	IT	LT	LU	LV	MT	NL	PL	PT	RO	SE	SI	SK	UK	
Binding rules/guidelines on identification of victims	11																												
Reflection period available as right:	25																												
28-40 days	16																												
41-60 days	10																												
more	8																												
requires cooperation with investigation	2																												
During investigation have right to:																													
free and safe accommodation	26																												
free medical care	26																												
free legal advice and representation	18																												
free education and training	17																												
employment	16																												
Binding rules covering return to country of origin	9																												
Special arrangements in:																													
witness protection	26																												
investigation	14																												
court procedure	11																												
prosecution	9																												

(1) In designated areas where children might be found, e.g. schools.

(2) Unless in prohibited zone, it is a minor offence.

(3) Provided victim is accepted into support and assistance programme — discretionary.

(4) Where victim's reflection period has been renewed for six months.

Table 4: Forced marriage (FM)

Legal provisions	Total	Countries																											
		AT	BE	BG	CY	CZ	DE	DK	EE	EL	ES	FI	FR	HU	IE	IT	LT	LU	LV	MT	NL	PL	PT	RO	SE	SI	SK	UK	
FM is recognised in:																													
policy	11																												
criminal law	6																												
civil law	4																												
Distinction between FM and arranged marriage	5																												
Min. age of marriage: female																													
14/15	2																												
16/17	15																												
18	10																												
Min. age of marriage: male																													
14/15	2																												
16/17	13																												
18	12																												
Different age for foreign nationals	4																												
Special arrangements in:																													
investigation	2																												
court procedure	2																												

Table 5: Honour-based violence (HBV)

Legal provisions	Total	Countries																												
		AT	BE	BG	CY	CZ	DE	DK	EE	EL	ES	FI	FR	HU	IE	IT	LT	LU	LV	MT	NL	PL	PT	RO	SE	SI	SK	UK		
Concept of HBV recognised:																														
in policy	7																													
in criminal law	5																													
as aggravating factor	4																													
Is possible to plead a defence of honour	0																													
Special arrangements in:																														
investigation	1																													
prosecution	2																													
court procedure	1																													

Table 6: Intimate partner violence/domestic violence (IPV/DV)

Legal provisions	Total	Countries																												
		AT	BE	BG	CY	CZ	DE	DK	EE	EL	ES	FI	FR	HU	IE	IT	LT	LU	LV	MT	NL	PL	PT	RO	SE	SI	SK	UK		
Dedicated DV/IPV law ⁽¹⁾	18																													
IPV and criminal law:																														
IPV as an aggravated circumstance	11																													
a specific criminal offence	10																													
Specific law uses as a legal concept:																														
family violence	12																													
DV	10																													
IPV	5																													
gender-based violence	2																													
Police competence includes:																														
power of arrest to protect from further harm	12																													
emergency removal order	11																													
Civil law protection orders can order:																														
to leave the residence	23																													
to prohibit presence in certain locations	22																													
to prevent any contact with victim	20																													
to refrain from violence	13																													
Applications can be made by third parties	6																													
Legal provision for perpetrator programmes	15																													

Table 9: Sexual harassment (SH)

Legal provisions	Total	Countries																												
		AT	BE	BG	CY	CZ	DE	DK	EE	EL	ES	FI	FR	HU	IE	IT	LT	LU	LV	MT	NL	PL	PT	RO	SE	SI	SK	UK		
Provision specifically prohibiting SH:	27																													
in equality law	22																													
in labour law	18																													
in criminal law	11																													
Legal definition specifies:																														
unwelcome sexual act undermining dignity	26																													
unwelcome sexual act creating hostile environment	26																													
sexual act that can reasonably be regarded as offensive	23																													
sexual act where victim could be treated differently if they rejected it	18																													
unwelcome act of a sexual nature resulting from economic dependence	10																													
SH can be prosecuted as a criminal offence based on:																														
unwanted offensive conduct of a sexual nature	6																													
subjecting someone to an act of physical intimacy	5																													
demand or trying to extort sexual favours	4																													

Legal provisions	Total	Countries																											
		AT	BE	BG	CY	CZ	DE	DK	EE	EL	ES	FI	FR	HU	IE	IT	LT	LU	LV	MT	NL	PL	PT	RO	SE	SI	SK	UK	
some other sexual offence in general criminal law	3																												
none of the above	13																												
Criminal offence of harassment is limited to:																													
harassment by anyone with whom there are work relations	5																												
abuse of power by superiors at work	3																												
no such limitation	6																												

(1) In new Criminal Code.

(2) Until now.

Table 10: Rape

Legal provisions	Total	Countries																												
		AT	BE	BG	CY	CZ	DE	DK	EE	EL	ES	FI	FR	HU	IE	IT	LT	LU	LV	MT	NL	PL	PT	RO	SE	SI	SK	UK		
Offence in criminal/penal code	27																													
Victim of rape can be:																														
female	27																													
male	24																													
Perpetrator can be:																														
male	27																													
female	25																													
Legal definition based on:																														
force	11																													
extended force	7																													
force and consent	6																													
consent	3																													
Marital rape exemption explicitly removed	26																													
Is framed as a crime against:																														
sexual integrity/autonomy	18																													
sexual crime	9																													
morality	5																													
sexual freedom	6																													
All penetrative acts included	11																													
Aggravating circumstances:																														
degree of harm to victim	17																													
multiple perpetrators	16																													
victim a minor ()	15																													

Legal provisions	Total	Countries																											
		AT	BE	BG	CY	CZ	DE	DK	EE	EL	ES	FI	FR	HU	IE	IT	LT	LU	LV	MT	NL	PL	PT	RO	SE	SI	SK	UK	
sexual attack results in death	13																												
helplessness/abuse of incapacity	10																												
use of weapons	9																												
perpetrator a family member	9												(2)																
Forensic examinations are available free of charge	22																												
Victims have a right to a female doctor	7		(4)																										
Victims retain the right to decide to release the evidence	10																												
In court evidence is admissible with respect to the victim on:																													
medical history	21																												
general character recredibility	21																												
sex history	17																												
Special arrangements in:																													
prosecution	11																												
investigation	8																												
court procedure	8																												

(1) Only applies where laws cover adults and children, some Member States have separate sexual offences against children.

(2) These are rulings of the Supreme Court.

(3) Only some are free of charge.

(4) If there is a female doctor available.

(5) Except in the case of a warrant to reveal evidence for the purposes of criminal procedures for acts prosecuted *ex officio*.

Table 11: Sexual orientation violence (SOV)

Legal provisions	Total	Countries																											
		AT	BE	BG	CY	CZ	DE	DK	EE	EL	ES	FI	FR	HU	IE	IT	LT	LU	LV	MT	NL	PL	PT	RO	SE	SI	SK	UK	
Some aspects of consensual sexual acts between same sex partners are criminalised	0																												
Same age of consent as for heterosexual	27								(1)																				
Sexual orientation is included as a form of discrimination:																													
in labour law	24																												
in equality law	21																												
Recognised concept of SOV:																													
in law	7																												
in policy	3																												
LGBT protected under 'hate speech'	11																												
LGBT protected under 'hate crime'	14																								(2)				
Persecution on grounds of sexual orientation is accepted as grounds for asylum	19																												

(1) Close in age exception — age of consent is same as for heterosexual if both 'partners' are aged 15 to 17, if one 'partner' is aged 18+ and the other under 18, then age of consent is 17.
 (2) Not yet in force.
 (3) Via case-law.

Annex 2 — Existing standards and proposed revised/additional standards

Violence against women — VAW

No	Existing standards VAW	Proposed revised/additional standards VAW
	GENERAL LEGISLATION	
1.	Recognise that violence against women is a form of gender-based discrimination and a violation of human rights, and recognise the intersection with other bases of discrimination ⁽¹⁾ .	
2.		Member States shall establish integrated approaches to VAW resting on the three pillars of statutory restraining/restrictive measures (stop perpetration), social protection and assistance (support victims) and legal protection and sanctions (end infringements and threats, provide safety and justice).
3.	Condemn violence against women and refrain from invoking any custom, tradition, or religious consideration to avoid their obligations with respect to its elimination ⁽²⁾ .	
4.	Develop criminal, civil, labour and administrative legislation to offer a comprehensive legislative approach that gives adequate protection to all women against any form of violence respecting their integrity and dignity, end impunity and ensure both punishment and redress ⁽³⁾ .	Develop and effectively implement criminal, civil, labour and administrative legislation to offer a comprehensive legislative approach that gives adequate protection to all women against any form of violence respecting their integrity and dignity, end impunity and ensure both punishment and redress.
5.		Adapted to the criminal legal system of the Member State, set a framework for prosecution of repeated violence in a pattern of coercive control, recognising a course of conduct, including stalking, causes serious harm which undermines the integrity of the victim and constitutes an infringement of liberty and fundamental rights. Member States shall adjust the definition of rape within their national criminal law to the effect that the absence of consent of the victim is the defining element of the crime. Member States shall criminalise all forms of non-consensual sex.

(1) General Recommendation 19.

(2) 1993 UNDEVAW, Article 4 and also CoE Recommendation Rec(2002)5, Appendix, p. 2. This principle is also reflected in other regional documents and international reports: see the Inter-American Convention (Belem do Pará) and the African Protocol on the rights of women, General Recommendation 19 and the Special Rapporteur on VAW (2006) and the Secretary General in his in-depth study.

(3) General Recommendation 19, paragraph 24(b), see also *Handbook for legislation on violence against women*, Department of Economic and Social Affairs Division for the Advancement of Women, United Nations, 2009; *Developing legislation on violence against women*; UNSG 2006 *Study on violence against women*. It is important that legal frameworks make effective use of a range of areas of the law, including civil, criminal, administrative and constitutional law (UN Manual on Legislation 3.1.2). See also Article 7(c) of the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women, which refers to penal, civil, administrative and any other type of provisions that may be needed to prevent, punish and eradicate VAW, and to adopt appropriate administrative measures where necessary.

No	Existing standards VAW	Proposed revised/additional standards VAW
6.	Encourage the enactment or amendment of legislation in order to ⁽⁴⁾ : <ul style="list-style-type: none"> ♦ provide for the principle of extraterritoriality in respect of harmful practices; ♦ allow for the extradition of perpetrators of harmful practices for trial. 	
INVESTIGATION/PROSECUTION		
7.	Member States should be sure to exercise due diligence to prevent, investigate, and punish acts of violence against women, whether those acts are perpetrated by the state or by private actors, regardless whether they occurred in the public or private sphere ⁽⁵⁾ . Member States shall investigate promptly, thoroughly, impartially and seriously all allegations of domestic violence and/or any other form of violence against women ⁽⁶⁾ . Member States shall take the necessary legislative or other measures to ensure that investigations of VAW and judicial proceedings are carried out as a priority and without undue delay while taking into consideration the safety and rights of the victims and suspects at all times ⁽⁷⁾ .	<i>Member States shall demonstrate due diligence through recording, promptly and thoroughly investigating all reports of VAW, and, where it is in the public interest and evidentially possible, take forward prosecutions.</i> <i>Member States shall monitor attrition within the CJS, identify the points and causes and act to prevent attrition due to ineffective action by the responsible services or courts or failure of due diligence.</i> <i>Member States shall develop and implement guidelines for police and prosecutors to enhance the adequate investigation and prosecution of cases of VAW.</i> <i>Member States shall make forensic examinations free of charge available to every victim of physical or sexual violence irrespective of criminal proceedings, the results not to be released without consent of the victim.</i>
VICTIM'S RIGHTS		
8.	Member States should ensure the effective recognition of, and respect for, the rights of victims of violence against women with regard to their human rights: they should, in particular, respect the security, dignity, and privacy of victims ⁽⁸⁾ . Member States shall create safe and confidential systems for reporting violence against women and protection of complainants from any possible act of retaliation ⁽⁹⁾ .	

(4) Good Practices in Legislation on 'Harmful Practices' Against Women, Report of the Expert Group Meeting, United Nations Division for the Advancement of Women United Nations Economic Commission for Africa (Addis Ababa, 26 to 29 May 2009), some state practice already confirms this approach towards some forms of violence; for example, Constitutional Act 3/2005 makes female genital mutilation committed abroad a crime in Spain.

(5) See Chapter 4 for a more detailed explanation and sources.

(6) CEDAW, *AT v Hungary*, Communication No 2/2003.

(7) Conforms with Article 37 CAHVIO draft, Article 35 CoE Recommendation Rec(2002)5 which refers to swift and effective action, and Article 7(f) Inter-American Convention referring to a timely hearing and fair and effective procedures.

(8) See Article 2 of CoE Recommendation Rec(2006)8 on assistance to crime victims and Article 8 Framework Decision on the rights of victims which states, 'Each Member State shall ensure a suitable level of protection for victims and, where appropriate, their families or persons in a similar position, particularly as regards their safety and protection of privacy, where the competent authorities consider that there is a serious risk of reprisals or firm evidence of serious intent to intrude upon their privacy'.

(9) ECtHR, 39272/98, 4 Dec. 2003, *M.C. v Bulgaria*.

No	Existing standards VAW	Proposed revised/additional standards VAW
9.	<p>Each Member State shall support the progressive creation, in respect of proceedings in general, and particularly in venues where criminal proceedings may be initiated, of the necessary conditions for attempting to prevent secondary victimisation and avoiding placing victims under unnecessary pressure. This shall apply particularly as regards proper initial reception of victims and the establishment of conditions appropriate to their situation in the venues in question⁽¹⁰⁾.</p> <p>To develop investigative techniques that do not degrade women subjected to violence and that minimise intrusion into their lives, while maintaining standards for the collection of the best evidence⁽¹¹⁾.</p>	<p>Member States shall provide victims of sexual violence and rape the opportunity to be interviewed by female police officers and examined by female forensic examiners.</p>
10.	<p>Each Member State shall ensure that victims in particular have access⁽¹²⁾, by any means it deems appropriate and as far as possible in languages commonly understood, to information of relevance for the protection of their interest. Such information shall be at least as follows:</p> <ul style="list-style-type: none"> (a) the type of services or organisations to which they can turn for support; (b) the type of support which they can obtain; (c) where and how they can report an offence; (d) procedures following such a report and their role in connection with such procedures; (e) how and under what condition they can obtain protection; (f) to what extent, and on what terms they have access to: <ul style="list-style-type: none"> (i) legal advice or (ii) legal aid or (iii) any other sort of advice if, in the cases envisaged in points (i) and (ii), they are entitled to receive it; (g) requirements for them to be entitled to compensation; (h) if they are resident in another state, any special arrangements available to them in order to protect their interests. 	<p>Member States shall provide access to legal aid for victims, free of charge where appropriate⁽¹³⁾.</p>

(10) Derived from Article 4(f), UN Declaration on the elimination of violence against women, A/RES/48/104(1993) and Article 15, Framework Decision on the standing of victims in criminal proceedings.

(11) GA Resolution 52/86; A/52/635, paragraph 8(b).

(12) Article 4 Framework Decision on the standing of victims in criminal proceedings: we have deleted the part that says 'as from their first contact with law enforcement agencies' considering the additive 'law' too restrictive, see also Article 6.2 of CoE Recommendation Rec(2006)8 which has a broader scope as well.

(13) See Article 4.5 CoE Recommendation Rec(2006)8 which provides that 'legal advice should be made available where appropriate' or Article 44 of the CoE draft Convention.

No	Existing standards VAW	Proposed revised/additional standards VAW
	<p>Each Member State shall ensure that victims who have expressed a wish to this effect are kept informed of: (a) the outcome of their complaint; (b) relevant factors enabling them, in the event of prosecution, to know the conduct of the criminal proceedings regarding the person prosecuted for offences concerning them, except in exceptional cases where the proper handling of the case may be adversely affected; and (c) the court's sentence⁽¹⁴⁾.</p> <p>Member States shall take the necessary measures to ensure that, at least in cases where there might be danger to the victims, when the person prosecuted or sentenced for an offence is released, a decision may be taken to notify the victim if necessary⁽¹⁵⁾.</p> <p>Insofar as a Member State forwards on its own initiative the information referred to in paragraphs (a) and (b), it must ensure that victims have the right not to receive it, unless communication thereof is compulsory under the terms of the relevant criminal proceedings.</p>	
11.	<p>Member States shall take the necessary legislative or other measures to protect the rights and interests of victims of violence against women, including their special needs as witnesses, at all stages of investigations and judicial proceedings⁽¹⁶⁾.</p> <p>Member States shall safeguard the possibility for victims to be heard during proceedings⁽¹⁷⁾.</p> <p>Member States shall guarantee that it is possible to adopt, if necessary, as part of the court proceedings, appropriate measures to protect the privacy and photographic image of victims and their families or persons in a similar position⁽¹⁸⁾.</p> <p>Each Member State shall ensure that contact between victims and offenders within court premises may be avoided, unless criminal proceedings require such contact. Where appropriate for that purpose, each Member State shall progressively provide that court premises have special waiting areas for victims⁽¹⁹⁾.</p>	<p><i>Victims shall not be required to confront the perpetrator, nor shall victim and perpetrator be required to attend mediation or conciliation procedures as an alternative to criminal prosecution.</i></p>

(14) For more detailed regulation of the right to information: see, in general, Article 26 CoE Recommendation Rec(2002)5 and the UN *Handbook for legislation on violence against women*, p. 40.

(15) UN *Handbook for legislation on violence against women*, referring to several national laws, p. 40.

(16) Article 8 Framework Decision on the standing of victims in criminal proceedings, and also Article 43 CAHVIO Convention.

(17) Article 3 Framework Decision, and Article 6(2)(b) Palermo Protocol.

(18) Article 8.2 Framework Decision.

(19) Article 8.3 Framework Decision.

No	Existing standards VAW	Proposed revised/additional standards VAW
	Each Member State shall ensure that, where there is a need to protect victims — particularly those most vulnerable — from the effects of giving evidence in open court, victims may, by decision taken by the court, be entitled to testify in a manner which will enable this objective to be achieved, by any appropriate means compatible with its basic legal principles ⁽²⁰⁾ .	
12.	<p>Member States should provide for compensation for⁽²¹⁾ victims of serious, intentional, violent crimes, including sexual violence, and for the immediate family and dependants of victims who have died as a result of such crime. Each Member State shall ensure that victims of the acts of violence covered by this instrument are entitled to obtain a decision within reasonable time limits on compensation by the offender in the course of criminal proceedings, except where, in certain cases, national law provides for compensation to be awarded in another manner⁽²²⁾. Dependants of a victim who has deceased as a result of such acts shall be entitled to adequate compensation⁽²³⁾.</p> <p>Compensation referred to in the first paragraph should include compensation for physical and psychological injuries, necessary treatment and rehabilitation, as well as loss of income. In the event of the death of a victim, compensation for dependants should include compensation for loss of alimony, emotional distress and funeral expenses⁽²⁴⁾.</p>	<p><i>Member States shall provide for compensation from the perpetrator, and establish a procedure for timely resolution and enforcement. Provision should also be made for a state compensation scheme.</i></p>

(20) Article 8.4 Framework Decision.

(21) Article 8 CoE Recommendation Rec(2006)8 and Section 3.11.5. on restitution and compensation for survivors in the UN *Handbook for legislation on violence against women*.

(22) Article 9 Framework Decision on the standing of victims, see also Article 7(g) of the Inter-American Convention the Prevention, Punishment and Eradication of Violence against Women and Section 3.11.5. on restitution and compensation for survivors in the UN *Handbook for legislation on violence against women*.

(23) See paragraph 36 of CoE Recommendation Rec(2002)5 and the draft CoE Convention, Article 22, see also paragraph 24(i) of General Recommendation 19.

(24) Conforms with Article 22.2 CoE draft Convention. We use the term 'should', even though the text of the CoE Convention on the Compensation of Victims of Violent Crimes uses the term 'shall'. The Convention is ratified by 17 CoE Member States, of which the following EU Member States: Belgium, Cyprus, Czech Republic, Denmark, Finland, France, Germany, Luxembourg, the Netherlands, Portugal, Spain, Sweden. However, the newly acceded Member States have not signed this convention, neither have Italy and Poland. Note that other international quasi-legal instruments use the word 'should'; see, for instance, CoE Recommendation Rec(2006)8 Article 8.6 and 8.7.

No	Existing standards VAW	Proposed revised/additional standards VAW
	PROTECTION	
13.	<p>Member States shall take the necessary legislative or other measures to ensure that appropriate restraining and protection orders are available to victims of violence against women ⁽²⁵⁾.</p> <p>Member States should enable the judiciary to adopt, as interim measures aimed at protecting the victims, the banning of a perpetrator from contacting, communicating with or approaching the victim, residing in or entering certain defined areas ⁽²⁶⁾.</p> <p>Member States should enable the immediate issuance of emergency protection orders in situations where there is immediate danger of an act of violence ⁽²⁷⁾.</p> <p>The granting of protective measures should not depend on the identification, arrest, prosecution or conviction of the perpetrator of the criminal act ⁽²⁸⁾.</p>	<p><i>Due diligence obligations ⁽²⁹⁾ of the states require that Member States shall ensure the availability, free of charge, of immediate protection measures delivered by the police, administrative authorities or courts, that allow removing the perpetrator from the premises and ensure that the duration of such immediate protection through removal can be extended until longer-term measures can be issued, without gaps in protection between the issuing of short and longer-term protection measures.</i></p> <p><i>Member States shall ensure that all victims of VAW have recourse to appropriate, and where necessary, longer-term protection orders and that the courts deliver these in a timely manner.</i></p> <p><i>Protection orders should permit the banning of a perpetrator from contacting, communicating with or approaching the victim, residing in or entering certain defined areas ⁽³⁰⁾; ensure family law orders such as child access or contact do not contradict the protection orders and, when they do, introduce a presumption that the conditions of the protection order will take precedence over those of the child contact orders until and unless the court decides that there is no longer any need for the protection order.</i></p>
14.	Member States should envisage the possibility of taking measures in order to penalise all breaches of the measures imposed on the perpetrators by the authorities ⁽³¹⁾ .	<i>Breach of protection orders should be considered a criminal offence and/or as contempt of court.</i>

(25) CoE Draft Convention Article 21, see also UN *Handbook for legislation on violence against women*, pp. 77ff. To illustrate, the Spanish Act regulating the protection order for victims of domestic violence (2003) provides for a range of remedies, such as forbidding the offender to approach the complainant/survivor directly or through third persons; ordering the accused to keep a specified distance away from the complainant/survivor, her children, her family, her residence, her place of work or any other place she might visit or frequent, including the obligation to abandon the common residence; temporary child custody; vacation determination; and payment for child support and basic living expenses, including rent and insurance.

(26) Article 58(b) CoE Recommendation Rec(2002)5.

(27) See UN *Handbook for legislation on violence against women*, p. 59 and CoE Draft Convention Article 21.2 and Article 40. There is also some state practice. We have not further elaborated who has standing to ask for such an order, since this cannot be easily derived from the existing standards. As C. Hagemann notes 'behind the many technical issues of who, when and how such orders work, there are differences in the underlying legal philosophy: Is protection from the threat of private violence a concern of the state in its obligation to secure social welfare and security, is it an obligation of the police ensuring order and compliance with norms, or is it a service that the state should offer, but not impose unless requested?', Hagemann, 2009, p. 7.

(28) See Article 2.3 of CoE Recommendation Rec(2006)8 on assistance to crime victims.

(29) ECtHR, *Opuz v Turkey*, 2009.

(30) Article 58(b) CoE Recommendation Rec(2002)5.

(31) Article 58(f) CoE Recommendation Rec(2002)5.

No	Existing standards VAW	Proposed revised/additional standards VAW
15.	Member States should consider providing victims whose resident status depends on marital status with an independent residence permit irrespective of the duration of the marriage ⁽³²⁾ .	<i>In cases of VAW, notably victims of IPV, HBV or forced marriage, Member States should provide victims whose resident status depends on marital status with the right to apply for an independent residence permit irrespective of the duration of the marriage.</i>
16.	Member States should ensure effective cooperation between all agencies involved in criminal justice, social provision and healthcare, in the statutory, private and voluntary sectors, to ensure a coordinated response to victims or witnesses of violence against women ⁽³³⁾ .	
SUPPORT SERVICES		
17.	<p>Member States should establish support services for victims of violence against women⁽³⁴⁾.</p> <p>Member States should identify and support measures to alleviate the negative effects of violence against women and to undertake that victims are assisted in all aspects of their rehabilitation, in the community, at home, and in the workplace⁽³⁵⁾.</p>	<p><i>Member States should ensure that a sufficient number and geographical spread of support services are available to women, free of charge, to assist them in establishing safety, accessing information and overcoming the legacies of VAW.</i></p> <p><i>These should, preferably, be independent, run by NGOs, with states providing sustainable funding and establishing quality standards.</i></p> <p><i>All forms of VAW need to be covered, either through organisations that specialise (e.g. IPV shelters, trafficking shelters) or which provide integrated services.</i></p>

(32) Article 59 CoE Recommendation Rec(2002)5.

(33) See also Article 14.2 of the CoE Recommendation Rec(2006)8 on assistance to crime victims, and article of the same recommendation that states that 'States should ensure that victims, without any discrimination, receive immediate and comprehensive assistance provided by a co-ordinated, multidisciplinary and professional effort, whether or not they lodge a complaint, including medical and forensic medical examination and treatment, together with post-traumatic psychological and social support as well as legal assistance; this should be provided on a confidential basis, free of charge and be available around the clock', see further Article 14.2 of the Draft Convention on Preventing and Combating Violence Against Women, CAHVIO (2009) 32 prov, 15 October 2009.

(34) Article 24(k) General Recommendation 19 on services, see also Article 5 CoE Recommendation Rec(2006)8 and Article 13 of the Framework Decision on the standing of victims in criminal proceedings. This latter provision uses the words: 'Each Member State shall, in the context of proceedings, promote the involvement of victim support systems responsible for organising the initial reception of victims and for victim support and assistance thereafter.' In many countries, such services have not been mandated by law. As a result, they are often provided by non-governmental organisations with limited financial means and with unpredictable funding from Government, resulting in limitations to availability. As a consequence, many women who have experienced violence do not receive support services, or receive services that are insufficient. However, while the state can play an important role in establishing and funding services, it is often not the most appropriate body to run the services. Where possible, services should be run by independent and experienced women's non-governmental organisations, UN *Handbook for legislation on violence against women*, p. 41. Whether and how (through criminal or civil law) states are increasingly providing legislative mandates for the establishment of services will be determined after the analysis of the country reports. See in this regard also provisions in the European Social Charter, for instance, Articles 11, 13, 14 and 16. See also Article 12 CEDAW.

(35) See Article 3.1 CoE Recommendation Rec(2006)8. Research shows that many victims have problems reintegrating at work. Including measures in the workplace should then be considered an emerging obligation. It also confirms the human rights-based approach that is more and more promoted to be included in instruments on violence against women. See also Article 21 of the Spanish Organic Act on Integrated Protection Measures against Gender Violence (2004) which provides various employment and social security rights for survivors of violence, including the right to reduce or reorganise working hours. It also confirms EU policy and legislation on equality in the workplace. See also Article 6.3 of the UN Protocol to prevent, suppress and punish trafficking in persons, especially women and children which notes the following: 3. Each State Party shall consider implementing measures to provide for the physical, psychological and social recovery of victims of trafficking in persons, including, in appropriate cases, in cooperation with non-governmental organisations, other relevant organisations and other elements of civil society, and, in particular, the provision of: (a) Appropriate housing; (b) Counselling and information, in particular as regards their legal rights, in a language that the victims of trafficking in persons can understand; (c) Medical, psychological and material assistance; and (d) Employment, educational and training opportunities.

No	Existing standards VAW	Proposed revised/additional standards VAW
	<p>Encourage the establishment of emergency services such as anonymous, free-of-charge telephone helplines for victims of violence and/or persons confronted or threatened by situations of violence; regularly monitor calls and evaluate the data obtained from the assistance provided with due respect for data protection standards ⁽³⁶⁾.</p> <p>Member States should, in particular, ensure that all services and legal remedies available for victims of domestic violence are provided to immigrant women upon their request ⁽³⁷⁾.</p> <p>EU standard: ‘Each Member State shall, in the context of proceedings, promote the involvement of victim support systems responsible for organising the initial reception of victims and for victim support and assistance thereafter’ (Article 13 of the EU Framework Decision on the standing of victims in criminal proceedings).</p>	<p><i>The services should include: shelters, hotlines, counselling, advocacy, rape crisis centres and sexual assault referral centres.</i></p> <p><i>The level of services needed should be calculated through prevalence and incidence data and the population of the Member State.</i></p> <p><i>Member States shall ensure that housing arrangements and financial support for women with children are provided and that the terms of housing and financial arrangements do not require any contact between the perpetrator and victim.</i></p> <p><i>In every Member State, all women resident in the country, irrespective of immigration status or citizenship, shall have full rights to protection, provision and redress with regard to all forms of VAW ⁽³⁸⁾.</i></p> <p><i>Services should be available to meet the additional needs of migrant/minority groups, women with disabilities, women in rural areas.</i></p> <p><i>Services must have sufficient staff and capacity to meet the needs.</i></p>
	PREVENTION	
18.	<p>Develop their national strategy and a systematic, comprehensive, multi-sectoral and sustained approach aimed at eliminating all forms of violence against women ⁽³⁹⁾.</p> <p>Adopt appropriate measures, especially in the field of education, to modify the social and cultural patterns of conduct of men and women and to eliminate prejudices, customary practices and all other practices based on the idea of the inferiority or superiority of either of the sexes and on stereotyped roles for men and women ⁽⁴⁰⁾.</p>	<p><i>All NPAs should have medium and long-term primary prevention as a core component, including the development of educational modules on gender equality that challenge stereotypes of masculinity and femininity, establish principles of sexual self-determination and bodily integrity, respectful relationships.</i></p> <p><i>Develop multifaceted awareness-raising campaigns on VAW that impart accurate knowledge in order to dispel myths and stereotypes.</i></p>

(36) See also Article 17.4 draft CoE Convention.

(37) See the Convention on the Status of Migrant Workers and their Family Members. Similarly, the SRVAW has acknowledged the relevance of migrant status as an element contributing to the risk of becoming a victim of VAW.

(38) This is explicitly guaranteed in the 2004 Spanish Organic Law, Title II: The rights of female victims of gender violence, Chapter 1, Article 17: All women suffering gender violence, regardless of their origin, religion or any other personal or social condition or particular, are guaranteed the rights recognised herein.

(39) A/RES/63/155, 18 December 2008.

(40) Article 5 CEDAW, A/RES/63/155, 18 December 2008. Gral Rec. 19 states: Traditional attitudes by which women are regarded as subordinate to men or as having stereotyped roles perpetuate widespread practices involving violence or coercion, such as family violence and abuse, forced marriage, dowry deaths, acid attacks and female circumcision. Such prejudices and practices may justify gender-based violence as a form of protection or control of women. The effect of such violence on the physical and mental integrity of women is to deprive them the equal enjoyment, exercise and knowledge of human rights and fundamental freedoms. While this comment addresses mainly actual or threatened violence, the underlying consequences of these forms of gender-based violence help to maintain women in subordinate roles and contribute to the low level of political participation and to their lower level of education, skills and work opportunities. Later, GA Resolution 61/143 (2007) reminded states that they cannot use customs, traditions, or religious beliefs as excuses for avoiding their obligation to eliminate violence against women and girls.

No	Existing standards VAW	Proposed revised/additional standards VAW
	<p>Member States should introduce education and public information programmes to help eliminate prejudices that hinder women's equality⁽⁴¹⁾ by undertaking to:</p> <ul style="list-style-type: none"> (i) introduce or reinforce a gender perspective in human rights education programmes, and reinforce sex education programmes that give special importance to gender equality and mutual respect⁽⁴²⁾; (ii) ensure that both boys and girls receive a basic education that avoids social and cultural patterns, prejudices and stereotyped roles for the sexes and includes training in assertiveness skills, with special attention to young people in difficulty at school; train all members of the teaching profession to integrate the concept of gender equality in their teaching⁽⁴³⁾; (iii) mobilise public opinion by organising or supporting conferences and information campaigns so that society is aware of the problem and its devastating effects on victims and society in general and can therefore discuss the subject of violence towards women openly, without prejudice or preconceived ideas⁽⁴⁴⁾; (iv) encourage awareness-raising campaigns on male violence towards women, stressing that men should be responsible for their acts and encouraging them to analyse and dismantle mechanisms of violence and to adopt different behaviour⁽⁴⁵⁾; (v) encourage the prison system and probation services to provide appropriate rehabilitation programmes for perpetrators, as a preventive tool to avoid recidivism⁽⁴⁶⁾. 	<p>Target primary prevention programmes at men inviting them to choose not to use violence towards women or children.</p> <p>Member States should establish a legal basis for the CJS to mandate participation of IPV perpetrators in appropriate programmes.</p> <p>States should invest in developing a differentiated range of programmes — provided in the community by NGOs as well as within prison/probation — that can enable groups of boys and men to learn and practice alternatives to violence; these programmes should target different groups appropriately, including primary prevention (role models and group activities for non-sexist and non-violent masculinities), secondary prevention (addressing, for example, batterers and 'low-level' sexual aggressors), and tertiary prevention (treatment for chronic and dangerous offenders). In all cases, a gender analysis and human rights framework should underpin the interventions.</p>

(41) General Recommendation 19, paragraph 24(f).

(42) Article 14 CoE Recommendation Rec(2002)5.

(43) Article 15 CoE Recommendation Rec(2002)5.

(44) Article 7 CoE Recommendation Rec(2002)5.

(45) CoE Recommendation Rec(2002)5. According to the 2008 Report of the Committee on Equal Opportunities for Women and Men, involving men in achieving gender equality 'given the lessons learnt from the parliamentary dimension of the Council of Europe campaign Stop Domestic Violence against Women (2006-08), the Parliamentary Assembly should consider that involving men is crucial to make society progress as a whole and contribute to change mentalities, in particular in the field of combating violence against women, balanced participation of women and men in public and political life, reproductive health, conciliation of professional and private life and parenthood.' Similarly, the in-depth report of the Secretary General also recommended to 'engage men and boys proactively in strategy development and implementation for the prevention of male violence against women', stressing that 'The struggle to transform gender relations and to eliminate violence against women cannot be successful without the involvement of men. There are promising examples of coalitions in which men address the need to end community acquiescence in violence against women and support women's leadership roles. Strategies to engage men in the prevention of violence against women have included work to raise awareness of the issue with organised groups such as the military, trade unions, sports teams and the police, as well as campaigns that utilise positive male role models to oppose violence against women.'

(46) A/RES/63/155. In a preliminary phase of the mapping of legislation it was possible to notice that there are quite different approaches towards these programmes within the different states. While some offer rehabilitation programmes on a voluntary basis, some include them as an alternative to a criminal sanction. The importance of the programmes, however, seems to be generally addressed.

No	Existing standards VAW	Proposed revised/additional standards VAW
19.		Ensure wide availability of high-quality early intervention and prevention programmes with outreach in pregnancy and after birth to teach women and men parenting skills; programmes should be community based and independently evaluated.
	SPECIFIC FORMS OF VIOLENCE	
	Sexual harassment	
20.	<p>Harassment and sexual harassment within the meaning of this directive shall be deemed to be discrimination on the grounds of sex and therefore prohibited.</p> <p>Member States shall encourage, in accordance with national law, collective agreements or practice, employers and those responsible for access to vocational training to take measures to prevent all forms of discrimination on grounds of sex, in particular harassment and sexual harassment at the workplace⁽⁴⁷⁾.</p>	Member States shall develop legal frameworks to penalise harassment, including sexual harassment, in any context.
	Trafficking	
21.	<p>Victims shall be granted the necessary assistance and support by Member States in the framework of criminal proceedings, to enable them to recover and escape from the influence of the perpetrators, including by providing them with secure accommodation and material assistance, necessary medical treatment including psychological assistance, counselling and information, assistance to enable their rights and interests to be presented and considered in criminal proceedings, and translation and interpretation services where appropriate. Member States shall attend to the special needs of the most vulnerable, as well as of their possibilities to continue to receive psychological, medical and social support and legal assistance⁽⁴⁸⁾.</p> <p>Each Party shall provide its competent authorities with persons who are trained and qualified in preventing and combating trafficking in human beings, in identifying and helping victims, including children, and shall ensure that the different authorities collaborate with each other as well as with relevant support organisations, so that victims can be identified in a procedure duly taking into account the special situation of women and child victims and, in appropriate cases, issued with residence permits under the conditions provided for in Article 14 of the present Convention⁽⁴⁹⁾.</p>	<p>Entrust to an independent qualified agency, the initial identification and assessment of trafficking victims for the purpose of granting them a reflection period, preventing summary deportation, and ensuring full consideration to applications for residence permits on humanitarian grounds.</p> <p>Self-identified, or suspected, victims of trafficking shall be guaranteed in law protection against summary deportation, as well as access to medical assistance, safe housing, social and welfare support, until the identification process has been completed by the independent qualified agency.</p> <p>Establish, in accordance with the basic principles of the legal system, a rebuttable legal presumption that confirmed victims of trafficking will not be prosecuted for offences committed while under the control of, or attempting to escape, their traffickers or exploiters.</p>

(47) Directive 2002/73/EC of the European Parliament and of the Council of 23 September 2002 amending Council Directive 76/207/EEC on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions.

(48) Article 10.4, proposed directive on trafficking in human beings.

(49) Council of Europe Convention Against Trafficking in Human Beings, Article 10 (<http://conventions.coe.int>).

No	Existing standards VAW	Proposed revised/additional standards VAW
	<p>Each Party shall adopt such legislative or other measures as may be necessary to identify victims as appropriate in collaboration with other Parties and relevant support organisations. Each Party shall ensure that, if the competent authorities have reasonable grounds to believe that a person has been victim of trafficking in human beings, that person shall not be removed from its territory until the identification process as victim of an offence provided for in Article 18 of this Convention has been completed by the competent authorities and shall likewise ensure that that person receives the assistance provided for in Article 12, paragraphs 1 and 2 ⁽⁵⁰⁾.</p> <p>Each Party shall, in accordance with the basic principles of its legal system, provide for the possibility of not imposing penalties on victims for their involvement in unlawful activities, to the extent that they have been compelled to do so ⁽⁵¹⁾.</p>	
	Female genital mutilation	
22.	<p>Member States should:</p> <ul style="list-style-type: none"> ♦ organise information and prevention campaigns aimed at the population groups concerned, in particular immigrants and refugees, on the health risks to victims and the criminal penalties for perpetrators; ♦ train the social and medical professions, responsible for pre- and post-natal healthcare of children ⁽⁵²⁾. <p>The Assembly calls on the governments of Member States to conduct information and public awareness-raising campaigns to inform health personnel, refugee groups and all groups concerned by this question about the dangerous consequences of genital mutilation for the health, physical well-being and dignity of the women concerned, about their right to personal fulfilment and about the customs and traditions that are in contradiction with human rights ⁽⁵³⁾.</p>	<p><i>Develop methods appropriate to working within newly arrived and settled communities in which FGM is practiced to develop abandonment of the practice.</i></p> <p><i>Train medical and social welfare professions so that they can prevent FGM with girls and undertake appropriate healthcare, including reversal, with women who have been genitally cut.</i></p>

(50) Op. cit.

(51) Op. cit., Article 26.

(52) Recommendation Rec(2002)5 of the Committee of Ministers to Member States on the protection of women against violence, Articles 64 and 65.

(53) CoE PA Resolution 1247 (2001).

No	Existing standards VAW	Proposed revised/additional standards VAW
	<i>Honour-based violence</i>	
23.	<p>Member States shall:</p> <ul style="list-style-type: none"> (i) launch national awareness-raising campaigns through the media, in schools, universities and religious institutions in order to discourage and prevent honour crimes; (ii) provide special educational programmes for women and men from communities where such crimes occur, to raise their awareness of women's rights; (iii) encourage the collation and dissemination of statistical information on the occurrence of so-called honour crimes; (iv) provide gender equality training in conjunction with cultural sensitivity training to law enforcement and judicial personnel to enable them to address complaints of violence in the name of honour with impartiality and founded on adequate knowledge⁽⁵⁴⁾. 	<p><i>Build awareness about the rights of young women, including the right to choose who they marry, sexual-self determination, and of the value of mutual respect between women and men.</i></p> <p><i>Build capacity among teachers, social workers and the CJS to understand HBV as part of VAW, and respond appropriately.</i></p> <p><i>Provide gender equality training in conjunction with cultural sensitivity training to the criminal justice system professionals to address complaints of violence in the name of honour with adequate impartial expertise.</i></p> <p><i>Develop and implement dedicated guidelines for police and prosecutors to enhance the adequate handling of cases of violence committed in the name of honour.</i></p>
	<i>Forced marriage</i>	
24.	<p>Member States should, with regard to forced marriages, adapt their domestic legislation, if appropriate, so as to:</p> <ul style="list-style-type: none"> ♦ fix at, or raise to, 18 years the minimum statutory age of marriage for women and men; ♦ make it compulsory for every marriage to be declared and entered by the competent authority in an official register⁽⁵⁵⁾; ♦ institute prevention campaigns in primary, secondary and upper secondary schools, suited to the age of the pupils targeted, informing them of their rights and especially the right to make up one's own mind with regard to marriage, the right to choose one's future partner and the right not to marry before 18 years of age, aiming both at a general audience and at those particularly concerned⁽⁵⁶⁾. 	<p><i>Have an agreed minimum age of marriage for all persons, and ensure that all partnerships are freely entered into by both parties.</i></p> <p><i>Member States shall guarantee protection and financial support to all women and men, girls and boys who were forced into marriage without their full and free consent.</i></p> <p><i>Member States shall ensure protective measures that, if necessary, a victim of forced marriage cannot be located and her or his residence is not revealed without her or his consent.</i> <i>Every victim who is forced or deceived into marriage has the right to annulment on request without requirement of divorce procedures.</i></p> <p><i>Member States should make protection orders, fit-for-purpose shelters/foster families and services available for young women or men threatened with forced marriage.</i></p>

(54) CoE Resolution 1327 (2003) on so-called honour crimes.

(55) CoE Resolution 1468 (2005)¹ on forced marriages and child marriages, Assembly debate on 5 October 2005 (29th Sitting) (see Doc. 10590, report of the Committee on Equal Opportunities for Women and Men, rapporteur: Mrs Zapfl-Helbling; and Doc. 10678, opinion of the Social, Health and Family Affairs Committee, rapporteur: Mrs Bargholtz), text adopted by the Assembly on 5 October 2005 (29th Sitting).

(56) CoE Recommendation 1723 (2005)¹ on forced marriages and child marriages, Assembly debate on 5 October 2005 (29th Sitting) (see Doc. 10590, report of the Committee on Equal Opportunities for Women and Men, rapporteur: Mrs Zapfl-Helbling; and Doc. 10678, opinion of the Social, Health and Family Affairs Committee, rapporteur: Mrs Bargholtz), text adopted by the Assembly on 5 October 2005 (29th Sitting).

No	Existing standards VAW	Proposed revised/additional standards VAW
	CAPACITY-BUILDING AND TRAINING	
25.	<p>Implement national plans of action, and within this framework, wherever possible, to set up a governmental coordination institution or body in charge of the implementation as well as of regular monitoring and evaluation of any legal reform or new form of intervention in the field of action against violence, in consultation with NGOs and academic and other institutions.</p> <p>Gender-sensitive training of judicial and law enforcement officers and other public officials is essential for effective implementation. Hence, Member States should:</p> <ul style="list-style-type: none"> ♦ ensure special training for professionals confronted with violence against women, undertaking to: <ul style="list-style-type: none"> — include in the basic training programmes of members of the police force, judicial personnel and the medical and social fields, elements concerning the treatment of domestic violence, as well as all other forms of violence affecting women⁽⁵⁷⁾; — include in the vocational training programmes of these personnel, information and training so as to give them the means to detect and manage crisis situations and improve the manner in which victims are received, listened to and counselled⁽⁵⁸⁾; ♦ encourage the participation of these personnel in specialised training programmes, by integrating the latter in a merit-awarding scheme⁽⁵⁹⁾; ♦ encourage the inclusion of questions concerning violence against women in the training of judges⁽⁶⁰⁾; ♦ encourage the organisation of training to inform media professionals and alert them to the possible consequences of programmes that associate violence and sex⁽⁶¹⁾. 	<p>Member States should ensure that all relevant professionals have training on VAW:</p> <ul style="list-style-type: none"> ♦ to be a core component in all qualifying professional training for police, prosecutors, judges, teachers, social workers, doctors, nurses, journalists; ♦ to be part of vocational/in-service training for those already qualified and to keep up to date with new developments; ♦ such training to include social science research on the prevalence of violence, its meanings and impacts alongside the roles and responsibilities of professions; ♦ all undertaking specialist roles to have appropriate qualifications. <p>Member States shall set standards for the qualifications of judges dealing with violence. In addition to having specialised courts as family or juvenile courts, Member States should guarantee training in the social science aspects of violence against women and violence against children.</p>
	PREVENTION/MEDIA	
26.	<p>Encourage the media to promote a non-stereotyped image of women and men based on respect for the human person and human dignity and to avoid programmes associating violence and sex⁽⁶²⁾.</p> <p>Encourage the media to adopt and respect self-regulation measures in order to protect victim's privacy and personal data⁽⁶³⁾.</p>	<p>Establish a code of conduct concerning VAW for media professionals.</p> <p>Ensure that there is a body serving as a media watchdog dealing with issues concerning VAW, sexism as well as with stereotyped discriminatory portrayal of women⁽⁶⁴⁾.</p>

(57) Article 8 CoE Recommendation Rec(2002)5.

(58) *Ibidem* Article 9.

(59) *Ibidem* Article 10.

(60) *Ibidem* Article 11.

(61) *Ibidem* Article 19.

(62) General Recommendation 19 notes the relation between traditional attitudes and stereotyped and subordinated appreciation of women. It states that 'These attitudes also contribute to the propagation of pornography and the depiction and other commercial exploitation of women as sexual objects, rather than as individuals. This in turn contributes to gender-based violence'.

(63) *Ibidem* Article 10.9, see also Article 8(g) of the Inter-American Convention which also encourages media to develop appropriate media guidelines and Section 3.5.4 of the UN *Handbook on sensitising media*.

(64) See monitoring framework to CoE Recommendation Rec(2002)5.

No	Existing standards VAW	Proposed revised/additional standards VAW
	RESEARCH AND STATISTICS	
27.	<p>Member States should:</p> <ul style="list-style-type: none"> ♦ strengthen the knowledge base on all forms of violence against women to inform policy and strategy development, by means of: compiling statistics and research on the extent, causes and effects of violence, and on the effectiveness of measures to prevent and deal with violence⁽⁶⁵⁾; ♦ establish appropriate national mechanisms for monitoring and evaluating the implementation of national measures, including national action plans, taken to eliminate violence against women and girls, including through the use of national indicators⁽⁶⁶⁾; ♦ evaluate and assess the impact of current legislation, rules and procedures regarding violence against women, including the reasons for low reporting, and, where necessary, reinforcing criminal law and procedure relating to all forms of violence against women and, where necessary, incorporating into law measures aimed at preventing violence against women⁽⁶⁷⁾. 	<p>Member States should develop their national knowledge base on all forms of VAW through:</p> <ul style="list-style-type: none"> ♦ regular prevalence studies; ♦ publishing regular reports based on official statistics with appropriate gender breakdown on identification, recording and responses to VAW, as part of monitoring NPAs; ♦ funding research on the impacts of violence on victims; ♦ funding evaluation of the effectiveness of measures to prevent and respond to VAW. <p>Evaluate and assess the impact of current legislation, rules and procedures regarding violence against women, including the reasons for low reporting, and, where necessary, reinforcing criminal law and procedure relating to all forms of violence against women and, where necessary, incorporating into law measures aimed at preventing violence against women⁽⁶⁸⁾.</p>

(65) *Ibidem*, according to the EU Guidelines on violence against women and girls and combating all forms of discrimination against them, 'accurate comparable quantitative and qualitative data are needed on all forms of violence against women and girls, as well as relevant indicators, so that states can frame their actions and strategies in full knowledge of the facts'. The need to maintain statistics and data has been also pointed out by the Inter-American Convention, the CoE Convention on the Protection of Children Against Sexual Exploitation and Sexual abuse, by GA Res. 58/147 on Elimination of domestic violence against women, Res. 59/165 on Working towards the elimination of crimes against women and girls committed in the name of honour, UN GA Rec. 59/166 on Trafficking in women and girls, UN GA Rec. 60/139 on Violence against women migrant workers and UN GA Rec. 61/143 on Intensification of efforts to eliminate all forms of violence against women. Alternatively, see the text from the latter GA Res.: Ensuring the systematic collection and analysis of data to monitor all forms of violence against women, while ensuring and maintaining the privacy and confidentiality of the victims, including with the involvement of national statistical offices and, where appropriate, in partnership with other actors.

(66) A/RES/61/143.

(67) *Ibidem*.

(68) *Ibidem*.

Sexual orientation violence

No	Existing standards SOV	Proposed revised/additional standards SOV
	GENERAL LEGISLATION	
1.	<p>Member States should recognise that sexual orientation violence is a form of discrimination⁽⁶⁹⁾.</p> <p>Member States should condemn acts of violence and related human rights violations committed against individuals because of their sexual orientation and gender identity and make those acts punishable⁽⁷⁰⁾.</p> <p>Member States should ensure effective, prompt and impartial investigations into alleged cases of crimes and other incidents, where the sexual orientation or gender identity of the victim is reasonably suspected to have constituted a motive for the perpetrator⁽⁷¹⁾.</p>	<p>Member States shall remove all discriminatory legislation and distinctions based on sexual orientation.</p> <p>Member States shall demonstrate due diligence through recording, promptly and thoroughly investigating all reports of SOV, and where it is in the public interest and evidentially possible taking forward prosecutions.</p>

- (69) Article 19 TFEU, also: non-discrimination directives: Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin (Racial Equality Directive) (OJ L 180, 19.7.2000, p. 22); Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation (Employment Equality Directive) (OJ L 303, 2.12.2000, p. 16); and Directive 2004/113/EC implementing the principle of equal treatment between men and women in the access to and supply of goods and services (OJ L 373, 21.12.2004, p. 37). See recent Recommendation Rec(2010)5 of the Committee of Ministers to Member States on measures to combat discrimination on grounds of sexual orientation or gender identity. See Swiebel and Van der Veur, '[...] hate crimes and hate-motivated acts can be regarded as the cruellest form of discrimination and oppression as the physical and mental integrity of an individual, often as a member of a particular community, is at stake', p. 487. And 'Hate crime is a form of discrimination and therefore a matter of violation of human rights, because it is a threat to the right to life, liberty and security (Article 3 Universal Declaration of Human Rights (UDHR) as well as (in some cases) the right to freedom of opinion and expression (Article 19 UDHR) and the freedom of association and assembly (Article 20 UDHR),' p. 495. See also Yogyakarta Principles, No 2.
- (70) OSCE, Hate Crime Laws: A Practical Guide, OSCE/ODIHR, Warsaw, 2009, p. 7. '[...] hate crime laws are important. By explicitly condemning bias motives, they send a message to offenders that a just and humane society will not tolerate such behaviour. By recognising the harm done to victims, they convey to individual victims and to their communities the understanding that the criminal justice system serves to protect them. See also GA Res. Organisation of American States, AG/RES. 2504 (XXXIX-O/09), human rights, sexual orientation, and gender identity, Article 1. See also Yogyakarta Principles, No 5.b: Take all necessary legislative measures to impose appropriate criminal penalties for violence, threats of violence, incitement to violence and related harassment, based on the sexual orientation or gender identity of any person or group of persons, in all spheres of life, including the family.
- (71) CoE Recommendation Rec(2010)5 of the Committee of Ministers to Member States on measures to combat discrimination on grounds of sexual orientation or gender identity (adopted by the Committee of Ministers on 31 March 2010 at the 1081st meeting of the Ministers' Deputies), Article 1, hereafter CoE Recommendation Rec. 2010. See further ECtHR, *Secic v Croatia*, judgment of 31 May 2007, Reports 2007-VI, No 40116/02, where the Court interestingly noted that 'that when investigating violent incidents, State authorities have the additional duty to take all reasonable steps to unmask any racist motive and to establish whether or not ethnic hatred or prejudice may have played a role in the events (...) [and that] treating racially induced violence and brutality on an equal footing with cases that have no racist overtones would be turning a blind eye to the specific nature of acts that are particularly destructive of fundamental rights. A failure to make a distinction in the way in which situations that are essentially different are handled may constitute unjustified treatment irreconcilable with Article 14 of the Convention. According to Swiebel and Van der Veur, 'such bias motivation should be considered as an aggravating circumstance in the prosecution and sentencing of the accused', p. 507. See also *Angelova and Iliev v Bulgaria*, No 55523/00, judgment of 26 July 2007, paragraph 115. See also Article 2 Res. OAS AG/RES. 2504 (XXXIX-O/09) Human Rights, Sexual Orientation, and Gender Identity. Yogyakarta Principles, No 5 d: Ensure that perpetration of such violence is vigorously investigated, and that, where appropriate evidence is found, those responsible are prosecuted, tried and duly punished, and that victims are provided with appropriate remedies and redress, including compensation. See also Principle 29.

No	Existing standards SOV	Proposed revised/additional standards SOV
	<p>Member States should introduce appropriate measures to encourage the victims and witnesses of hate crimes or other hate-motivated incidents based on sexual orientation or gender identity to report these acts. Such measures could include:</p> <ul style="list-style-type: none"> ♦ drawing up and disseminating a simple and comprehensible definition of 'hate crimes' including the motive of sexual orientation or gender identity, aimed at the general public so that these crimes are more frequently reported and at the police services which log the complaints; ♦ setting up training programmes in order to ensure that the different structures of the law enforcement authorities, including the judicial system, possess the knowledge and skills required to provide victims and witnesses with adequate assistance and support; ♦ creating special units tasked inter alia with investigating crimes and incidents linked to sexual orientation or gender identity and special liaison officers for maintaining contact with local communities in order to foster a relationship of trust; ♦ introducing systems of anonymous complaints or online complaints or using other means of easy access and allow reporting by third parties in order to gather information on the incidence and particular nature of these incidents⁽⁷²⁾. 	<p>Member States should take efforts to encourage reporting of SOV, this can include:</p> <ul style="list-style-type: none"> ♦ setting up special police units with responsibility to record and investigate reports and special liaison officers for maintaining contact with local communities in order to foster a relationship of trust; ♦ introducing systems of anonymous complaints or online complaints or using other means of easy access and allow reporting by third parties in order to gather information on the incidence and particular nature of these incidents⁽⁷³⁾. <p>Enact a gender identity law to regulate rights of transgender persons and prohibit discrimination.</p>
	PROTECTION	
2.	<p>Member States shall recognise that a well-founded fear of persecution based on sexual orientation or gender identity is a valid ground for the granting of refugee status and asylum⁽⁷⁴⁾.</p> <p>Member States should take appropriate measures to ensure, in accordance with Article 11 of the Convention, that the right to freedom of association can be effectively enjoyed without discrimination on grounds of sexual orientation or gender identity⁽⁷⁵⁾.</p> <p>Member States should ensure particularly that asylum seekers are not sent to a country where their life or freedom would be threatened or they face the risk of torture, inhuman or degrading treatment or punishment, on grounds of sexual orientation or gender identity⁽⁷⁶⁾.</p>	<p>Member States should ensure that ensure that immediate and longer-term protection orders are also available to victims of SOV.</p>

(72) CoE Rec. 2010, Article 3, and explanatory memorandum, p. 6.

(73) CoE Rec. 2010, Article 3, and explanatory memorandum, p. 6.

(74) Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted, Article 10(d).

(75) CoE Rec. 2010, Article 9.

(76) CoE Rec. 2010, Articles 42–43.

No	Existing standards SOV	Proposed revised/additional standards SOV
	SUPPORT	
3.		<p>Member States should fund specialist NGOs to provide support to victims of SOV.</p> <p>Member States should ensure that generic victim support services are accessible to LGBT persons.</p>
	PREVENTION	
4.	<p>Member States should ensure that national human rights structures are clearly mandated to address discrimination on grounds of sexual orientation or gender identity; in particular, they should be able to make recommendations on legislation and policies, raise awareness amongst the general public, as well as — as far as national law so provides — examine individual complaints regarding both the private and public sector and initiate or participate in court proceedings⁽⁷⁷⁾.</p> <p>Member States should decriminalise sexual acts between adults of the same sex⁽⁷⁸⁾.</p> <p>Undertake campaigns of awareness-raising, directed to the general public as well as to actual and potential perpetrators of violence, in order to combat the prejudices that underlie violence related to sexual orientation and gender identity⁽⁷⁹⁾.</p> <p>Member States should raise awareness among public authorities and public institutions at all levels of their responsibility to refrain from statements, in particular to the media, which may reasonably be understood as legitimising such hatred or discrimination. Public officials and other state representatives should be encouraged to promote tolerance and respect for the human rights of lesbian, gay, bisexual and transgender persons whenever they engage in a dialogue with key representatives of the civil society, including media and sports organisations, political organisations and religious communities⁽⁸⁰⁾.</p> <p>Member States should ensure that education methods, curricula and resources serve to enhance understanding of and respect for, inter alia, diverse sexual orientations and gender identities, including the particular needs of students, their parents and family members related to these grounds⁽⁸¹⁾.</p>	<p>Member States should undertake campaigns to raise awareness about SOV among the general public and assert the right to equal protection under the law.</p> <p>Member States should raise awareness about fundamental rights and their application to LGBT persons among public authorities and public institutions.</p>

(77) CoE Rec. 2010, Article 45.

(78) See various communications by the UN Treaty Bodies towards States Parties, for references: International Commission of Jurists, *Sexual orientation and gender identity in Human Rights Law; references to jurisprudence and doctrine of the United Nations human rights system*, 4th updated ed., ICJ, Geneva, 2010.

(79) Yogyakarta Principles, No 5 e.

(80) CoE Rec. 2010, Articles 6, 7, 8.

(81) Yogyakarta Principles, No 16 d.

No	Existing standards SOV	Proposed revised/additional standards SOV
	CAPACITY-BUILDING AND TRAINING	
5.		<p><i>Member States should ensure that all relevant professionals have training on SOV:</i></p> <ul style="list-style-type: none"> ♦ <i>within a core component in all qualifying professional training for police, prosecutors, judges, teachers, social workers, doctors, nurses, journalists;</i> ♦ <i>within vocational/in-service training for those already qualified and to keep up to date with new developments;</i> ♦ <i>such training to include social science research on the prevalence of violence, its meanings and impacts alongside the roles and responsibilities of professions;</i> ♦ <i>all undertaking specialist roles to have appropriate qualifications.</i>
	RESEARCH AND STATISTICS	
6.		<p><i>Member States should develop their national knowledge base on SOV through publishing regular reports based on administrative registration data and/or official police statistics with appropriate gender breakdown on identification, recording and responses to SOV:</i></p> <ul style="list-style-type: none"> ♦ <i>funding research on the impacts of violence on victims;</i> ♦ <i>funding evaluation of the effectiveness of measures to prevent and respond to SOV.</i>

Violence against children — VAC

No	Existing standards VAC	Proposed revised/additional standards VAC
	GENERAL LEGISLATION	
1.	Member States should enact appropriate legislative, administrative, social and educational measures to prohibit all violence against children at all times and in all settings ⁽⁸²⁾ . This should include a prohibition of corporal punishment, defined as any punishment in which physical force is used and intended to cause some degree of pain or discomfort, however light ⁽⁸³⁾ .	<i>Corporal punishment shall be banned in schools or other institutions of care or education, with possible criminal and disciplinary consequences for those who mistreat children under their care.</i>
2.		<i>Member States shall set a minimum age for sexual consent and ensure that all treatment of children under the age of 18 is criminalised that seriously harms their integrity and development, including acts to which they may give apparent consent due to the abuse of a position of trust or authority or to their inability to understand the consequences.</i>
3.	Each Member State shall take the necessary legislative or other measures to criminalise the intentional proposal, through information and communication technologies, of an adult to meet a child who has not reached the age of sexual consent under national law, for the purpose of committing any of the offences established in accordance with this directive against him or her, where this proposal has been followed by material acts leading to such a meeting ⁽⁸⁴⁾ .	
4.	Each Member State shall take the necessary legislative or other measures to ensure that the statute of limitation for initiating proceedings with regard to the offences established shall give the child victim a sufficient period of time to initiate criminal investigations and proceedings as well as claim compensation ⁽⁸⁵⁾ .	<i>Any limitation period shall not start before the victim has reached the age of majority. The limitation period for compensation shall not be shorter than the one for criminal prosecution.</i>
	PROTECTION	
5.	Member States should protect children from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has/have the care of the child ⁽⁸⁶⁾ .	<i>Such measures should be applicable and available to all persons under the age of 18⁽⁸⁷⁾.</i>

(82) European Court of Human Rights, *Tyrer v the United Kingdom*, 1978; *Campbell and Cosans v the United Kingdom*, 1982; *A. v the United Kingdom*, 1998; admissibility decision in *Philip Williamson and Others v the United Kingdom*, 2000, Application No 55211/00, CoE Guidelines, p. 18.

(83) Paragraph 11, General Comment No 8 (2006) on the right of the child to protection from corporal punishment and other cruel or degrading forms of punishment; CoE 2005 report on eliminating corporal punishment, a human rights imperative for Europe's children.

(84) Article 6 proposed directive, Article 23 CoE Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse; see also EU Safer Internet programme.

(85) Article 33 CoE Convention; see also EU Safer Internet programme.

(86) Article 19 UNCRC; 2009 CoE policy guidelines for integrated strategies against violence against children, *Building a Europe for and with Children* (<http://www.coe.int/children>), Section 2.1.a (hereafter CoE Guidelines). See also Article 18 of the proposed Council Framework Decision 2009 on combating the sexual abuse, sexual exploitation of children and child pornography (hereafter proposed directive).

(87) Article 1 UNCRC.

No	Existing standards VAC	Proposed revised/additional standards VAC
6.	Member States 'shall respect and ensure the rights to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status' ⁽⁸⁸⁾ .	
7.	Member States should take action such as registering children immediately after birth, subject to national regulations and state obligations under the relevant international treaties in this field ⁽⁸⁹⁾ .	Member States should take action such as setting a minimum age of marriage for both boys and girls.
8.	Recognising the central role that families play in children's development and well-being and in the safeguarding of their rights, including the right to protection from all forms of violence, Member States should support families in their child-rearing role by: <ul style="list-style-type: none"> ♦ establishing effective social programmes and multi-disciplinary structures to assist parents or carers in the performance of their child rearing responsibilities ⁽⁹⁰⁾; ♦ providing for a network of accessible, flexible and quality childcare services ⁽⁹¹⁾; ♦ facilitating positive reconciliation of family and working life; ♦ drawing up programmes to improve parental skills and to foster a healthy and positive family environment ⁽⁹²⁾. 	
9.	Such protective measures should, as appropriate, include effective procedures for the establishment of social programmes to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement ⁽⁹³⁾ .	Member States shall devise and implement effective procedures for the establishment of social programmes to provide, widely available, timely and sufficiently differentiated , necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement.
10.		Member States shall ensure sufficient provision of appropriately established, professionally supervised and monitored shelter and short-term fostering for children who need immediate protection with a legal or other binding guarantee of accessibility.
11.		Member States shall guarantee immediate measures to protect a child at imminent risk or subject to harm.

(88) Article 2.1, CRC, Article 2 CoE Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (hereafter CoE Convention).

(89) Article 7 UNCRC.

(90) Article 18(1) and (2) UNCRC.

(91) See CoE Recommendation Rec(2002)8 on child day care.

(92) See CoE Recommendation Rec(2006)19 on policy to support positive parenting.

(93) Article 19(2), UNCRC.

No	Existing standards VAC	Proposed revised/additional standards VAC
12.	Member States shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child.	Member States shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities determine, in accordance with applicable law and procedures and based on a multi-professional assessment according to scientific standards , that such separation is necessary for the best interests of the child.
13.	When a Member State gives administrative bodies or courts responsible for child protection the right to restrict parental rights or to place a child outside his/her family without consent of the parents or guardians the law shall not only take the actions of the parents into account but should address the situation of the child and his/her endangerment of the development and therefore the best interests of the child as the primary consideration ⁽⁹⁴⁾ .	
14.	A child temporarily or permanently deprived of his or her family environment, or in whose own best interest cannot be allowed in that environment, shall be entitled to special protection and assistance provided by the State ⁽⁹⁵⁾ .	A child temporarily or permanently deprived of his or her family environment, or in whose own best interest cannot be allowed in that environment, shall be entitled to special protection and sufficient support service for his/her recovery, development and well-being .
15.	Each Member State should adopt such measures as may be necessary to ensure that persons, units or services in charge of investigations are specialised in the field of combating violence against children or that persons are trained for this purpose. Such units or services shall have adequate financial resources ⁽⁹⁶⁾ .	Member States shall recognise their obligation to be guarantors of the well-being of children and in particular, to protect any child who is at risk of any form of abuse or neglect, from harm to its future development and well-being, by establishing professionally qualified and specialised services with a duty to assess and conduct, oversee or monitor support services and intervention measures in response to any reported or suspected indications of endangerment and with adequate financial resources.
16.		Member States shall establish specialised courts with the competency to adjudicate necessary measures of child protection when the parents or guardians are not able or willing, even with the assistance of social services, to protect a child from further harm.
17.	Each Member State take the necessary legislative or other measures to ensure that the confidentiality rules imposed by internal law on certain professionals called upon to work in contact with children do not constitute an obstacle to the possibility, for those professionals, of their reporting to the services responsible for child protection any situation where they have reasonable grounds for believing that a child is the victim of sexual exploitation or sexual abuse ⁽⁹⁷⁾ .	Each Member State take the necessary legislative or other measures to ensure that the confidentiality rules imposed by internal law on certain professionals called upon to work in contact with children do not constitute an obstacle to the possibility, for those professionals, of their reporting to the services responsible for child protection any situation where they have reasonable grounds for believing that a child's development is endangered and cannot achieve the consent of the child, parents or other carers to the data transfer which is necessary to give the child access to the protective services and measures .

(94) Article 3.1 CRC, Article 24.2, EU Charter on Fundamental Rights.

(95) Article 20 CRC.

(96) Article 34 CoE Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse, see also Article 14(3) of the proposed directive referring to effective investigative tools.

(97) Article 15 proposed directive.

No	Existing standards VAC	Proposed revised/additional standards VAC
18.		<i>Member States should establish the regular collection of anonymised data from all agencies with duties in the protection of children from violence, and collate these data in a way that ensures monitoring of the number and types of measures taken (e.g. reports, cases handled, protection measures employed, and reports to police and the courts, as well as the outcomes of such reports) and on the outcome of child protection measures for the development of children. The data shall be disaggregated according to specific age categories, gender, disability and the forms of violence. The resulting knowledge and databases should be publicly available.</i>
19.	Gender aspects of violence should be addressed as part of the integrated approach to violence, and due account should be taken of the different risks girls and boys face in respect of violence and of the different consequences of violence for boys and girls ⁽⁹⁸⁾ .	
20.	Member States shall prohibit employment into positions involving child supervision of persons convicted of violent, including sexual, offences against children ⁽⁹⁹⁾ .	Member States shall prevent and prohibit employment into positions involving child supervision and/or activities involving regular contacts with children of persons convicted of violent, including sexual, offences against children and ensure that effective measures are taken by the employers. The authorities initiating regular contacts with children, such as foster care, shall take measures to avoid the placement of children with such persons and supervise the contacts.
21.	States Parties shall undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognised in the present Convention ⁽¹⁰⁰⁾ .	<i>Member States should promote the adoption, implementation and monitoring of integrated national strategies for the protection of children from violence.</i>
CHILD'S VICTIMS RIGHTS IN PROCEEDINGS		
22.	In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration ⁽¹⁰¹⁾ .	<i>Member States shall guarantee accelerated court proceedings on the protection of children according to the child's sense of time.</i>

(98) CoE Guidelines, p. 10.

(99) Article 10 proposed directive, CoE Guidelines, p. 17.

(100) Article 5 UNCRC.

(101) Article 3.1 CRC, Article 24.2 EU Charter on Fundamental Rights.

No	Existing standards VAC	Proposed revised/additional standards VAC
23.	Member States shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child. Member States shall ensure that children are provided the opportunity to be heard in all matters affecting their lives, and in particular in any judicial or administrative procedure affecting the child, either directly or through a representative or an appropriate body ⁽¹⁰²⁾ .	
24.		<i>Member States shall take the necessary measures to ensure that in family/civil court proceedings, judicial authorities appoint a special representative for the child, where the holders of parental responsibility have a potential conflict of interest with the child's interests.</i>
25.	Member States shall take the necessary measures to ensure that in criminal investigations and proceedings, judicial authorities appoint a special representative for the child victim where, by national law, the holders of parental responsibility are precluded from representing the child as a result of a conflict of interest between them and the child victim, or where the child is unaccompanied or separated from the family ⁽¹⁰³⁾ .	Member States shall take the necessary measures to ensure that in criminal investigations and proceedings, judicial authorities appoint a special representative, exclusive to the child and duty-bound to represent and act only in accordance with the interests of the child victim where, by national law, the holders of parental responsibility are precluded from representing the child as a result of a conflict of interest between them and the child victim, or where the child is unaccompanied or separated from the family.
26.	Member States shall take the necessary measures to ensure that assistance and support are provided to victims before, during and for an appropriate time after criminal proceedings in order to enable them to exercise the rights set forth in Council Framework Decision 2001/220/JHA12 on the standing of victims in criminal proceedings, and in this instrument ⁽¹⁰⁴⁾ .	Member States shall take the necessary measures to ensure that professional and specially qualified assistance and support are provided to victims before, during and for an appropriate time after criminal proceedings in order to enable them to exercise the rights set forth in Council Framework Decision 2001/220/JHA12 on the standing of victims in criminal proceedings, and in this instrument.
27.	Member States shall ensure that child victims have immediate access to free legal counselling and to free legal representation, including for the purpose of claiming compensation.	
28.		<i>Member States shall take all possible measures to ensure that criminal proceedings do not cause additional harm to the child.</i>

(102) Article 12 CRC, see also CoE Guidelines on child participation, p. 10.

(103) European Convention on the Exercise of Children's Rights, Articles 5 and 6.

(104) Article 18(1) proposed directive.

No	Existing standards VAC	Proposed revised/additional standards VAC
29.	<p>Member States shall take the necessary measures to ensure, in criminal court proceedings relating to any of the offences referred to in Articles 3 to 7, that the law designates or the court may order that:</p> <ul style="list-style-type: none"> ♦ the hearing shall take place without the presence of the public; ♦ the child victim may be heard in the courtroom without being present, notably through the use of appropriate communication technologies ⁽¹⁰⁵⁾. 	<p><i>Without prejudice to the rights of the defence, Member States shall take the necessary measures to ensure that in criminal investigations of any of the offences referred to:</i></p> <ul style="list-style-type: none"> ♦ <i>the child has a right to speak to the prosecutor prior to criminal court proceedings;</i> ♦ <i>interviews with the child victim take place, where necessary, in premises designed or adapted for this purpose;</i> ♦ <i>interviews with the child victim are carried out by or through professionals in the police and criminal justice system especially trained for this purpose;</i> ♦ <i>the same persons, if possible and where appropriate, conduct all interviews with the child victim;</i> ♦ <i>the number of interviews is, in accordance to the individual child's interest, as limited as possible;</i> ♦ <i>interviews are only carried out where strictly necessary for the purpose of criminal proceedings.</i> <p><i>Member States shall take the necessary measures to ensure that in criminal investigations of any of the offences referred to all interviews with the child victim or, where appropriate, with a child witness, may be videotaped and that these videotaped interviews may be used as evidence in criminal court proceedings, according to the rules under its national law.</i></p>
30.	<p>Member States shall take the necessary legislative actions to ensure that child victims are informed of their rights and the services at their disposal and, unless they do not wish to receive such information, the follow-up given to their complaint, the charges, the general progress of the investigation or proceedings, and their role therein as well as the outcome of their cases ⁽¹⁰⁶⁾.</p>	
31.	<p>Each Member State shall avoid unnecessary delay in the execution of orders or decrees granting compensation to child victims ⁽¹⁰⁷⁾.</p>	<p><i>Member States shall ensure that all child victims have access to adequate procedures to seek, without discrimination, compensation for damages from those legally responsible and the state.</i></p>

(105) Covered in Article 19 of the proposed directive.

(106) Article 31.1(b) CoE Convention on Sexual Exploitation.

(107) Article 8(9) and (9.4) of the optional protocol to the CRC on the sale of children, child prostitution and child pornography.

No	Existing standards VAC	Proposed revised/additional standards VAC
	SUPPORT SERVICES AND PREVENTION	
32.	<p>Member States shall take all appropriate measures to promote physical and psychological recovery and social integration of a child victim of: any form of abuse, neglect or exploitation; torture, or any other form of cruel, inhuman or degrading treatment or punishment. Such recovery and reintegration shall take place in an environment which fosters the health, self-respect and dignity of the child⁽¹⁰⁸⁾.</p> <p>Member States shall take the necessary measures to ensure that the specific actions to assist and support victims in the short and long term, in their physical and psychosocial recovery, are undertaken following an individual assessment of the special circumstances of each particular child victim, taking due account of the child's views, needs and concerns⁽¹⁰⁹⁾.</p> <p>Member States shall take measures, where appropriate and possible, to provide assistance and support to the child's family⁽¹¹⁰⁾.</p>	<p>Member States shall take all appropriate measures to promote physical and psychological recovery and social integration of a child victim of: any form of abuse, neglect or exploitation; torture, or any other form of cruel, inhuman or degrading treatment or punishment. Such recovery and social integration shall be undertaken following an individual assessment of the special circumstances of each particular child, taking due account of the child's views, needs and concerns and take place in an environment which fosters the health, self-respect and dignity of the child.</p> <p>Member States shall take measures, where appropriate and possible, to provide assistance and support to the child's family.</p>
33.	<p>National and regional authorities should provide adequate support to local violence prevention programmes in terms of financing, training, evaluation and follow-up. Cooperation and coordination among these levels are indispensable for constant improvements in service delivery and resource optimisation⁽¹¹¹⁾.</p>	<p>National and regional authorities should ensure the provision of early and adequate support to local violence prevention programmes in terms of financing, training, evaluation and follow-up. Cooperation and coordination among these levels and the various stakeholders in the field of child protection are indispensable for constant improvements in service delivery and resource optimisation.</p>
34.	<p>Member States should encourage appropriate rehabilitation programmes and measures with a view to preventing and minimising the risks of repeated offences⁽¹¹²⁾.</p>	<p>Member States should ensure specific evidence informed programmes for offenders of crimes against children, especially for adolescents, intervening as early as possible, with a view to preventing and minimising the risks of repeated offences, and with rights as a core theme.</p>
35.	<p>Policies, based on research, evidence, and children's own experiences, should be developed to prevent, detect and respond to violence against children. Particular attention should be paid to protection of vulnerable groups⁽¹¹³⁾.</p>	

(108) Article 39 UNCRC.

(109) Article 18(2) proposed directive.

(110) Article 18(4) proposed directive.

(111) Article 10 CoE Convention on Sexual Exploitation.

(112) Articles 15, 16 and 17 CoE Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse, see for a detailed listing of intervention measures, Article 20 proposed directive.

(113) CoE Guidelines, p. 21. Some documents refer to the establishment of an Ombudsman for Children's Rights, in line with the Paris Principles, UN GA Res. 48/134 20 December 1993, see also Articles 42 and 44 CRC and General Comment No 5 on General Measures of Implementation for the Convention on the Rights of the Child.

No	Existing standards VAC	Proposed revised/additional standards VAC
36.	Each Member State shall take the necessary legislative or other measures to encourage and support the setting up of information services, such as telephone or Internet helplines, to provide advice to child victims or other persons, even confidentially or with due regard for their anonymity ⁽¹¹⁴⁾ .	
37.	Member States should include specific information in school curricula on the rights of children, helplines, institutions where they can seek help and persons they can turn to in confidence ⁽¹¹⁵⁾ .	
38.	Each Member State shall encourage the private sector, in particular the information and communication technology sector, the tourism and travel industry and the banking and finance sectors, as well as civil society, to participate in the elaboration and implementation of policies to prevent violence against children, especially sexual exploitation, and to implement internal norms through self-regulation or co-regulation ⁽¹¹⁶⁾ .	
TRAINING AND CAPACITY-BUILDING		
39.		<i>Member States shall ensure that professionals, including judges, are specialised and well trained on the specific issues of child development and endangerment or child's victim rights in criminal proceedings before dealing with cases of child protection or criminal proceedings with child victims.</i>
40.	States Parties undertake to make the principles and provisions of the Convention widely known, by appropriate and active means, to adults and children alike ⁽¹¹⁷⁾ .	<ul style="list-style-type: none"> ♦ <i>incorporating the rights of the child into school curricula and promoting a child rights approach in education at all levels;</i> ♦ <i>regular and ongoing training on the rights of the child for all those who work with and for children.</i>
RESEARCH		
41.	Policies and the methods with which these are implemented should be evaluated at all levels, including the cross-sectoral level, regularly by independent research, with a view to identifying policies and measures that are appropriate and effective in preventing and addressing violence ⁽¹¹⁸⁾ .	<i>The results should be published and necessary improvements implemented.</i>

(114) Article 13 CoE Convention on Sexual Exploitation.

(115) CoE Recommendation Rec(2002)5.

(116) Article 9.2, CoE Convention on Sexual Exploitation; see also EU Safer Internet programme.

(117) Article 42 UNCRC.

(118) P. 13, CoE Guidelines.

Annex 3 — Glossary

VIOLENCE AGAINST WOMEN (VAW)

Violence against women means any act of gender-based violence that is directed at a woman because she is a woman or violence that affects women disproportionately⁽¹⁾. Violence refers to any act that results in, or is likely to result in, physical, sexual or psychological harm or suffering, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life⁽²⁾.

Intimate partner violence⁽³⁾

Intimate partner violence refers to a pattern of coercive control which includes a combination of physical, sexual and psychological violence or threats of such acts, perpetrated by current or former intimate partners, irrespective of the sex of the partner, legal ties or whether the partners live or have lived in the same household.

(1) UN Special Rapporteur Study on violence against women (2006), pp. 15–16. See footnote 6.

(2) The Council of Europe Ad Hoc Committee on Combating Violence against Women and Domestic Violence (CAHVIO) is currently (2010) preparing a Council of Europe Convention on VAW; as of September 2010, that convention is still under construction and has not been finalised.

(3) A growing body of research underlines the importance of recognising domestic violence/IPV as ‘a course of conduct with cumulative harm’, rather than incriminating only single incidents. See Johnson, M.P., 2008, *A typology of domestic violence: Intimate terrorism, violent resistance and situational couple violence*, Hanover (N.H.): University Press of New England, and Stark, E., 2007, *Coercive control: How men entrap women in personal life*, Oxford University Press. The definition in the glossary builds on these findings.

Stalking⁽⁴⁾

Stalking refers to a course of conduct, aiming at contacting the targeted person against that person’s will, either directly, indirectly or virtually, that arouses distress, fear or harm in the targeted person.

Sexual harassment⁽⁵⁾

Harassment refers to unwanted conduct related to the sex of a person that occurs with the purpose or effect of violating the dignity of a person and of creating an intimidating, hostile, degrading, humiliating or offensive environment.

Sexual harassment refers to 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.

(4) In the interest of consistency, and in line with recent developments described in footnote 3, the concept ‘course of conduct’ widely captures a range of unwanted repetitive behaviours that can be elements of stalking behaviour. From that perspective, ‘distress’ and ‘harm’ are crucial to recognise as a potential negative impact of stalking behaviours, which not always nor necessarily translate into ‘fear for safety’.

(5) Directive 2002/73/EC of the European Parliament and of the Council of 23 September 2002 amending Council Directive 76/207/EEC on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions.

Rape/sexual assault⁽⁶⁾

Rape refers to the sexual penetration by one person, with any means, of another person's body without the consent of that person, and regardless whether that person shows signs of resistance.

Regarding sexual assault/violence more broadly, these acts refer to any sexual act committed against a non-consenting person, regardless whether the person shows signs of resistance.

Trafficking in human beings⁽⁷⁾

- (a) Trafficking in persons shall mean the recruitment, transportation, transfer, harbouring or receipt of persons by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability, or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs;
- (b) the consent of a victim of trafficking in persons to the intended exploitation set forth in subparagraph (a) of this Article shall be irrelevant where any of the means set forth in subparagraph (a) have been used;
- (c) the recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered “trafficking in persons” even if this does not involve any of

(6) ECtHR, *M.C. v Bulgaria* (No 39272/98), judgment of 4 December 2003.

(7) UN Optional Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Article 3 (Palermo Protocol on trafficking in persons).

the means set forth in subparagraph (a) of this Article;

- (d) “child” shall mean any person under 18 years of age.’

Forced marriage⁽⁸⁾

Forced marriage is a marriage conducted without the free and full consent of at least one of the parties, or the marriage of anyone under the age of sexual consent.

Female genital mutilation⁽⁹⁾

Female genital mutilation comprises all procedures involving partial or total removal of the external female genitalia or other injury to the female genital organs for non-medical reasons.

Honour-based violence⁽¹⁰⁾

Honour-based violence comprises all forms of physical, sexual or psychological violence against females within the framework of family structures, communities, and/or societies, where the main justification for the perpetration of the violence is the protection of a social construction of ‘honour’ as a value system, norm or tradition.

(8) See Council of Europe, Parliamentary Assembly, Resolution 1468 (2005), paragraph 4.

(9) *Eliminating female genital mutilation, an inter-agency statement*, OHCHR, UNAIDS, UNDP, UNECA, Unesco, UNFPA, UNHCR, Unicef, Unifem, WHO, Geneva, World Health Organisation, 2008.

(10) See also Gill, A., 2009, *Honour killings and the quest for justice in black and minority ethnic communities in the United Kingdom*, expert paper prepared for the UN Expert Group on good practices in legislation to address harmful practices against women.

VIOLENCE AGAINST CHILDREN (VAC)⁽¹¹⁾

Child physical abuse⁽¹²⁾

Child physical child abuse is any use of physical force or violence, by a parent or person entrusted with the care or education of the child, which can be expected with high probability to cause significant physical or mental harm to the child and the child's development, or that carries a serious risk of such harm.

Child psychological/emotional abuse⁽¹³⁾

Psychological/emotional child abuse is the persistent or repeated hostile treatment by a parent or person entrusted with the care or education of the child (including disparagement, ridicule, threats and intimidation and rejection), that with high probability can be expected to have an adverse effect on the child's emotional health and development.

Neglect⁽¹⁴⁾

Neglect is the persistent or repeated failure of a parent or carer to provide for the physical, emotional and developmental needs of a child, when the carer

has the means, knowledge and access to services to do so, and when the omission of care results with high probability in significant physical or mental harm to the child and the child's development.

Child sexual abuse⁽¹⁵⁾

Child sexual abuse is any sexual act with or on a child, to which either valid consent is not possible because of the child's physical, mental, emotional or linguistic developmental level or due to the authority, position of trust or older age of the perpetrator, or a sexual act to which an adolescent over the age of consent has not freely consented.

Child sexual exploitation⁽¹⁶⁾

Child sexual exploitation encompasses three interrelated forms of commercial sexual exploitation of children: prostitution, pornography and trafficking for sexual purposes.

Child prostitution⁽¹⁷⁾

Child prostitution refers to the use of a child in sexual activities for remuneration or any other form of consideration.

(11) For a wider discussion of some of the definitional elements of VAC used here, see *Preventing child maltreatment: a guide to taking action and generating evidence*, World Health Organisation, 2006 (http://www.who.int/violence_injury_prevention/publications/violence/child_maltreatment/en/index.html) and also Butchart, E. et al., *Preventing child maltreatment: a guide to taking action and generating evidence*, Geneva, World Health Organisation, 2006, 9 f.

(12) Krug, E.G. et al. (eds), *World report on violence and health*, Geneva, World Health Organisation, 2002, 60.

(13) *Ibidem*.

(14) *Ibidem*.

(15) Butchart, E. et al., *Preventing child maltreatment: a guide to taking action and generating evidence*, Geneva, World Health Organisation, 2006, 9 f.

(16) See definitions of child prostitution and child pornography in the United Nations Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography (CRC).

(17) Optional Protocol to the CRC, Article 2(b).

Child pornography⁽¹⁸⁾

Child pornography refers to any representation, by whatever means, of a child engaged in real or simulated explicit sexual activities or any representation of the sexual parts of a child, the dominant characteristic of which is depiction for a sexual purpose. It shall include pornographic material that visually depicts: (a) a minor engaged in sexually explicit conduct; (b) a person appearing to be a minor engaged in sexually explicit conduct; (c) realistic images representing a minor engaged in sexually explicit conduct.

Child sex tourism⁽¹⁹⁾

Child sex tourism refers to the commercial exploitation of children by persons who travel from one place to another, usually from a richer country to one that is less developed, and there engage in sexual acts with children, defined as anyone aged under 18.

SEXUAL ORIENTATION VIOLENCE (SOV)⁽²⁰⁾

Sexual orientation violence refers to any form of physical, sexual or psychological violence or threats of violence, resulting in or likely to result in harm or suffering, against a person because the person belongs, or is perceived to belong, to a sexual minority.

(18) *Ibidem*, Article 2(c).

(19) Child sex tourism (CST) is not defined in international law. We followed the definitions used by ECPAT International (http://www.ecpat.net/ei/Programmes_CST.asp).

(20) SOV is not defined in international law: see the Council of Europe Committee of Ministers Recommendation, CM/Rec(2010)5.

Annex 4

A — Research working definitions

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Introduction

This overview of research working definitions contains all definitions used during data collection. The aim of these descriptions of the forms of violence was to prime the experts on the substance of the area of research before they started their analysis. It was, at that point of the study, not intended nor used to assess or compare with other (national) definitions, and did not have normative aspirations.

The descriptions in the questionnaire originate from mid-2009 (when data collection started for the project ‘Realising rights’). The definitions in the guidelines for the national report originate from February 2010. From the different angles that emerged in the two forms of data collection, a new set of definitions was presented. Since new (definitional) developments had taken place between mid-2009 and early 2010 (such as the Council of Europe draft Convention on violence against women including domestic violence — CAHVIO) from which the guidelines could be improved, they have been used as well. Although the working definitions sometimes vary, they do not conflict.

Where possible, established legal definitions have been used in the data collection instruments (questionnaire and the guidelines for the national reports). If that was the case, the reference of the main source is included in a footnote. In the absence of established legal definitions for certain forms of violence, the conceptualisation of working definitions has been guided by research and leading international developments in the field as laid down in the CAHVIO documents and the UN *Handbook for legislation on violence against women*.

Violence against women

Violence against women means any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life⁽¹⁾.

Trafficking in human beings

- (a) Trafficking in persons shall mean the recruitment, transportation, transfer, harbouring or receipt of persons by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability, or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs;
- (b) the consent of a victim of trafficking in persons to the intended exploitation set forth in subparagraph (a) of this Article shall be irrelevant where any of the means set forth in subparagraph (a) have been used;
- (c) the recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered ‘trafficking in persons’ even if this does not involve any of the means set forth in subparagraph (a) of this Article;
- (d) ‘child’ shall mean any person under 18 years of age⁽²⁾.

(1) DEVAW definition.

(2) UN Optional Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Article 3 (Palermo Protocol on trafficking in persons).

Forced marriage

Questionnaire: According to relevant international legal instruments, marriages require the free and full consent of both parties, expressed in person before a competent authority in the presence of witnesses. However, this in itself cannot always guarantee freedom of choice. A marriage can be forced due to duress, family pressure and/or a range of threats.

Guidelines: a forced marriage is:

- ◆ a marriage conducted without the full consent of at least one of the parties.
- ◆ involving duress (emotional pressure and/or physical abuse):
 - perpetrated by family members (mostly parents);
 - perpetrated against children, adolescents and young adults, mainly female.

Female genital mutilation

Female genital mutilation comprises all procedures involving partial or total removal of the external female genitalia or other injury to the female genital organs for non-medical reasons⁽³⁾.

Honour-based violence

Questionnaire: Honour-based violence refers to all forms of violence and/or threats, which are specifically motivated by the perpetrator's wish to protect, defend or revenge the so-called honour of either the victim or of the victim's family. Women's sexual reputation is considered to be the basis of their own and their family's 'honour'. Female (family) honour is dependent on the perceived chastity and adherence to 'acceptable femininity':

(3) World Health Organisation, Fact sheet No 241, February 2010 (<http://www.who.int/mediacentre/factsheets/fs241/en/>).

this is often linked to prescribing the sexual behaviour of women to heterosexual marriage. Male sexual behaviour is usually only considered a violation of (family) honour when it is homosexual. Honour-based violence includes, but is not limited to: violent abuse or assault, restrictions on free movement, kidnapping, imprisonment and at the extreme murder.

Guidelines: Council of Europe Resolution 1327 (2003) refers to honour crimes as crimes committed against women in the name of honour and based on archaic and unjust cultures and traditions⁽⁴⁾.

Honour-based violence can be psychological and physical violence, including homicide:

- ◆ perpetrated by members of the family or the community, instigated:
 - mostly by adult males but often carried out by boys below the age of criminal responsibility;
- ◆ perpetrated against female members of the family or the community.

Intimate partner violence

Questionnaire: Intimate partner violence refers to physical, sexual and psychological violence used against adult and adolescent women by a current or former intimate partner. Intimate partner violence can take place regardless of whether there is, or has been, a shared residence.

Guidelines: Intimate partner violence refers to physical, sexual and psychological violence or threats of such acts, including rape and marital rape:

- ◆ perpetrated by regular or occasional partners or ex-partners, spouses or ex-spouses, cohabitant or non-cohabitant, same-sex or different-sex partners;

(4) Parliamentary Assembly of the Council of Europe, Resolution 1327 (2003) So-called honour crimes.

- ♦ perpetrated against regular or occasional partners or ex-partners, spouses or ex-spouses, cohabitant or non-cohabitant current or former partners, same-sex or different-sex partners.

Stalking

Questionnaire: Stalking refers to a pattern of repeated and unwanted attention — a course of conduct — in the form of direct, indirect or virtual attention, communication or contact, causing anxiety or fear in the targeted person. More severe forms of stalking consist of persistent and continued pursuit and harassment in a way that is likely to impair the victim's life. It is often, but not always, associated with IPV, especially post-separation.

Guidelines: Stalking is any form of harassment that causes the person being harassed to have a reasonable fear for his or her safety (repeated phone calls, phone messages, or e-mails) that annoy or threaten the individual, attempts at contact through other communication tools, sending the individual unwanted things, following the individual, or his or her friends, family, or anyone else close to them, showing up uninvited at work or home, trying to get private information about the individual from other people, entering the individual's home, vandalism, harming pets, threats or assaults.

Sexual harassment

Harassment is when an unwanted conduct related to the sex of a person that occurs with the purpose or effect of violating the dignity of a person and of creating an intimidating, hostile, degrading, humiliating or offensive environment.

Sexual harassment is where any form of unwanted verbal, non-verbal or physical conduct of a sexual nature occurs, with the purpose or effect of violating the dignity of a person, in particular when

creating an intimidating, hostile, degrading, humiliating or offensive environment⁽⁵⁾.

Rape

Rape is considered to be the sexual penetration by one person of another person's body without the will/consent of that other person⁽⁶⁾.

Regarding sexual assault/violence more broadly, these acts refer to:

- any sexual act committed against non-consenting persons, even if they do not show signs of resistance; and
- sexual penetration of any nature whatsoever, or by any means whatsoever, of a non-consenting person.

Violence against children

General children's rights

The United Nations Convention on the Rights of the Child (UNCRC) defines a child as any person under the age of 18 years. It calls upon States Parties to 'take all legislative, administrative, social and educational measures to protect the child from all forms of physical and mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has care of the child'. The Committee on the Rights of the Child has stated that this includes all forms of corporal punishment, however light, defined as 'the deliberate and

(5) Council Directive 2002/73/EC, this is the definition provided in the questionnaire and the guidelines, copy pasted from the directive. Note that we ask in the questionnaire about both types of harassment.

(6) This is the definition of **rape** provided in the questionnaire.

punitive use of force to cause some degree of pain, discomfort or humiliation to children⁽⁷⁾.

Child sexual abuse

Child sexual abuse means engaging in sexual activities with a child who has not reached the legal age, and engaging in sexual activities where use is made of coercion, force or threats, or abuse is made of a recognised position of trust, authority or influence over the child. It includes:

- (a) penetrative and non-penetrative sexual acts; and
- (b) contact and non-contact sexual activities.

Consensual sexual activities between minors do not fall under this definition⁽⁸⁾.

Child maltreatment

Physical abuse

Legal provisions for child protection often do not define child maltreatment with respect to physical abuse. No working definition was used in the instruments for data collection. Instead, experts were asked whether the EU Member State has a specific criminal offence, and to define the threshold of state intervention when a child is in danger of harm.

- (7) United Nations Convention on the Rights of the Child (UNCRC) (<http://www2.ohchr.org/english/law/crc.htm>) and UN Rapporteur's *World Report on Violence against Children* (http://www.crin.org/docs/UNVAC_World_Report_on_Violence_against_Children.pdf).
- (8) Council of Europe Policy guidelines for integrated national strategies for the protection of children from violence (http://www.coe.int/t/transversalprojects/children/News/Guidelines/Adoption_guidelines_en.asp), see also Article 18 of the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (CETS No 201) (<http://conventions.coe.int/Treaty/EN/Treaties/Word/201.doc>).

Neglect

Neglect refers to the failure of parents or carers to meet a child's physical or emotional needs when they have the means, knowledge and access to services to do so; or failure to protect him or her from exposure to danger⁽⁹⁾.

Child sexual exploitation

Child sexual exploitation is also referred to as the commercial sexual exploitation of children (CSEC). There are three primary and interrelated forms of commercial sexual exploitation of children: prostitution, pornography and trafficking for sexual purposes. Other forms of commercial sexual exploitation of children include sex tourism, child marriages and forced marriages⁽¹⁰⁾.

Child prostitution

Child prostitution means using a child for sexual activities where money or any other form of remuneration or consideration is given or promised as payment, regardless if this payment, promise or consideration is made to the child or to a third person⁽¹¹⁾.

- (9) UN Rapporteur's *World Report on Violence Against Children* (http://www.crin.org/docs/UNVAC_World_Report_on_Violence_against_Children.pdf).
- (10) ECPAT International (http://www.ecpat.net/EI/Csec_terminology.asp).
- (11) Article 19, Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (CETS No 201) (<http://conventions.coe.int/Treaty/EN/Treaties/Word/201.doc>), see also United Nations Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, GA Res. A/RES/54/263, Article 2b (<http://www2.ohchr.org/english/law/crc-sale.htm>).

Child pornography

Child pornography refers to any representation, by whatever means, of a child engaged in real or simulated explicit sexual activities or any representation of the sexual parts of a child, the dominant characteristic of which is depiction for a sexual purpose. It shall include pornographic material that visually depicts: (a) a minor engaged in sexually explicit conduct; (b) a person appearing to be a minor engaged in sexually explicit conduct; (c) realistic images representing a minor engaged in sexually explicit conduct⁽¹²⁾.

Child sex tourism

Child sex tourism refers to the commercial exploitation of children by men or women who travel from one place to another, usually from a richer country to one that is less developed, and there engage in sexual acts with children, defined as anyone aged under 18⁽¹³⁾.

Sexual orientation violence

Sexual orientation violence is understood as violence or abuse which takes place because the person belongs, or is perceived to belong, to a sexual minority.

(12) United Nations Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, GA Res. A/RES/54/263, Article 2b (<http://www2.ohchr.org/english/law/crc-sale.htm>).

(13) ECPAT International (http://www.ecpat.net/EI/Csec_terminology.asp).

Annex 4

B – Explanatory document

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Aim of the working research definitions

After long discussing the purpose of the previous glossary, it seems opportune to reiterate that this glossary is intended only for the purpose of data analysis and comparison. It is, in fact, a gathering of the definitions provided in either the questionnaire or the guidelines for the NE. Some of these definitions are different in one or the other document. When this is the case, the differences between them are elaborated below in order to illustrate why it was decided to adopt one or the other definition, and also to facilitate future discussions when the drafting of the ‘final’ (deliverable) glossary is compiled.

Explanatory notes on the definitions used in the questionnaire and guidelines

Forced marriages

In the questionnaire, there is no ‘definition’ provided but some elements, such as ‘free and full consent to marriage’, and the use of ‘duress, family pressure and a range of threats’ are indicated.

The guidelines take the definition from CAHVIO which refers to (the lack of) full consent, although it says ‘involving duress (emotional pressure and/or physical abuse)’.

The current CAHVIO definition, however, states that forced marriage comprises ‘forcing a person to enter into a marriage without her or his free and full consent’, and clarifies that ‘force’ shall include coercion, duress, threats or any other coercive circumstances⁽¹⁴⁾. For that reason, means of infringing consent have not been included.

⁽¹⁴⁾ Draft convention, Article 29 (draft version: (2009) 32 prov.).

Honour-based violence

Regarding HBV, two definitions are provided. One which does not refer to ‘culture’ or ‘tradition’, and one which does. In the guidelines, a definition used by the CAHVIO is quoted; questionnaire: Honour-based violence refers to all forms of violence and/or threats which are specifically motivated by the perpetrator’s wish to protect, defend or revenge the so-called honour of either the victim or of the victim’s family.

Guidelines: Council of Europe Resolution 1327 (2003) refers to honour crimes as crimes committed against women in the name of honour and based on archaic and unjust cultures and traditions. Note that this definition seems to have changed, and honour violence is now contemplated only as an aggravating circumstance⁽¹⁵⁾.

Intimate partner violence

The guidelines’ definition of IPV is based on the CAHVIO, although the current version of the document does not include an IPV definition, only a ‘domestic violence’ definition, much resembling the definition used in the RRS questionnaire.

CAHVIO: Domestic violence shall mean all acts of physical, sexual and psychological violence that occur within the family or domestic unit or within any other intimate relationship, whether or not the perpetrator shares or has shared the same residence with the victim⁽¹⁶⁾.

Questionnaire: Intimate partner violence ... refers to physical, sexual and psychological violence used against adult and adolescent women by a current

⁽¹⁵⁾ See Article 53(d) of the draft convention (draft version: (2009) 32 prov.).

⁽¹⁶⁾ Draft convention Article 2(b) (draft version: (2009) 32 prov.).

or former intimate partner. Intimate partner violence can take place regardless of whether there is, or has been, a shared residence.

Stalking

For the analysis of the data, definitions provided in the questionnaire are included. The main reason was the use of the term ‘harassment’ in the definition used in the guidelines, which was based on the definition of the CAHVIO Convention which, however, has changed.

Guidelines: Any form of harassment that causes the person being harassed to have a reasonable fear for his or her safety (repeated phone calls, phone messages, or e-mails that annoy or threaten the individual, attempts at contact through other communication tools, sending the individual unwanted things, following the individual, or his or her friends, family, or anyone else close to them, showing up uninvited at work or home, trying to get private information about the individual from other people, entering the individual’s home, vandalism, harming pets, threats or assaults).

CAHVIO: Parties shall take the necessary legislative or other measures to ensure that the following intentional conduct is criminalised:

- (a) engaging in threatening conduct directed at another person or any member of her or his family;
- (b) repeatedly following, watching or engaging in unwanted communication with another person or any member of her or his family, directly or indirectly, which causes her or him to fear for her or his safety, or that of any member of her or his family, or which creates an intimidating, hostile, degrading, humiliating or offensive environment.

Rape/sexual violence

The main difference between the questionnaire and the guidelines is that, in the first questionnaire, a definition of rape is provided. The second part (sexual assault/violence) is included in both documents.

Child maltreatment

The guidelines explain: ‘Child abuse’ may not exist as a legal concept, or the term may be defined in criminal law only with reference to sexual abuse, while the legal obligations to ensure good care of children and keep them safe from harm may be formulated only in positive terms. At the same time, the legal frameworks (for example, in national social welfare law) defining the obligation of statutory agencies to intervene for child protection may use a term such as ‘child abuse’ in a way that gives it a quasi-legal status. The UN uses the overarching concept of ‘child maltreatment’ to avoid some of the dangers of incompatible definitions.

The UNCRC sets as a standard that all proceedings should follow the principle of the best interests of the child; it gives children the right to live in their families as far as possible and it also calls on all treaty states to assist parents in fulfilling their parental responsibilities. No parallel provisions or standards exist for women, because they are full citizens. As a result, the protection of children from violence has to define the legal frameworks for state intervention into the family (if necessary, without consent) very carefully: it must define a balance of priorities between supporting parents and taking state responsibility for the welfare of the child. Furthermore, child abuse and neglect are defined by the resulting harm to the child or by the risk of harm and, thus, often refer to a course of conduct or an overall situation. Child protection law is often very distinct from criminal law;

depending on types of abuse and legal traditions, criminalisation may come into play at the outset or only after protection efforts have had success.

This is also explained more briefly in the introductory section of the questionnaire to explain why the section begins with children's rights and addresses child protection first, and criminal law only thereafter.

The vulnerability of children to physical violence depends on their age and their developmental stage, so that abstract definitions of abuse are difficult. The Council of Europe policy guidelines (in their final version) do not include either physical abuse or child abuse in their glossary. Both the WHO and the UN Rapporteur define physical

violence against children as 'the intentional use of physical force against a child that either results in or has a high likelihood of resulting in harm to the child's health, survival, development or dignity'. Thus, the identification of child abuse depends on assessment of harm.

Source: UN Rapporteur's *World Report on Violence Against Children* (http://www.crin.org/docs/UNVAC_World_Report_on_Violence_against_Children.pdf).

See also Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (CETS No 201), Glossary of terms (<http://conventions.coe.int/Treaty/EN/Treaties/Word/201.doc>).

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