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**Panel on “Emerging issues, trends and new approaches to issues affecting
the situation of women or equality between women and men”**

**Theme:
Elimination of all forms of violence against women: Follow-up to the Secretary-
General’s in-depth study at national and international levels**

Written statement*

submitted by

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Statement for the Panel “Elimination of all forms of violence against women: follow-up to the Secretary-General’s in-depth study at national and international levels”

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In my statement, I would like to present some of the activities that have developed in the 46 countries of the Council of Europe in recent years, speaking about good practices, seen against the background of some of the problems that make progress difficult.

Political will

Recommendation Rec(2002)5 on the protection of women against violence, adopted by the Committee of Ministers of the Council of Europe in April 2002, framed a comprehensive approach towards overcoming violence against women. It expresses a consensus on general principles as well describing necessary measures in services, legislation, policing, work with perpetrators, awareness-raising, education and training and data collection. A monitoring framework on implementation by the 46 member states has been set up, and currently, the Council of Europe is carrying out a pan-European campaign to combat violence against women, including domestic violence; implementation is being assessed. These actions express, and also work to mobilize, a political will to eliminate violence against women.

This clear political statement has helped even countries in economic and political transition, for example in former Yugoslavia, to develop laws and policies on violence against women. A key factor are women’s NGOs. In the West Balkans, they have built a network across the multiple lines of division and conflict to work together against domestic violence. With the support of a foundation in the Netherlands, they assessed the situation in each country against international standards, making recommendations for further progress. Together, shaping political will internationally and engagement “on the ground” can effect change.

A growing number of member states, although still a minority, have published National Action Plans with clear timelines and well-defined mechanisms and responsibilities. A few of these are comprehensive with respect to all forms of violence against women; more of them focus on domestic violence only. Resource allocation is not always reported on the national level, in part because some states co-ordinate decentralized activities and work towards change through regional and local authorities (for example Germany, the Netherlands, the UK).

Overcoming impunity

Nearly all 46 countries in the CoE now penalize **rape** within marriage, at least nominally. Only a few (e.g. Romania and Malta) still exempt marital rape from penalty, and there are some that do not prosecute ex officio. Several member states (Greece, France) have recently lifted the marital exemption, and the remainder may be expected to follow. However, there is still a tendency to require proof of the use of force. There are still very few states that actually make lack of consent the measure of rape, as in the UK, where it is a sexual offence if the perpetrator either knows that the other person does not

consent, or is reckless regarding consent. Only in Belgium, where consent is also pivotal, has the law also declared that spousal rape is an aggravated offence.

Reporting on their legislation on violence against women, most states give very little attention to penalizing sexual abuses that do not fulfil their definition of rape. The Spanish Organic Law penalizes "sexual assault" by "any person who infringes the sexual rights of another through violence or intimidation" ; when this involves penetration, it is punished as rape. Sweden affirms in its Penal Code "the absolute right of every individual to personal and sexual integrity" and refers to the offences general as sexual crimes. Slovakia deserves mention for introducing the offence of sexual assault to mean "sexual abuse by other means than intercourse" (Slovakia) into the criminal code, affirming in the commentary a woman's (and man's) right to free decision regarding her sexual life. A number of countries do not seem to penalize such sexual abuse at all. Others seem to have thought it not worth mention, indicating a low level of awareness.

There has been a very dynamic process of legislative reform and elaboration to address **domestic violence** specifically. The tendency is to include both married and unmarried couples as well as family members. However, some laws restrict protection to women living in the same household with the violent man, with the (unintended) effect that she must stay with him until the court helps her to leave. Such provisions suggest that the law is intended to protect the family and not the woman. In some countries, a woman can only obtain a restraining order if she demonstrates that she has lived with the man recently, perhaps for a period of 6 months of the past year (Ireland), or if a criminal case against the man has already begun (Hungary).

There are several approaches to more comprehensive legislation. One is to consider not only the single incident, but the repetition of attacks or a "course of conduct" (harassment in the UK) as a more serious crime than a one-time attack. In 1998, Sweden penalized repeated violations towards a person close to the offender as "gross violations of a woman's integrity". Norway has introduced the concept of gross or repeated maltreatment; in Andorra, "habitual abuse" is more seriously punished (defined by at least three acts of violence against the same person in the family within three years). In the Czech Republic, the concept of "maltreatment of a family member" allows consideration of a series of different kinds of abusive acts as well. All of these concepts do present difficulties for legal implementation, but they point to an emerging notion of domestic abuse as a pattern of coercive control, pain and humiliation for which codification is being explored.

The Organic Law of Spain (2004) defines in its first article: "The purpose of this Act is to combat the violence exercised against women by their present or former spouses or by men with whom they maintain or have maintained analogous affective relations, with or without cohabitation, as an expression of discrimination, the situation of inequality and the power relations prevailing between the sexes. (...) 3. The gender violence to which this Act refers encompasses all acts of physical and psychological violence, including offences against sexual liberty, threats, coercion and the arbitrary deprivation of liberty." Furthermore, the Spanish law is unique in stating unequivocally (in 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."

Overall, it can be said that a specific law addressing domestic or gender-based violence needs to be carefully crafted to ensure that the interaction with existing legal frameworks has the desired effect. To judge by the number of cross-references, the Spanish organic law seems to be founded in such an integrative approach. It is also innovative in taking a truly comprehensive, multi-pronged approach, addressing gender violence in context including prevention measures, procedural as well as criminal and civil law provisions, social and economic rights, setting up fast-track specialized courts, and more. Perpetrators can only be sentenced to prison or to community service, accompanied by re-education; fines, which often burden the wife as well, are not possible. Any conviction for gender violence suspends the right to own a weapon, and may exclude the perpetrator from exercising any parental authority for up to five years. This consideration of the interlocking aspects of society's response to gender violence lends the Organic Law the aspect of a coordinated national policy. At the same time, it presents a challenge, since many of the elements have first to be put in place before they can act in concert.

Protecting victims from further harm

Without effective victim protection that is well-coordinated with policing and prosecution, sanctions may exist only on paper. The Austrian model, since implemented in all the German-speaking countries, Belgium, the Czech Republic and Slovenia, authorizes police officers to expel a person who poses a danger to another from the home and prohibit his return for about 10 days, regardless of ownership or whether the persons are related. The decision on eviction and barring orders lies exclusively with the police officers on site, not with the victim, and compliance with barring orders should be enforced. An advisory centre is usually to be informed about the intervention within 24 hours, and will then actively contact the victim and offer her information and support, including how to obtain a court order that extends the police ban. The police ban is founded on the police mandate to protect the life and safety of citizens; it is a preventive measure that the police are required to take when there is reasonable ground to suppose a threat of violence in the home. A previous assault creates a high probability of such a threat, but neither the police ban nor the court injunction requires evidence for criminal prosecution. It may, however, make the police less inclined to investigate the violence as a crime, essential for prosecution, so that protection of the victim may allow impunity to continue.

A growing number of Council of Europe states are introducing a measure to evict the perpetrator, indeed, it is rapidly becoming a common element of strategy. However, a majority of countries choose not to give this power to the police. There is a tendency to see all kinds of protection orders as judicial measures. Such court decisions are unlikely to take effect quickly. Many of them are dependent on criminal proceedings already having begun, thus presupposing that the victim will have made a statement and is prepared to testify before any protective measures are taken. A few laws, such as that in Bulgaria, also foresee court decisions as an emergency measure with an *ex parte* decision within 24 hours.

In the UK, growing awareness of the seriousness of domestic violence has been met by an increase in police arrest. Common assault has been added to the list of offences for which a police officer can make an arrest without a warrant. If the police assess that there has been a crime, or have reason to believe that a crime may be committed, they

may even keep the man in jail until taken before a magistrate. Increasingly, the UK is setting up specialized courts and aiming to fast-track domestic violence cases, so that a man might be brought before the court within 24 hours. This approach assumes that most domestic violence situations include identifiable criminal acts and provide enough evidence for a conviction. This may often not be the case; there may be too little evidence, or the woman may hesitate to testify: Police intervention comes in a situation where the victim is not at all prepared to make such a long-term decision about her relationships and her life. In essence, the Austrian and the UK approaches differ in giving priority, on the one side, to protection of victims, and on the other, to penalizing wrong-doing. There is a tension between the two.

The rather high level of success of the Austrian model – very few bans are contested and the level of violations is low – is probably founded on its clear distinction between the actions of the state and those of the victim, and its balance between state use of force and respect for the victim's right to decide on her own personal life. The state acts *ex officio* in removing the perpetrator and in giving a specialized social support service the opportunity to contact the victim. It is then up to the woman to use this period of safety and the resource of counselling according to her wishes and felt needs. This expresses both the state's clear rejection of violence and the empowerment of victims.

Services for victims

Almost all European countries now have shelters, most free of charge, for women who need to escape abuse; the largest numbers are in Germany, the UK, Spain and the Netherlands, but the numbers are also now substantial in “newcomers” to this type of service such as the Czech Republic, Slovakia, Serbia and Croatia. However, the funding for these services is usually insecure even in the more wealthy countries. The UK has now founded financial support for shelters on a legal obligation to provide housing for the homeless, with women who leave an abusive husband being by definition homeless. The city of Vienna has both trained the police to expel perpetrators from the home, and set up outreach services to give victims information and advice. It also has secured financing for shelters as a permanent part of the city budget, recognizing a public duty to provide sustainable and professionally staffed services for this need. With this parallel structure they meet the needs of many more women than either service could do alone.

In much of Europe, violence against women has been addressed primarily as a social work or legal problem, and involvement of the health care system is fairly recent. Routine inquiry about possible experience of violence is increasingly being recommended, especially in primary health care and maternity services, but also for emergency care in hospitals. In Finland, screening in a large maternity hospital has been found a valuable approach, as it was in Zurich, Switzerland, and a similar project is now being piloted in Norway. In Berlin, Germany a large general hospital agreed to training of the entire staff with particular attention to the emergency ward to identify women whose injuries were due to violence. This has been carried out in all hospitals in Slovenia as well. Whilst in Scandinavia, medical data have been used to assess prevalence, in other countries concern for informational rights (and the threat to health insurance benefits) have prevented systematic recording of intentional injuries.

Vulnerability of immigrant women

According to the Recommendation, women and children have a right to safety independent of their citizenship, residence status, or any personal characteristics. When a woman's residence status depends on her marriage, the dependency can prevent them her from seeking recourse or separation in case of violence. Governments have been reluctant to take general measures that might be seen as opening the door to immigration, however, a number of countries now have measures that permit a woman who leaves a man because of his violence to remain in the country if she wishes.

In the Netherlands, women who are victims of domestic violence can obtain an independent permanent residence permit, and in the records since mid-2005 the majority of applications (183 out of 206) were successful. Sweden has a similar exemption since 2000, but a review of practice revealed that relatively few extended residence permits have been granted due to violence, and in nearly 2/3 of cases a residence permit was denied after an appeal; there seems to be a high threshold in the severity of violence to be demonstrated.

The UK has established an exemption from immigration rules for women who experience domestic violence within their probationary period of stay in the UK; In order to secure this they need to provide 'satisfactory evidence' of domestic violence evidence, now including at least two of the following: a medical report or GP's letter confirming injury, a court undertaking that the perpetrator will not approach the victim, a police report confirming attendance at the home, a letter from Social Services confirming involvement or a letter of support from a women's refuge.

All of these measures presuppose that women have access to information and support to claim their rights. With the help of NGOs, the city of Berlin established a telephone hotline and a small mobile intervention team that can call on translators in 54 languages as needed.

Data collection and evaluation

A European research network has undertaken a comparative analysis using the original data from national population-based surveys of prevalence, and found both similarities and differences¹. It seems that such studies are extremely sensitive to small differences in the wording of questions or the construction of the items. Furthermore, women's ability to name and disclose acts of "private" violence changes with awareness-raising and other cultural factors. Thus, while it is important to document the dimensions of the problem, violence is not like an infectious disease, where the success of measures against it will be demonstrated by a decrease in the number of reported cases – the contrary might be the case.

Whilst data from administrative records and statutory agencies yield no accurate estimate of the true extent of violence against women, they are of the greatest importance for monitoring the extent to which measures are actually being implemented. The Regan/Kelly report² on rape case attrition based on questionnaire responses from 21 member states for the period 1980-2003 found that conviction rates for rape have

¹ See publications at www.cahrv.uni-osnabrueck.de

² Regan, L. and Kelly, L.: Rape: still a forgotten issue. London Metropolitan University 2003

been sinking – in some cases dramatically – across Europe, while women’s reporting of sexual attacks has increased. The rise in reporting can be understood as an effect of growing awareness of women’s rights. Yet in all countries (except Germany), when reporting rose, convictions sank. One does not need representative prevalence data to recognize that there is a serious problem here.

Based on information given to the Council of Europe, it seems that few if any countries have a monitoring system which would enable them to know where the new legal activities are actually leading in practice. Only Spain has set up a central observatory to collect and analyze data on all cases as they move through the policing and legal system; only the UK and Sweden seem to have an inspection system that, at least at intervals, reviews the actions of statutory agencies towards domestic violence and/or towards sexual assault and rape. There is not even adequate information available on the recording of offences.

Evaluation of services and performance is needed both for statutory agencies and by the voluntary sector (NGO-driven). Much good work has been done in Austria, Germany, Ireland, Luxembourg, Switzerland and the UK. Here, I should like to question the statement that “randomized control trials are considered to be the most rigorous way to compare the effectiveness of one intervention over another.” This method is, for a number of reasons, of which the report rightly mentions ethical considerations, inappropriate and ineffective with respect to violence intervention. A sophisticated tradition of formative evaluation has developed in its stead, which is well able to assess both quality of process and impact. However, evaluation research is funded primarily in countries that devolve services to the NGO sector, creating a political need to assess the proper use of public moneys. Germany accompanied the development of inter-agency networks with innovative approaches by a six-year formative evaluation process, and a similar major evaluation effort is being set up in the UK. States that rely more strongly on the statutory sector, for example in Scandinavia, have little evaluation research. Regrettably, in the most of Europe, decisions on funding services are negotiated politically, with little or no resources devoted to evaluation. Changes in the political discourse or the majorities can thus lead to serious discontinuity.

Victim’s rights and empowerment

Civil injunctions, by which citizens can request protection of their rights and interests against encroachment, have a strong tradition in many older democracies. In these countries, the task of legislation has been to make this tool, seen as a means of empowerment of the victim, more readily available to women, allowing her to ask for protection tailored to her assessment of the threat. Thus, in 1997 the UK revised Family Law to simplify and strengthen the civil remedies, and courts have attached the power of arrest to the great majority of occupation orders and non-molestation orders. Protection from harassment allows restraining orders to prohibit further specified acts. The German Protection from Violence Act in 2000 also made protection orders against spouses and cohabiting partners more readily available, and explicitly regulated non-molestation orders. Finland instituted a general restraining order in 1999, and in 2003 amended the law to make these orders available when both parties live in the same household (inside-the-family restraining orders), requiring the offender to leave the residence and not to contact the victim for up to three months.

In other countries (Cyprus, Czech Republic, Bulgaria, Romania), protection orders have been introduced as a specific measure within a law penalizing domestic violence as a crime. Some laws are unclear as to whether protection orders are issued as part of a criminal proceeding, and who decides what protection a woman needs: she herself, her family, an agency concerned in some way with the case, or the prosecutor and the judge.

A more systematic attention to victims' rights is still rare. The Slovak republic has codified victim's rights quite specifically, including not only compensation, but also the right to submit evidence, and to be informed if the defendant is released. Switzerland and Sweden both make substantial financial resources from a crime victims fund for specialized services, including shelters. Switzerland and Denmark also give victims / witnesses the right to have a contact person of their choice to be with them during legal proceedings.

Institutional mechanisms for coordination

It is widely recognized that a multisectoral approach is essential to combat violence against women. Whilst on a highest level a National Action Plan, a public and credible commitment of parliament and government, and allotting appropriate funding are best practice, effective implementation calls for translating the multisectoral approach into practice on the local and regional levels. This is increasingly being adopted in Council of Europe member states. Recent CEDAW reports from countries such as Denmark, Finland, France, Ireland and Italy cite such multi-agency cooperation as a strategic priority. In smaller countries such as Cyprus or Liechtenstein, the interdepartmental cooperation at the government level can promote cooperation. Especially in countries with a decentralized structure and a traditionally strong reliance on NGOs, such as the Netherlands and Norway, encouraging cooperation between agencies and the voluntary sector is a typical element of national policy.

Although multi-agency cooperation originated in countries that already had a number of institutionalized activities and resources in place, such as the US, the UK, and Germany, with a focus on harmonizing procedures, creating synergy and ensuring that there should be no gaps in the "chain of intervention", the idea has proved equally valuable in countries at an early stage of building awareness, services and specific agency procedures. Thus, both the Czech Republic and Slovakia are building inter-agency cooperation projects in cities and/or districts across the country. Understandably, success varies and the process requires time.

Summing up

Human rights are not to be reduced to single "best practices"; there are always contradictions that must be addressed with a balanced solution taking account of local conditions and resources. There are tensions between strong state sanctions and empowerment of women, between women's rights and children's rights, between protection and punishment. Even in countries that seem close, there are different institutional cultures the influence both the acceptance and the actual impact of measures. Thus, international law must indeed be translated flexibly into local justice.