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Good Practices and Challenges in Legislation on Violence against Women

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** The views expressed in this paper are those of the author and do not necessarily represent those of the United Nations.*

Introduction

Violence against women, in all its forms, continues to be a massive problem in Europe. According to prevalence studies in this field, approximately 20% to 25% of all women have suffered physical violence, and more than 10%, sexual violence, during adult life. If all forms of violence against women are taken into account, around 45% of women have experienced violence (Council of Europe 2006:7f). This means that in the 27 member states of the European Union, with a total of almost 500 million inhabitants, between 20 million and 90 million women are estimated to have become victims¹ of male violence in their lifetime. This figure does not include girls and adolescents. In situations and as a consequence of war and armed conflict women suffer from increased violence (SEESAC-South Eastern and Eastern Europe Clearinghouse for the Control of Small Arms and Light Weapons 2007).

Women and girls are disproportionately often affected by domestic violence: statistics of police interventions because of domestic violence in Vienna show that more than 90% of victims are female, while a majority of abusers who commit acts of violence (i.e., more than 90%) are male family members, primarily husbands or intimate partners.²

In other words, it is especially women who become victims of violence in family contexts, which is thus a form of gender-based violence, or “violence that is directed against a woman because she is a woman or violence that affects women disproportionately” (UN-CEDAW Recommendation No. 19 / 1992). However, the family is not the cause of violence, but the violence is “a manifestation of the historically unequal power relations between men and women, which have led to domination over and discrimination against women by men and to the prevention of women’s full advancement.” (United Nations 1996, p 75). Women suffer from physical, psychological and sexual violence even after a separation from their partners, they may also be abused by acquaintances, at work or in the public sphere. Women may become victims of male violence at any age, and they may, often repeatedly, experience numerous forms of violence and discrimination. Violence committed by men against women is so frequent that every woman may be affected, which leads to a climate of fear and restriction for women and prevents them from exercising their rights.

¹ Terminology: in this article I use the term victim, although it is somewhat problematic, as it stresses the passive aspect of being victimised and does not take into account that women in many ways put up resistance against violence, which makes them survivors of violence. Still, I consider the term victim important, especially with regard to legal measures: persons who have experienced violence must be perceived as victims in that it should be recognised that they have suffered from injustice committed against them, they have the right to be protected from violence and are entitled to help and support.

² Statistics by the Domestic Abuse Intervention Centre Vienna, 2007; www.interventionsstelle-wien.at

Violence against women always affects their children as well, as it is still mostly women who take care of children. No matter which form of violence it is that women have endured, sexual violence in the context of wars or armed conflicts, sexual harassment at work or rape by their partners: their children will always suffer, too, and it is an important aspect for women to get help for their children as well. In the case of domestic violence, children are very strongly affected: the violent husband or partner often also abuses the children. The severer the violence against the wife, the more massive the violence against the children will be, and often will not stop even after the mother has left her violent husband or partner (Hester 2005). For children, witnessing violence against their mother is also violence against themselves, and vice versa, abusing children is a form of psychological violence against women. A woman who is dependent on a violent partner, either financially or because her right of residence is linked to him, will live in fear not only of violence but also of jeopardising her own, and her children's, subsistence.

These specific characteristics of violence against women, i.e. gender-based violence, from which women of every age group and in all fields of society may suffer and which at the same time also affects their children, have to be taken into account in all measures that aim to prevent violence against women otherwise there is the risk that they might not be effective. Furthermore, the corresponding interventions have to be oriented towards the specific form of violence, its effects on victims and the social context in which it occurs. For instance, in the case of sexual harassment at the workplace, victims often risk being fired, especially if the violence is committed by superiors. In intimate relationships or domestic contexts, women have often experienced violence by their partners over many years, which involves the danger of chronic trauma and the woman's identifying with the perpetrator (the "Stockholm syndrome") as a strategy of survival (Herman 1992; Graham et al 1994). Young women or girls who refuse to accept a forced marriage or flee from "honour violence", in addition to the violence committed, also have to cope with the loss of their families and face the difficult task to earn a living alone. Women who have suffered from violence and sexual abuse already during childhood run a high risk of experiencing violence also as adults because they have not been able to build (adequate) protective mechanisms; therefore women may become victims of violence by men again and again throughout their life. For this reason, any laws on the prevention of violence against women and the protection of victims must follow a comprehensive approach and form a coordinated set of provisions in order to meet the complex needs of victims in their individual situations.

It was the second wave of feminism in the 1970s that raised public awareness of the issue of violence against women, and the first shelters, phone hot-lines and counselling centres for women and their

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children were opened (Logar 2004). At that time, many acts of violence against women, e.g., spousal rape, were not punishable, or violence against women was not prosecuted by the authorities. There were hardly any laws protecting women from violence, and it was a priority matter for women's organisations to establish safe places for women.

The police and judicial authorities were not regarded as cooperating partners but from a feminist point of view they were rather part of the problem than of the solution, as they were dominated by men and showed little sensitivity or even hostility towards the interests and needs of women who had become victims of violence. It was not before the 1980s and 1990s that women's organisations all over the world began to demand justice and protection from violence, and the world-wide Women's Rights Are Human Rights campaign launched during the United Nations Conference on Human Rights held in Vienna in 1993 was an outstanding event in the international movement to combat violence against women (Bunch/Reilly 1994). This campaign was an important contributing factor to the recognition of violence against women as a violation of human rights (United Nations 1993). Step by step, it has also been acknowledged at national level that violence against women, even if committed in the "private sphere", is not a private matter and that it is the duty of governments to prevent violence and to protect women affected by it.

In 1994, in the context of the preparations for the 1995 World Conference on Women in Beijing, activists from women's shelters and women's centres in Europe founded the WAVE (Women Against Violence Europe) network in order to back activities undertaken in all regions of Europe to stop violence against women. Research has shown that transnational networks play important roles in the prevention of violence against women and that states with great numbers of active women's NGOs have taken more effective steps to counteract violence against women than states with small numbers of women's NGOs (Johnson/Brunell 2006).

Measures against violence from the victims' perspective

In the following sections I will deal with the development of statutory measures to counteract violence against women, using Austria as case study. Coming from the theoretical aspects of violence against women described above, I aim to build a framework where the needs of women affected by violence are in the focus of attention, based on the recommendation of the Council of Europe that member states should ensure "that all measures are co-ordinated nation-wide and focused on the needs of the victims."(Council of Europe 2002). Using this approach, I attempt to "weaken" somewhat the

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predominant position of the legal system, which often leads to a competition between the interests of victims and manifold other interests (Römkens 2007). At the same time, I want to highlight the importance of legal provisions on the prevention of violence and protection of victims, not only in the fields of civil law and criminal law but also in other areas.

However, a difficulty in any attempt to take the victims' perspective when looking at measures to counteract violence against women of course is that not all women who have experienced violence have the same interests: their needs and wishes may be diverse and also contradictory. For instance, not every victim of violence wants the perpetrator to be punished, in particular if he is part of the family. Victims who have been chronically traumatised and have not been supported by their families need other types of measures than victims who have experienced violence once and may count on support by their families.

Although women who have suffered from violence may have different needs and interests, my experience gathered over several decades of work with and support of victims shows that there are a few central needs that all victims have in common: they want the violence to stop, they do not want to become victims again³ and they need assistance and support.

For prevention of violence against women to be effective, governments must take distinct measures against any form of violence and protect women from violence. In addition, it must be ensured that as a consequence of these interventions, women affected by violence are not objectified anew and denied self-determination. Thus, any measures to stop violence against women have to focus on giving control back to the victim. This is not an easy undertaking, also because women are often dependent on the perpetrator in manifold ways and legal protection measures alone are not enough.

I will give a brief outline of central statutory measures I think are needed to realise the right of victims to live free of violence. I will not follow the order in which legal measures are typically described, which usually starts with criminal law, as for those affected by violence; criminal law may not always be the most important instrument.

³ Any theories according to which victims want, or even seek, violence have ceased to be of relevance, and tend to be regarded as victim-blaming. Still, victims continue to be confronted with the prejudice, also in court contexts, that they have endured violence voluntarily or even wanted it; especially in cases of violence committed by an intimate partner when the woman concerned has not left him. Not all actors have become fully aware of the fact that these women have stayed with their partners not because of, but in spite of, the violence they have experienced.

The right to social and financial independence as a basis for preventing violence against women

It is necessary to enforce social and economic rights of women so that they have a chance to live a self-determined life and not to depend on their husbands or families. This is important both for the prevention of violence, because women who depend on a partner financially run a higher risk of suffering violence, and also for getting out of a violent relationship, which is easier if a woman has her own income that ensures her subsistence. In this context it must also be taken into account that women often have to take care of children.

Statutory measures that aim to prevent violence must be comprehensive and well-coordinated. For instance, it is of crucial importance in a situation of acute violence that the police may order the abuser to stay away from the victim, but if the victim has no money to support herself and her children and to pay the rent, her right to be protected must be complemented by the right to get financial assistance quickly, or she will continue to depend on the abuser.

Below you find an enumeration of central social and economic rights that should be ensured for all women, and in particular women who have become victims of violence.

- The right to adequate financial assistance (at a level that ensures subsistence) for all women as long as they do not have incomes of their own and childcare obligations do not permit full-time work. This assistance should be granted quickly and with as little red tape as possible, and victims should not be forced to institute lengthy maintenance proceedings, but the government should provide financial assistance temporarily and reclaim any maintenance payments from the husband or father.
- The right to cost-free or affordable childcare centres.
- The right to education and training, including the right to cost-free language courses for immigrants.
- The right to assistance in finding a job that ensures the subsistence of the woman and her children, as well as effective measures aimed at higher incomes for women.
- The right to affordable housing: this is especially relevant for women who have suffered violence in their families or who face an elevated risk of becoming victims of violence, for instance, because they are homeless. Women who have experienced violence should not be forced to continue to live with a violent partner even after a separation, for lack of affordable housing, which is still the case in many countries at present (Council of Europe 2007:28).
- The individual right of residence for all immigrant women, independent of their husbands or other family members.

- The right for victims to take part in the evaluation of measures that aim to counteract violence against women and their participation as experts in the preparation of such measures.

Austria has laid down a number of fundamental social and economic rights for women who have become victims of violence, but considerable gaps still exist. All Austrian nationals without incomes of their own are entitled to quick financial support in the form of welfare assistance (as of 2009 in the form of basic minimum income), but for immigrants this right is restricted. The network of kindergartens and day care centres is insufficient to considerable degrees. In Austria, children have not yet been granted the right to affordable places in kindergartens or day care centres. In order to meet the Barcelona target⁴ Austria needs another 49 000 places in care centres for children under 3 and around 10 000 places for children aged between 3 and 5.

Massive problems also exist with regard to income security through gainful employment. Although the employment rate for women is rising, it is still only 67%. Regarding employed labour, women's incomes are only 60% of men's earnings (Statistik Austria 2007). Special programmes for women affected by violence are found only sporadically. The poverty risk is highest for women without gainful employment, women with part-time jobs and single mothers, and as statistics maintained by the Austrian women's shelters show, this means that the risk of suffering violence is also very high for these groups.⁵

In the field of housing, a good practice model has been implemented in Vienna: the City of Vienna has invested relevant sums in social housing for many decades and built approximately 220 000 flats. The Municipal Department of Social Housing is in charge of letting flats to citizens with low incomes. Women who have suffered violence and become homeless may rent affordable flats without much red tape involved (and move in within 2 or 3 weeks in some cases). Since 2001 also immigrants have been eligible for social housing. There have been some improvements regarding residence permits for immigrants who have become victims of domestic violence, but the goal of an independent right of residence granted to all immigrants from the beginning of their stay in Austria has not yet been met. The approach that victims of violence participate in the preparation and evaluation of legal measures against violence has not been a priority in Austria so far, although the consultation of victims should

⁴ Barcelona childcare targets of the European Union: by 2010, childcare should be provided to 33% of children under 3 and 90% of children between 3 and 5 years of age.

⁵ According to Statistics Austria the average employment rate for women in Austria was 67% in 2006; and according to statistics maintained by the Austrian women's shelters, in 2007 only 24% of women living in the shelters were gainfully employed; 15% received unemployment assistance and 19%, childcare assistance. The latter is between EUR 436 and 800 per month, depending on the period over which assistance is granted. According to Statistics Austria, the poverty line was at EUR 900 per month in 2006.

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be an integral part of assistance measures. A good practice in this field is found in the manual published by Women's Aid England: Professionals by experience. A guide to service user participation and consultation for domestic violence services (Hague/Mullender/Aris 2002).

Any social and economic measures to assist women who have become victims of violence should be laid down as statutory provisions in order to ensure that such assistance is an enforceable right and not just a charitable gift.

The right to information and a supportive environment

As mentioned at the beginning, violence affects a great number of women in different societal groups. However, general knowledge about and awareness of this problem are still small in Austria, and many victims do not know what their rights are and where they may get more information and help. The protection of victims from violence therefore also includes the obligation by the state to provide information to those affected by violence as well as education and awareness-raising in order to exercise influence on attitudes that tolerate or lead to violence. You still hear questionable points of view such as: women themselves are to blame for the violence, or: women provoke violence and deserve it. This creates an atmosphere in which it is hardly possible for victims to talk about what they have suffered or to find help.

Another problem is that victims are often disbelieved and that it is not taken seriously what they have experienced. This has also become apparent in the most recent, horrible case of violence and slavery in Austria: the woman affected had been abused by her father already during childhood and adolescence. She ran away from home but did not find help and was sent back. When she was 18 years old, her father imprisoned her in a "dungeon" in the cellar, where she was held captive for 24 years. Her father continued his sexual abuse, and she gave birth to seven children before she was finally able to persuade the perpetrator to take to hospital her daughter, who was fatally ill, and eventually also to release herself from captivity. Although this is an extreme example, in its tendency it is not untypical of patriarchal structures that still exist in Austria's society and that make it possible for men to control and bully other members of the family and to exert violence, without anybody interfering.

Awareness-raising campaigns are essential instruments of prevention, but one-off events are not enough. What is needed is regular campaigns that address in an adequate way both the general public and specific groups such as immigrants or women with special needs. These campaigns should also encourage people to take heart and get active against violence and to help victims. In many cases,

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victims first talk to friends and relatives as well as colleagues at work when they need help. Therefore it is of central importance that everybody is sensitised to and has knowledge about the problem to be able eventually to help those affected and inform them about existing support structures. Another important aspect is to raise awareness among and train health-care staff because many victims turn to these services (Bundesministerium für Familie, Senioren, Frauen und Jugend 2004).

Summary: The right to information for victims of violence should be based on statutes, and governments should be obliged by law to launch information campaigns regularly. In Austria, the right to information for victims of violence in the context of criminal proceedings has been realised under the new Code of Criminal Procedure that entered into force in 2006 (see also next section). This is an important improvement, but still, information and education in this field are needed already at an earlier stage and must be an integral part in training programmes for teachers and other occupational groups.

The right to comprehensive and adequate help

Women who have become victims of violence should have a right to professional help. Cost-free phone hotlines for women are important for first contacts for providing information about victims' rights and for initial counselling. In order to be protected from violence, victims must also be granted the right to safe accommodation and adequate help.⁶ In addition, these women should have the right to live safely in their own homes and to be protected from the perpetrator (e.g., on the basis of expulsion or barring orders by the police or protection orders by the court). However, victims should be free to decide whether to turn to the police or to the courts in order to get legal protection or to a women's shelter to plan their next steps with the shelter's assistance. The experience regarding Austria's Violence Protection Act has shown that both measures are necessary and complement each other. All victims of violence that turn to the police or the courts should proactively be offered counselling and support by professionals who act in their best interest.

The government's obligation to prevent violence and protect victims can only be met if all women are granted the right to help and support by specialised women's centres. This standard has not yet been achieved in many European countries, and even Western Europe lacks women's shelters and other services for women victims of violence in many regions (Hanmer/Gloor/Meier et al. 2006; Council of Europe 2007a; Coy/Kelly/Jo et al 2007). The existing centres often have inadequate financial means

⁶ For information on quality standards of women's shelters see WAVE Manual: Away from violence (2004): www.wavenetwork.org

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and in some countries of Europe, women's organisations that offer services for victims do not receive any financing by the government. Another problem is that financing is not secure and that women's organisations have to fight for a continuation of financial support every year. As a consequence, many women who have experienced violence do not get help, or to an insufficient degree.

In Austria⁷ a network of women's support centres has been built over the past 30 years, where victims of violence may get help. The cost-free 24-hour phone hotline for women⁸ is a focal point for information in this context. It is financed by the Federal Ministry of Women and run by a women's organisation (Austrian Women's Shelters Network). Austria has 29 women's shelters that offer 722 places of accommodation for women and their children⁹. Still, this is not enough, and every day women and children who seek help have to be turned down. Several provinces of Austria have started to create a legal basis for financing women's shelters to ensure the consolidation of their services.

Austria also provides six regional women's phone hotlines and counselling centres for women in all provinces. Specific services addressing immigrants or victims of trafficking in women are found only in larger cities, and no nation-wide network has yet been built.

The firmest basis for help for victims is provided under the Violence Protection Act of 1997 and the provisions on support to victims of violence in the amended Code of Criminal Procedure of 2006. Under the Violence Protection Act of 1997, all provinces had to establish intervention centres where victims of domestic violence are proactively offered assistance after interventions by the police. The intervention centres are run by women's NGOs and financed by two Federal Ministries (Ministries of the Interior and of Women) on the basis of five-year contracts. Because of the enormous rise in barring orders by the police in cases of domestic violence, since 2004 it has not been possible to provide assistance to all victims who would have needed it. In 2007 the Federal Government reacted to this emergency and increased the corresponding budget by 60%. Since 2006, the Ministry of Justice has granted all victims of violence the statutory right to psychosocial and legal counselling in criminal proceedings. These measures have marked a great progress in Austria on the way to adequate assistance to all women who have become victims of violence. Still, further efforts need to be made.

Summary: The main reason for the difficult situation with regard to counselling and support of victims is that the right to assistance has not been put on a statutory basis. This is a grave impediment to

⁷ Austria has approx. 8 million inhabitants.

⁸ Phone number: 0800 222 555; cost-free 24-hour helpline

⁹ Fact sheet: Frauenhäuser in Österreich 2008, Austrian Women's Shelter Network, www.aodef.at

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effective prevention of violence against women. The right to help can only be realised if governments are obliged by law to provide assistance to all victims of violence at a nation-wide level.

The following minimum standards for assistance to women who have become victims of violence, and their children, should be based on statute and implemented.

- Every country should have least one national women's phone hotline where all victims of violence may get assistance by phone around the clock and free of cost and from where they may be referred to other service providers.
- Safe accommodation and qualified counselling in a women's shelter. Minimum standard: one family place¹⁰ for every 10 000 inhabitants.
- one women's advocacy and counselling centre for every 50 000 women, which provides crisis intervention as well as long-term support to victims of all forms of violence or to special groups (i.e. specialised services for immigrant victims of violence, for victims of trafficking in women or for women who have suffered sexual harassment at the work place)
- Outreach services to victims in rural areas.
- one rape crisis centre for every 200 000 women.
- one intervention centre per district/province that provides proactive support and advocacy to women victims after violence has been reported to the police or other agencies, and also support them in legal proceedings.
- All services for women victims of violence should also provide adequate support to the women's children.

The right to protection from violence

It is the duty of the state to prosecute and punish violence against women, to prevent violence and to protect victims.¹¹ In order to meet this duty, a variety of legal measures have to be taken that should be implemented simultaneously:

- 1 Criminalisation, prosecution and punishment of all acts of violence against woman as well as prevention of further violence by means of resocialisation measures for perpetrators
- 2 Quick and effective protection of victims by public authorities

¹⁰ Family place = for a women + her children

¹¹ The United Nations Declaration on the Elimination of Violence against Women 1993 states that member states should "Exercise due diligence to prevent, investigate and, in accordance with national legislation, punish acts of violence against women, whether those acts are perpetrated by the State or by private persons (Article 4.c).

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- 3 Legal protection measures taken upon application by the victim as well as assistance in the enforcement of legal protection measures
- 4 Prevention of secondary traumatic stress in court proceedings, right to assistance and being party to legal action as well as right to damages

For the first point to be realised, penal provisions have to be adopted that criminalise any form of violence against women, and the state must play an active role in the prosecution of acts of violence against women. However, it is not enough to prosecute criminal acts: first and foremost, the authorities, the police and the courts have to prevent acts of violence and protect at-risk victims from further violence. For this purpose, both the police and the court authorities must be able to take adequate legal measures, e.g., issue barring orders, detain perpetrators or order them to stay away from the victim's vicinity or forbid them to go to certain places. The decision which measures are necessary to protect the victim must be based on a professional assessment of the risk situation, therefore all persons in the police or court authorities involved in such cases need special training. In such decisions, the victim's right to protection must take priority. This principle has definitely been adopted by the CEDAW Committee in the two cases of Fatma Y. and Sahide G. versus Austria, where it is stated "that the perpetrator's rights cannot supersede women's human rights to life and to physical and mental integrity".¹²

Consequently, criminal prosecution and measures to prevent perpetrators from committing further acts of violence should be initiated by the authorities. This means that the victim is not responsible for any action, which is very important, but this also means that she is not involved in decisions taken in this context. Therefore parallel to official action, there should be legal measures that are taken on the initiative of the victim, e.g., protection orders under civil law. In addition, victims should have the right to play an active part in proceedings and the right to support in this context. Below, a number of specific fields of protective measures are described in more detail.

The right to protection by the police

For women who have experienced violence, the police authorities are very important actors especially in situations of acute violence, but experience has shown that women who have become victims of violence sometimes hesitate to call the police because they have no confidence in this institution; they

¹² CEDAW Decisions Nos. 05/2005 and 06/2005; www.un.org/womenwatch/daw/cedaw/protocol/dec-views.htm

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fear that they might not be taken seriously or that the police will not believe what they say (Logar 2001). These fears are often based on what victims actually know from their own experience or from persons in their environment. This lack of confidence is a massive obstacle to combating violence against women: the reasons for this mistrust have to be studied, and adequate confidence-building measures have to be adopted. Another problem is that police authorities often understand themselves rather as a part of the criminal prosecution system than as a prevention agency (Römken 2007). However, the police is a central institution in the prevention of violence, and may be contacted around the clock. Therefore the police play a crucial role in the prevention of violence and it is essential that this function is performed in a proactive, professional way.

The police authorities, without doubt, are of central importance in the field of criminal prosecution, especially with regard to investigating acts of violence and preserving evidence. The quality of police work in this field may be crucial for the decision whether court proceedings are instituted or a person is convicted. Unfortunately, it has not yet become an established standard everywhere that acts of violence against women are investigated thoroughly and documented precisely. Domestic violence often continues to be regarded as a private matter and not a criminal offence. Photographs of injuries and damage as well preservation of DNA traces should be part of the standard procedure in investigations by the police or public prosecutor.

One of the measures that help to increase confidence in the police by women who have experienced violence is to hire more female police officers (in Austria, only approx. 10% of officers are women) and to put an end to the predominance of men by raising the share of women in managerial positions. Other important steps aimed to strengthen victims' confidence in the police include obligatory training programmes for police officers in the field of violence against women and the establishment of specialised departments. Women who have become victims of violence should have the right to be interviewed by a female police officer. In addition, police officers need legal instruments to effect the protection of victims, and specific guidelines on their rights and duties have to be drawn up. For instance, if it is not clear whether the police is entitled to enter or break into a flat after a call by a third person who heard shouts for help from this flat this is a grave obstacle to the protection of victims. In Austria, the duties and rights of police officers in the context of domestic violence are laid down in the Security Police Act of 1991.

Effective powers to protect victims should also include the right of police officers to order that the perpetrator leaves the flat or stays away from the neighbourhood and to forbid him to return to these places (Art. 38a of the Security Police Act). In Austria, the corresponding provisions are found in the

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Domestic Violence Act of 1997. Since the Austrian Anti-Stalking Act entered into force in July 2006, the police has also been able to protect victims of stalking by orders barring perpetrators from her place of residence. On the basis of a risk prognosis, perpetrators may be ordered to leave the flat and stay away for 10 days. This order is issued by the police and does not require approval on the part of the victim. If victims want to extend the protection period, they have to take action themselves and may turn to a civil court and apply for a protection order.

In order to support the victims, the police closely cooperate with intervention centres: the report on the corresponding police action is sent to the local intervention centre, which then contacts the victim and offers active assistance. In cases of trafficking in women, the police cooperate with the intervention centre for victims of trafficking in women. The victims are not arrested but live in an emergency flat and receive counselling and assistance by the intervention centre. From 1997 to 2007 barring orders were issued by the police in 45 000 cases of domestic violence. This measure has turned out to be very important, but its long-term effects cannot yet be assessed.

Protection measures under civil law

Protection measures under civil law for which the victims may apply are important instruments of prevention and should be available in every legal system. They help to protect from violence those victims who do not want to turn to the police or criminal courts and enable them to take active steps against violence themselves. In Europe, various types of protection order have been established in recent years, and now the question has arisen whether only the victims themselves, or also other persons or institutions, should have the right to apply for protection orders. My experience is that provisions under which third parties are entitled to apply for protection orders involve the risk that the victim is treated as if she were a minor. Therefore, I think that it is sensible only in cases where the victims are children that agencies in charge of child protection are granted the right to apply for protection orders under civil law.

Civil law protection measures should not serve as instruments that replace measures under criminal law to prevent perpetrators from committing further acts of violence. This would mean that the state imposes on the victim the obligation to prevent further violence.

Protection orders under civil law should be available to all women who have experienced violence and thus are impaired in their personal sphere. This group includes victims of domestic violence and victims of stalking, but also victims of sexual violence in the public sphere or sexual harassment at the workplace, if the perpetrator continues to harass them. The right to apply for protection under civil law should be an individual right and should not depend on one's marital status. There are many examples

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of civil law protection measures in Europe that obviously are not comprehensive enough and do not protect all victims. Almost all protection orders were introduced in the context of domestic violence or violence in partnerships, and it was not taken into account to a sufficient degree that as a consequence, the legal definition of family or partnership, which may be very narrow, is the basis of the decision whether a victim is granted protection or not. Moreover, in such a case it is the victim who has to prove that the violence was committed in the context of a family or intimate relationship.

In Austria, initially, the protection orders under civil law that were introduced under the Violence Protection Act of 1997 were restricted to family members who had lived together until three months ago. As this excluded many victims, the Act was amended in 2000. However, the corresponding provisions are still too narrow, because they have again been based on the requirement that the victim and the perpetrator have lived together. In providing protective measures, it has to be taken into account that not all partners share a flat, and protection should also include all victims, including those who have had no, or only a short, intimate relationship with the perpetrator. The Anti-Stalking Act of 2006 has closed some of these gaps, as now also victims of stalking are granted the right to apply for protection orders. Another problem of the Austrian situation is that the protection period is restricted to three months in certain cases. There are plans to amend the Violence Protection Act before the end of 2008; in the context of this new legal reform, the period of civil law protection orders will also be extended to six months and one year, respectively.

For civil law protection orders to be effective instruments of protection against violence, enforcement by the police should be possible. In addition, violations of civil law protection orders should be regarded as criminal offences.

Protection from domestic violence and the right to a life free of violence should also be a principle in all the relevant areas of family and divorce law. Legal measures should be in place to guarantee adequate alimony to women and children, and victims of family violence should have the right to stay in the family dwelling after divorce. Victims should not suffer any financial disadvantages as a result of separation, and their social insurance and pension rights should be ensured.

Civil law measures to protect children

As stated in the introduction, if the mother is abused, her children are always – directly and indirectly – affected by the violence too, especially in cases of domestic violence. Violent husbands or partners are also violent fathers or stepfathers and protective measures should always apply to women **and**

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their children; a woman should have the right to obtain a protection order on behalf of her children. Special attention needs to be given to women and children experiencing domestic violence during the process of separation, since violence tends to escalate in this period. Most homicides are committed when the victim tries to leave the violent partner, and often children are severely affected or murdered too.

Fathers' rights movements have gained growing public attention and influence in court in the last few years. Unfortunately, violent fathers have also profited from this development that is jeopardising the safety of children. Such initiatives often pretend to act in the interests of the child (in Austria they appeal to the "right of the child to both parents"), and even misuse the right of the **child** to maintain contact with both parents as an argument to assert their own interests. This certainly does not correspond with the provisions of the UN Convention on the Rights of the Child (1989), which clearly states that it is the right of the child who is separated from one or both parents to maintain personal contacts with them; this includes the right not to have contact; otherwise, it would be a duty. Unfortunately, violent fathers sometimes succeed in convincing judges that it is in the interests of the child to have contact, even if the child does not want it.

In Austria, children under 10 do not have to be included in the decision-making process at all; after the age of 10 they have to be heard, but the court does not have to take the child's wishes into account. Only children from 14 years of age on can decide freely whether or not they want to have contact with a parent. A mother can hardly protect her children from unwanted contact with the father; on the contrary, the law obliges her to facilitate contact, and she can even be punished for obstruction. This puts women in an agonising and paradoxical situation: on the one hand they have the obligation to protect their children, and in fact they may have separated from the violent partner in order to do so. Child protection authorities often insist that a mother separate from the violent partner to protect the children – instead of demanding of the violent father that he change his ways and imposing conditions for further contact. After the separation, the authorities sometimes seem to forget about the violence and support the father's right to see the child¹³. Needless to say, this severely disrupts the relationship of trust between mother and child and places the child in danger.

¹³ Marianne Hester (2004) has developed the model of the "three planets": the violence against women planet, the child protection planet and the visitation and contact planet: the disconnection of this three planets jeopardizes the safety of children.

In order to fulfill the obligations under the UN Convention on the Rights of the Child,¹⁴ in any legal decision, the rights of the father (custody or visitation rights) should never supersede the right of the child to be protected from violence.

Right to justice – criminal prosecution and prevention

The right to life, health and freedom are fundamental human rights, and the criminalisation of all forms of violence against women is a measure to guarantee these human rights.

Three questions arise in respect of criminalisation: The question as to what is criminalised and what not, the question as to what is subject to prosecution and by whom and the question of implementation of laws.

In Europe, there is a trend towards criminalising violence against women and removing exceptions such as rape in marriage (Council of Europe, 2007a). Despite this progress, there is still reason for concern regarding gaps in criminalisation and poorly drafted laws (for instance, rape is not always defined by the absence of consent). Another question that arises is whether instances of violence against women should be covered by general articles in the penal code or whether they should be defined as special crimes. Examples of special provisions in the criminal law are Spanish Organic Act No. 1/2004 on Integrated Protection Measures against Gender Violence, and the Swedish penal code sanctioning “Gross violation of women’s integrity” (Council of Europe 2007c). These laws recognise violence against women as gender-based violence, whereas other laws, such as laws on domestic violence, tend to see the problem in non-gender-related terms and this sometimes even leads to regulations that define acts in the family as less serious than violence in the public sphere.

It can be said that special laws do not automatically lead to better results in criminalising violence against women; the leading principles in law-making in this respect should be that violent acts against women are to be taken as seriously as other crimes and that special circumstances of violent acts against women, such as dependence on the perpetrator, should count as aggravating factors.

In many countries, the responsibility for initiating prosecution still rests with the victim. This contributes to the under-reporting of violent acts against women, especially as regards violence in the

¹⁴ Article 19, para. 1, States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child 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 the care of the child.

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family or partner violence. Leaving the initiative for prosecution to the women subjected to violence not only places unbearable pressure on the victim, but also jeopardises the victim's safety. In order to fulfil the obligation to prevent violence and to protect victims, mandatory prosecution by the state must be a principle, as recommended in the United Nations General Assembly resolution of 1997 on measures to eliminate violence against women.¹⁵

In Austria, rape in marriage became a crime in 1989, and forms of violence against women that had not been criminalised prior to that time were written into the penal code: the Anti-Stalking Law came into force in July 2006, and female genital mutilation and forced marriage as a form of aggravated coercion were penalised as well. An initiative to improve the protection from violence was started by the Minister of Justice in 2007, also in response to the recommendation of the CEDAW Committee concerning the two cases submitted to it by the Viennese Domestic Abuse Intervention Centre and the Association for Women's Access to Justice¹⁶. Already in 2006, as a response to the communication of the two cases to CEDAW, the government had changed the article regarding dangerous threats: the regulation that, in cases of violence in the family, the victims had to consent to prosecution was abolished. This is a good example of how international conventions can positively influence the situation at the national level and improve women's enjoyment of their human rights. In May 2008, a new draft law was published containing among other measures substantial improvements for victims in the civil law protection order. Furthermore, a new article defining repeated violent acts against a person as a crime will be introduced into the penal code.

The fact that violent acts against women are punishable does not always mean that they will be punished. Under-reporting, high attrition and low conviction rates mean that the vast majority of violent acts against women remain unsanctioned. According to a study in Northern England, of 869 cases of domestic violence recorded by the police, only 31 ended in the conviction of the perpetrator and only four resulted in custodial sentences (Hester 2003, quoted in Humphreys/Charter et al 2006:18). High attrition and low conviction rates are a problem of concern in Austria too. Although there is mandatory prosecution of all violent acts, a high percentage of proceedings are quickly dismissed, even if the victim testifies, because the assault is not deemed punishable (Humphreys 2006:18).

¹⁵ United Nations General Assembly resolution 52/86 (1997), Annex, II (b) "The primary responsibility for initiating prosecutions lies with prosecution authorities and does not rest with women subjected to violence".

¹⁶ See CEDAW decisions Nos. 5 and 6 of 2005

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This represents a serious obstacle to the state's obligation to punish violence against women and contributes to the high rates of revictimisation. Moreover, the potential of modern criminal systems that provide not only for sanctions but also for preventive measures and measures for resocialisation of perpetrators is rarely fully utilised.

In order to increase reporting and conviction rates and decrease second reporting and revictimisation, states should introduce due diligence standards in the criminal justice system such as:

- Mandatory reporting by authorities and mandatory prosecution;
- Speedy and comprehensive evidence-gathering;
- Clear guidelines on how to deal with the different forms of violence against women, including standardised risk assessment and the obligation to maintain close co-operation with victims' services;
- Specialised units in prosecution services;
- Specialised courts or special court proceedings guaranteeing fast and efficient handling of cases;
- Mandatory training for prosecutors and judges;
- The possibility of arrest in criminal procedures in order to prevent revictimisation;
- Provision and application of criminal law restraining orders to protect victims and prevent repeat victimisation (not instead of arrest, but for cases of low risk of revictimisation);
- Mandatory anti-violence training for perpetrators, not instead of, but in addition to, sentences and court orders to work with probation;
- No application of mediation or out-of-court settlements in cases of domestic violence against women and other forms of violence.

Victims' rights in criminal proceedings

Women victims of violence should have the right to support and to free legal aid in all legal proceedings, especially in criminal proceedings, in order to ensure access to justice and avoid secondary victimisation. In Austria, a legal provision was introduced in 2006 guaranteeing all victims of violence the right to free psychosocial and legal aid in criminal proceedings. Furthermore, the rights of victims in criminal proceedings were expanded to include provisions such as the right to be informed if the perpetrator is released from arrest, to ask questions and to bring in evidence.

Minimum standards of victims' rights should include:

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- The right of all victims, including victims from migrant or minority groups and other especially vulnerable victims, to be treated with the utmost respect;
- Effective measures to avoid secondary victimisation or any gender- and victim-insensitive treatment;
- Legal proceedings that ensure the maximum safety of women victims of violence, including the right not to testify in front of the perpetrator; courts should also ensure the anonymity of victims in the media;
- The integration of violence against women into witness-protection policies and standards;
- The implementation of court procedures that both protect the victims from revictimisation and enable them to provide the best evidence; the requirement for the victim to testify repeatedly should be restricted to a minimum;
- The right to be supported, accompanied and represented in court by a specialised victim's service; this service should be free of charge;
- The right to be given information about all proceedings concerning them, including information about the release of the perpetrator from pre-trial detention or from jail;
- The right to engage actively in the proceedings, including the right to bring in evidence and ask questions;
- The right to financial compensation and support for obtaining it.

Summary and conclusions

In order to be successful in fulfilling the obligation “to exercise due diligence to prevent, investigate and punish acts of violence, whether those acts are perpetrated by the state or private persons, and provide protection to victims” (Council of Europe, 2002), states need to have a comprehensive and coordinated policy in place. This policy must be based on the needs of victims and include legal provisions in all the relevant areas of law, including criminal law, and civil and administrative law measures in areas such as marriage and divorce, child custody and child protection, immigration, housing, employment, social benefits, insurance and others. International conventions and recommendations for the protection of women from violence should be implemented in national legislation, and the decisions of treaty bodies should be applied in court decisions at the national level.

Laws need to be harmonised and consistent; gaps and contradictory regulations that might jeopardise the effort to prevent violence and protect victims must be avoided. Women's NGOs supporting victims of violence as well as should be invited to participate actively in the drafting, implementation

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and evaluation of laws, ensuring that the needs of victims are represented in the making of laws. Constant monitoring and evaluation of laws are necessary to assess their effectiveness; this includes the systematic collection of data, as well as the participation of victims in evaluation processes.

Good laws are important for preventing violence against women and protecting victims, but their existence is not enough in itself; in order to fulfil the due diligence obligation, laws have to be implemented effectively in every single case, and in the application of legal measures, the right of perpetrators should not supersede the rights of victims to life and physical integrity. Close cooperation of all the agencies involved is a key element in successful prevention and protection of victims and, for several reasons, it is hard to achieve. Constant efforts are necessary and special efforts have to be made in order to better protect high-risk victims. Effective models such as the MARACs (Robinson 2004) should be widely established.

Finally – nothing works without adequate resources. Just as we cannot prevent terrorism, we cannot end the terror against women and children without investing financial and personal resources. Comprehensive, coordinated, long-term and public policies to eliminate all forms of violence against women (national action plans), based on legal obligations and including adequate financial means for implementation are necessary in order to be successful in preventing violence against women and protecting victims.

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