

# **TIME TO TAKE A STAND**

**AMNESTY INTERNATIONAL  
OPPOSES AMENDMENTS  
THAT WILL WEAKEN THE  
COUNCIL OF EUROPE  
TREATY ON VIOLENCE  
AGAINST WOMEN**

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# TIME TO TAKE A STAND TO OPPOSE VIOLENCE AGAINST WOMEN IN EUROPE

## BRIEFING NOTE ON AMNESTY INTERNATIONAL'S CONCERNS REGARDING PROPOSED AMENDMENTS TO THE DRAFT CONVENTION ON PREVENTING AND COMBATING VIOLENCE AGAINST WOMEN AND DOMESTIC VIOLENCE

On International Women's Day 2011, Amnesty International expressed its profound concerns at last minute efforts by some Council of Europe member states to unravel key provisions in a new European treaty on violence against women.<sup>1</sup> This treaty is known as the Council of Europe's Draft Convention on preventing and combating violence against women and domestic violence, and has been drafted over the past two years by a committee known as CAHVIO.<sup>2</sup> Amnesty International has participated in this drafting process, and published several documents with recommendations to ensure that the proposed treaty acts as a catalyst for change, as the prevalence of violence against women in Europe remains high.<sup>3</sup>

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<sup>1</sup> Proposed changes will undermine new European treaty on violence against women, AI Index: IOR 61/001/2011, 8 March 2011, <http://www.amnesty.org/en/library/info/IOR61/001/2011/en>.

<sup>2</sup> "Draft Convention on preventing and combating violence against women and domestic violence" 16 December 2010 (CAHVIO (2010) 26 FIN).

<sup>3</sup> See, for example, the following Amnesty International documents, relating to violence against women in countries in Europe: *Belgium: Stop violence against women: Breaking the cycle of violence* (AI Index EUR 14/001/2004) 5 March 2004; *Turkey: Women confronting family violence* (AI Index EUR 44/013/2004) 1 June 2004; *Russian Federation: Nowhere to turn to: violence against women in the family* (AI Index EUR 46/056/2005) 14 December 2005; *France: Violence against women: a matter for the state* (AI Index EUR 21/001/2006) 6 February 2006; *Albania: Violence against women in the family "It's not her shame"* (AI Index EUR 11/002/2006) 19 April 2006; *Georgia: Thousands suffering in silence: Violence against women in the family* (AI Index EUR 56/009/2006) 24 September 2006; *Belarus: Domestic violence- more than a private scandal* (AI Index EUR 49/014/2006) 9 November 2006; *Ukraine: Domestic violence, blaming the victim* (AI Index EUR 50/005/2006) 21 November 2006; *Hungary: Cries unheard: The failure to protect women from rape and sexual violence in the home* (AI Index EUR 27/002/2007) 10 May 2007; *Greece: Uphold the rights of woman and girls trafficked for sexual exploitation* (AI Index EUR 25/002/2007) 12 June 2007; *Albania: No pride in silence, domestic and sexual violence against women in Albania* (AI Index EUR 54/044/2008) 13 November 2008; *UK: No recourse, no safety: the government's failure to protect women from violence* (Amnesty International and Southall Black Sisters, March 2008); *Bosnia and Herzegovina: Whose justice? Bosnia and Herzegovina's women are still waiting* (AI Index EUR 63/010/2009) 30 September 2009; *Tajikistan: Violence is not just a family affair. Women face abuse in Tajikistan* (AI Index EUR 60/001/2009) 24 November 2009; *Norway, Sweden, Finland, Denmark: Case Closed: Rape and human rights in the Nordic Countries* (AI Index ACT 77/001/2010) 8 March 2010.

Amnesty International is profoundly concerned that a number of member states have proposed last minute amendments to the draft treaty – the majority of which, if adopted would seriously undermine the effectiveness of the draft treaty and – more generally - existing international law.

The current draft of the treaty, if adopted and ratified by states, would establish an effective framework for governments to ensure robust action to prevent, investigate and prosecute violence against women. It would also facilitate the sharing of good practice, providing a solid basis for making recommendations to states for improvement. It contains up-to-date models for legislation on the definitions of rape and sexual violence, domestic violence, stalking, risk assessment, protection measures and services for women and girls who are survivors of violence. It, therefore, has the potential to make a vital contribution to the eradication of violence against women in Europe. Proposed amendments significantly undermine this potential.

Amnesty International is therefore urging all states in the Council of Europe to oppose any attempts to re-open and undermine the existing draft treaty. The organization calls on those states that have proposed such amendments to withdraw them immediately.

The following sets out Amnesty International's specific concerns and observations on some of the amendments states have proposed.

## ARTICLE 2(3): PROPOSAL TO DELETE THE REFERENCE TO ARMED CONFLICT

Article 2 as currently drafted reads as follows:

### Scope of the Convention

1. This Convention shall apply to all forms of violence against women, including domestic violence, which affects women disproportionately.
2. Parties are encouraged to apply this Convention to all victims of domestic violence. Parties shall pay particular attention to women victims of gender-based violence in implementing the provisions of this Convention.
3. This Convention shall apply in times of peace and in situations of armed conflicts.

*The United Kingdom have proposed to delete the reference to armed conflict in Article 2 (3) seeking to limit the scope of the Convention to times of peace only.*

Studies show that violence against women in the home and the community tends to rise during and after armed conflict. Also, armed conflicts have been current in many parts of Europe in recent years, most notably in the former Yugoslavia and former Soviet republics.

Amnesty International considers that it would be unconscionable if this new treaty failed to address violence against women in these situations.

## ARTICLE 3: PROPOSAL TO DELETE REFERENCES TO VIOLENCE AGAINST WOMEN AS A VIOLATION OF HUMAN RIGHTS

Article 3 as currently drafted reads as follows:

### Definitions

For the purpose of this Convention:

- a. “violence against women” is understood as a violation of human rights and a form of discrimination against women and shall mean all acts of gender-based violence that result in, or are likely to result in, physical, sexual, psychological, or economic harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life;
- b. “domestic violence” shall mean all acts of physical, sexual, psychological or economic violence that occur within the family or domestic unit or between former or current spouses or partners, whether or not the perpetrator shares or has shared the same residence with the victim;
- c. “gender” shall mean the socially constructed roles, behaviours, activities and attributes that a given society considers appropriate for women and men;
- d. “gender-based violence against women” shall mean violence that is directed against a woman because she is a woman or that affects women disproportionately;
- e. “victim” shall mean any natural person who is subject to the conduct specified in points a and b of this article;
- f. “women” includes girls under the age of 18 years.

*The United Kingdom (UK) has proposed to remove in Article 3(a) the reference to violence against women as a violation of human rights and replace it with the expression “[v]iolence against women constitutes a serious obstacle for women’s enjoyment of human rights.” No explanation has been offered for this proposal.*

Amnesty International is concerned that this amendment significantly weakens the legal basis of this treaty. If, as the UK suggests, violence against women is merely an “obstacle in the enjoyment of human rights” rather than a violation of human rights in itself, this limits the legal obligation on states to address the issue, and also undermines the importance of the problem.

Amnesty International is also concerned that such a stance undermines existing international human rights law. International human rights bodies, including the Committee on the Elimination of Discrimination against Women, have identified violence against women as a violation of human rights since the early 1990s, as violence against women is rooted in the discrimination that women suffer.

The Council of Europe’s Committee of Ministers also declared that violence against women is a violation of human rights, in the Preamble to its Recommendation 5 of 2002, “[a]ffirming that violence against women both violates and impairs or nullifies the enjoyment of their human rights and fundamental freedoms[.]”

The Preamble to the Convention of Belem do Para (the Inter-American Convention on violence against women, a binding regional treaty) also contains the statement that violence against women is a violation of human rights.

Amnesty International considers that the text of this article should remain the same. Violence against women should be defined as “a violation of human rights” in the text of this treaty.

## ARTICLE 4: FUNDAMENTAL RIGHTS, EQUALITY AND NON-DISCRIMINATION

Article 4 as currently drafted reads as follows:

### **Fundamental rights, equality and non-discrimination**

1. Parties shall take the necessary legislative and other measures to promote and protect the right for everyone, particularly women, to live free from violence in both the public and the private sphere.
2. Parties condemn all forms of discrimination against women and take, without delay, the necessary legislative and other measures to prevent it, in particular by:
  - embodying in their national constitutions or other appropriate legislation the principle of equality between women and men and ensuring the practical realisation of this principle;
  - prohibiting discrimination against women, including through the use of sanctions, where appropriate;
  - abolishing laws and practices which discriminate against women.



3. The implementation of the provisions of this Convention by the Parties, in particular measures to protect the rights of victims, shall be secured without discrimination on any ground such as sex, gender, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth, sexual orientation, gender identity, age, state of health, disability, marital status, migrant or refugee status, or other status.
4. Special measures that are necessary to prevent and protect women from gender-based violence shall not be considered discrimination under the terms of this Convention.

### ARTICLE 4(1): PROPOSAL TO DELETE THE TERM “THE RIGHT TO LIVE FREE FROM VIOLENCE”

*The UK has proposed to delete the term “the right to live free from violence” claiming that there is no right to live free from violence in the private and public sphere.*

Amnesty International disagrees. The right to life, the right not to suffer torture and other ill-treatment, and the right to liberty and security of their person, are human rights, and the state is obliged under international law to prevent abuses of these rights by others, using all reasonable measures. States must ensure that this right is protected in national law and policy (this is normally the aim of criminal justice measures such as laws against murder and assault) and provide reparation when violence is committed, such as provision of healthcare.

Amnesty International’s concerns about this amendment, as with the proposed amendment for Article 3(a), are that this proposal limits the basic legal obligation of this treaty.

### ARTICLE 4(3): PROPOSALS TO DELETE SEXUAL ORIENTATION AND GENDER IDENTITY AS IMPERMISSIBLE GROUNDS OF DISCRIMINATION

*The Russian Federation and the Holy See have proposed excluding violence against lesbian, bisexual and transgender women from the scope of this treaty, as it seeks to delete the reference to sexual orientation and gender identity as impermissible grounds of discrimination in Article 4(3).*

Amnesty International shares the view of ILGA Europe, that it is vitally important to maintain sexual orientation and gender identity explicitly as impermissible grounds of discrimination in the text of this treaty.

There is overwhelming evidence that lesbian, bisexual and transgender women are particularly targeted for violence because of their sexual orientation and/or gender identity. This has been recognised widely by the Committee of Ministers and the Parliamentary Assembly of the Council of Europe (PACE), as well as the Council of Europe Commissioner for Human Rights, and other international human rights mechanisms and institutions:

- The Committee of Ministers in its Recommendation CM/Rec(2010)5 to Council of

Europe member states on measures to combat discrimination on grounds of sexual orientation or gender identity recognised that: “ lesbian, gay, bisexual and transgender persons have been for centuries and are still subjected to homophobia, transphobia and other forms of intolerance and discrimination even within their family – including criminalisation, marginalisation, social exclusion and violence – on grounds of sexual orientation or gender identity, and that specific action is required in order to ensure the full enjoyment of the human rights of these persons.”

- PACE also highlighted that lesbian, gay, bisexual, transgender and intersex persons “still face deeply rooted prejudices, hostility and widespread discrimination all over Europe.”<sup>4</sup>
- The Commissioner for Human Rights, Mr Thomas Hammarberg stressed: “Transgender people experience a high degree of discrimination, intolerance and outright violence. Their basic human rights are violated, including the right to life.”<sup>5</sup>
- The Organization for Security and Cooperation in Europe (OSCE) Office for Democratic Institutions and Human Rights stated that “homophobic hate crimes and incidents often show a high degree of cruelty and brutality.... transgender people seem to be even more vulnerable”.<sup>6</sup>

More specifically in relation to lesbian, bisexual and transgender women:

- PACE stated that “lesbian, bisexual and transgender women face an increased risk of gender-based violence (in particular rape, sexual violence and harassment, as well as forced marriages).”<sup>7</sup>
- Similarly, the UN Special Rapporteur on violence against women stated that “Gender-based violence ... is particularly acute when combined with discrimination on the basis of sexual orientation or gender identity”.<sup>8</sup>

The full protections of the Convention must be clearly and explicitly available to this group who are in particular need of enhanced measures to ensure that they can enjoy their human rights to life, and to physical and mental integrity. There must be specific reference to sexual orientation and gender identity in this Convention. Without it, lesbian, bisexual and

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<sup>4</sup> Discrimination on the basis of sexual orientation and gender identity - Resolution 1728 (2010) – Para 3.

<sup>5</sup> Human Rights and Gender Identity - Issue Paper by the Council of Europe Commissioner for Human Rights.

<sup>6</sup> Hate Crimes in the OSCE Region: Incidents and Responses; Annual Report 2006; Warsaw: OSCE/ODIHR – Pages 51 -54.

<sup>7</sup> Recommendation 1915 (2010)1 - Discrimination on the basis of sexual orientation and gender identity – para. 3.3.

<sup>8</sup> Oral Statement at the 50 Session of the Commission on Human Rights - April 10, 2002 – Radhika Coomaraswamy, UN Special Rapporteur on violence against women, its causes and consequences.

transgender women are much less likely in practice to be able to claim their rights.

Some states argue that sexual orientation and gender identity are not recognised in international human rights law and should therefore be excluded, or that these are not clearly understood terms. This is not correct.

- "Sexual orientation" has been used in numerous judgments of the European Court of Human Rights relating to Articles 8 and 14;<sup>9</sup> also, it is already included in the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (Article 2, non-discrimination). At the European Union, the term is included in many agreements.<sup>10</sup>
- "Gender identity" has also been recognised by the European Court of Human Rights as falling within the elements protected by Article 8 of the Convention.<sup>11</sup>
- The terms "sexual orientation and gender identity" have been frequently used in the human rights discourse of the UN human rights treaty bodies, for example, in the General Comment of the Committee on Economic, Social and Cultural Rights on non-discrimination.<sup>12</sup>
- And as stated above, the Committee of Ministers itself has often used the terms, most authoritatively in Recommendation CM/Rec(2010)5 on measures to combat discrimination on grounds of sexual orientation or gender identity.

The draft Convention's definition of "domestic violence,"<sup>13</sup> taken in conjunction with the inclusion of sexual orientation in the non-discrimination article, makes it clear that same-sex partners should be covered by the domestic violence provisions of the Convention. Some member states may be concerned that this amounts to a form of legal recognition of same-sex partners. However this is not the case. It does not change their legal status in any way - just as including unmarried heterosexual couples in the provisions of the Convention does not change their legal status.

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<sup>9</sup> See for example *S.L. v. Austria*, para. 37: "the Court reiterates that sexual orientation is a concept covered by Article 14 ... Just like differences [in treatment] based on sex..."

<sup>10</sup> For example. Article 19, Treaty on the Functioning of the European Union, Art 21, EU Charter of Fundamental Rights.

<sup>11</sup> Article 8, in *Pretty v. United Kingdom* - para. 61: "... the concept of private life is a broad term not susceptible to exhaustive definition. ... It can sometimes embrace aspects of an individual's physical and social identity ... Elements such as, for example, gender identification .... fall within the personal sphere protected by Art. 8".

<sup>12</sup> Paragraph 32 of General Comment 20, Committee on Economic, Social and Cultural Rights, UN Doc E/C.12/GC/20, 2 July 2009, which has the title "Sexual Orientation and Gender Identity."

<sup>13</sup> "domestic violence" shall mean all acts of physical, sexual, psychological or economic violence that occur within the family or domestic unit or between former or current spouses or partners, whether or not the perpetrator shares or has shared the same residence with the victim.

# ARTICLE 5: PROPOSALS TO REMOVE EXISTING INTERNATIONAL LAW REFERENCES TO STATE RESPONSIBILITY

Article 5 as currently drafted reads as follows:

## **Principles of state responsibility, including due diligence**

1. Parties shall refrain from engaging in any act of violence against women and ensure that state authorities, officials, agents, institutions and other actors acting on behalf of the state act in conformity with this obligation.
2. Parties shall take the necessary legislative and other measures to exercise due diligence to prevent, investigate, punish and provide reparation for acts of violence covered by the scope of this Convention that are perpetrated by non-state actors.

*The United Kingdom has proposed to remove the term “due diligence” from this Article.*

“Due diligence” is a clearly understood term in international human rights law: in this context, it refers to the comprehensive and interdisciplinary approach required to prevent, investigate and punish acts of violence against women.

This term is used by many international human rights bodies, including the European Court of Human Rights, most recently in the case of *Opuz v Turkey*.<sup>14</sup> In its judgment on this case the Court applied the concept of “due diligence” in its assessment of the key issues<sup>15</sup> and it also provided a full explanation of the history and use of the term.<sup>16</sup>

This term has been used since the early 1990s, including in the UN Declaration on Violence against Women, and in successive reports of the Special Rapporteurs on violence against

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<sup>14</sup> Case of *Opuz v. Turkey* (Application no. 33401/02) 9 June 2009.

<sup>15</sup> Above, note 13, paragraph 131. “On the above understanding, the Court will ascertain whether the national authorities have fulfilled their positive obligation to take preventive operational measures to protect the applicant’s mother’s right to life. In this connection, it must establish whether the authorities knew or ought to have known at the time of the existence of a real and immediate risk to the life of the applicant’s mother from criminal acts by H.O. As it appears from the parties’ submissions, a crucial question in the instant case is whether the local authorities displayed due diligence to prevent violence against the applicant and her mother, in particular by pursuing criminal or other appropriate preventive measures against H.O. despite the withdrawal of complaints by the victims.”

<sup>16</sup> Above, note 13, paragraphs 72-90.

women, and expanded in detail in Special Rapporteur Yakin Erturk's report of 2006 on due diligence.<sup>17</sup>

The obligation to exercise due diligence to prevent, investigate and punish acts of violence against women is included in the Inter-American Convention on Violence against Women, the Treaty of Belem do Para, in Article 7(b).<sup>18</sup>

Amnesty International therefore considers that the term is appropriate treaty language, and removing it from an article relating to state responsibility would undermine existing international law.

## ARTICLE 17: PROPOSAL TO WEAKEN THE OBLIGATION TO TAKE ACTION TO PREVENT VIOLENCE AGAINST WOMEN THROUGH MEDIA MESSAGES

Article 17 as currently drafted reads as follows:

### **Participation of the private sector and the media**

1. Parties shall encourage the private sector, the information and communication technology sector and the media, with due respect for freedom of expression and their independence, to participate in the elaboration and implementation of policies and to set guidelines and self-regulatory standards to prevent violence against women and to enhance respect for their dignity.
2. Parties shall develop and promote, in co-operation with private sector actors, skills among children, parents and educators on how to deal with the information and communications environment that provides access to degrading content of a sexual or violent nature which might be harmful.

*The United Kingdom propose to substitute the current positive requirement in Article 17 to undertake the task of formulating policies, guidelines and standards for self-regulation in*

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<sup>17</sup> "The due diligence standard as a tool for the elimination of violence against women" Special Rapporteur on violence against women, its causes and consequences, UN Doc E/CN.4/2006/61, 20 January 2006.

<sup>18</sup> Article 7, Treaty of Belem do Para:

"The States Parties condemn all forms of violence against women and agree to pursue, by all appropriate means and without delay, policies to prevent, punish and eradicate such violence and undertake to: [...]

b. apply due diligence to prevent, investigate and impose penalties for violence against women;"

*cooperation with the media, while respecting for their freedom of expression, with a vague requirement to “encourage” the media to change their policies and practices.*

A key method of changing attitudes which encourage and permit violence against women is to work with the media to ensure that misogynistic attitudes are countered and addressed, and so that the media reflect women’s real experiences, talents, preferences and aspirations. Indeed, international human rights law requires already that states take measures to transform discriminatory attitudes.<sup>19</sup>

Amnesty International consider that this amendment would make the article empty of any real content, and fall short of already existing international law requirements under the Convention on the Elimination of All Forms of Discrimination against Women.

## **ARTICLE 21: PROPOSAL TO DELETE THE DRAFT PROVISION ON ASSISTANCE IN INDIVIDUAL AND COLLECTIVE COMPLAINTS**

Article 21 as currently drafted reads as follows:

### **Assistance in individual/collective complaints**

Parties shall ensure that victims have information on and access to applicable regional and international complaints mechanisms. Parties shall promote the provision of sensitive and knowledgeable assistance to victims in presenting any such complaints.

*The Russian Federation has proposed to delete this Article. The reason given for this amendment is that the filing of such complaints to international human rights bodies should be undertaken by the applicant or their legal representative, and that a state should not serve as a mediator.*

Amnesty International believes that this is a very important provision, which must be retained. It aims to assist women in communicating with the international human rights institutions with their experiences: this would ensure that the visibility of the problems of violence against women is improved, and that women have improved access to justice.

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<sup>19</sup> Articles 2(e) and (f) and 5(a) of the Convention on the Elimination of All Forms of Discrimination against Women.

In comparison with men, there are relatively few applications by women and girls to the international treaty monitoring bodies, the Special Procedures of the Human Rights Council and regional human rights institutions.

The obligation on states contained in Article 21 to ensure access to information about international mechanisms to enforce women's rights is an important aspect of "temporary special measures" as required by Article 4 of CEDAW and Article 4(4) of the current draft of the CAHVIO Convention itself. The current wording of Article 21 allows for states to delegate these functions, through provision of support to independent bodies. Amnesty International therefore disagrees with the Russian Federation's reasons for proposing this amendment: states can facilitate the provision of information and assistance without compromising the independence of the complaints process or the obligation to secure privileged communication between legal representatives and applicants.

## ARTICLE 37: PROPOSAL THAT FORCED MARRIAGE NOT BE SUBJECT TO CRIMINAL SANCTION

Article 37 as currently drafted reads as follows:

### **Forced marriage**

1. Parties shall take the necessary legislative or other measures to ensure that the intentional conduct of forcing an adult or a child to enter into a marriage is criminalised.
2. Parties shall take the necessary legislative or other measures to ensure that the intentional conduct of luring an adult or a child to the territory of a Party or state other than the one she or he resides in with the purpose of forcing this adult or child to enter into a marriage is criminalised.

*The UK proposes that there should be no requirement to criminalize forced marriage.*

The current CAHVIO draft mandates a comprehensive approach to forced marriage, including education and other methods of prevention, provision of civil remedies (such as injunctions), services and information to victims and potential victims at risk, as well as the requirement to criminalize acts of forced marriage.

During the CAHVIO negotiations, the UK made many interventions describing their current legal regime, which does not include criminal penalties, and strongly urged the negotiating group to follow their lead.

Given the seriousness of forced marriage – that it often involves violence, threats, and rape, and that it is a serious violation of the dignity and autonomy of men and women affected –

the drafting group did not wish to follow this suggestion.

Amnesty International agrees that this is the correct approach, and that forcing a person to enter into marriage without their free agreement should be criminalized.

## ARTICLE 40: PROPOSAL TO LIMIT THE EFFECTIVENESS OF LEGAL PROHIBITION OF SEXUAL HARASSMENT

Article 40 as currently drafted reads as follows:

### **Sexual harassment**

Parties shall take the necessary legislative or other measures to ensure that 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, is subject to criminal or other legal sanction.

The UK has proposed that to be criminalized, conduct has both the purpose **and** effect of harassing, rather than the purpose **or** effect.

The Explanatory Memorandum of the draft convention (which explains its provisions in detail, as a guide to its future use) clarifies that:

“the above acts must have the purpose or effect of violating the dignity of the victim. This is the case if the conduct in question creates an intimidating, hostile, degrading, humiliating or offensive environment. It is intended to capture a pattern of behaviour whose individual elements, if taken on their own, may not necessarily result in a sanction.”

Article 40 was carefully drafted to address the fact that many perpetrators of sexual harassment seek to justify their actions by saying their behaviour was “harmless fun” or “just a normal part of life” and not intended to harass: when in fact persistent acts, gestures or words – for example, making demands for sex to a passer-by, calling out repeatedly to women and girls in the street in a lewd manner, or making comments about women’s bodies that are portrayed as a “joke” in the workplace – can create an intimidating, hostile, degrading, humiliating or offensive environment.



To make this change would significantly weaken this important provision.

## ARTICLE 59: PROPOSALS TO LIMIT THE EFFECTIVENESS OF PROTECTION TO MIGRANT WOMEN

Article 59 as currently drafted reads as follows:

### Residence status

1. Parties shall take the necessary legislative or other measures to ensure that victims whose residence status depends on that of the spouse or partner as recognised by internal law, in the event of the dissolution of the marriage or the relationship, are granted in the event of particularly difficult circumstances, upon application, an autonomous residence permit irrespective of the duration of the marriage or the relationship. The conditions relating to the granting and duration of the autonomous residence permit are established by internal law.
2. Parties shall take the necessary legislative or other measures to ensure that victims may obtain suspension of expulsion proceedings initiated in relation to a residence status dependent on that of the spouse or partner as recognised by internal law to enable them to apply for an autonomous residence permit.
3. Parties shall issue a renewable residence permit to victims, in one or other of the two following situations or in both:
  - a. the competent authority considers that their stay is necessary owing to their personal situation;
  - b. the competent authority considers that their stay is necessary for the purpose of their co-operation with the competent authorities in investigation or criminal proceedings.
4. Parties shall take the necessary legislative or other measures to ensure that victims of forced marriage brought into another country for the purpose of the marriage and who, as a result, have lost their residence status in the country where they habitually reside, may regain this status.

*Italy has proposed to add the term “as recognized by internal law” to Article 59 (3) so that it reads: “Parties shall issue a renewable residence permit to victims, **as recognized by internal law**, in one of the two following situations, or in both”*

Italy has suggested that this would make the provision more clear and precise. Amnesty International is concerned that this addition would cause ambiguity. To include the additional wording in this provision would potentially allow states to redraft the definition of “victim” narrowly in domestic law, in a manner which would deny women and girls a remedy.

Italy has also proposed making an addition to Article 59(4) so that it reads:

“Parties shall take the necessary legislative or other measures to ensure that victims of forced marriage brought into another country for the purpose of the marriage and who, as a result, have lost their residence status in the country where they habitually reside, may regain this status **in the event of the dissolution or annulment of the marriage.**”

Amnesty International is concerned that the amendment proposed to Article 59 (4) would make applications to resolve residency dependent on first securing a divorce or annulment. This would potentially deny women and child victims of forced marriage a prompt and effective remedy, in situations where divorce or annulment processes are lengthy. Victims of forced marriages should have prompt resolution of their residency situation once the nature of the crime they have been subjected to comes to light, so that they can continue their lives in safety and dignity.

## ARTICLE 60: PROPOSALS WHICH THREATEN TO UNDERMINE EXISTING INTERNATIONAL REFUGEE LAW

Article 60 as currently drafted reads as follows:

### Gender-based asylum claims

1. Parties shall take the necessary legislative or other measures to ensure that gender-based violence against women may be recognised as a form of persecution within the meaning of Article 1 A (2) of the 1951 Convention relating to the Status of Refugees and as a form of serious harm giving rise to complementary/subsidiary protection.
2. Parties shall ensure that a gender-sensitive interpretation is given to each of the Convention grounds and that where it is established that the persecution feared is for one or more of these grounds, applicants shall be granted refugee status according to the applicable relevant instruments.
3. Parties shall take the necessary legislative or other measures to develop gender-sensitive reception procedures and support services for asylum-seekers as well as gender guidelines and gender-sensitive asylum procedures, including refugee status determination and application for international protection.

*The Russian Federation proposes the following amendments.*

*“Parties shall **consider** the necessary legislative or other measures to ensure that gender-*

*based violence against women occurring during armed conflicts; the systematic use of rape as form<sup>20</sup> or the persecution against populations or ethnical minorities, women at risk of so-called “honour crimes” in their countries of origin, women victims at risk of female genital mutilation may be recognized as a form of persecution.”*

The proposal for amendment would simply require states parties to “consider” taking the necessary legislative or other measures to ensure that gender-based violence against women may be recognized as a form of persecution under the 1951 Refugee Convention.

This is a far weaker obligation in the current draft, in which state parties state that they shall take such measures.

Furthermore, the specification of a short, exhaustive list of particular crimes against women would have the effect of limiting the forms of persecution that states are willing in practice to accept, and this would have the effect in practice of denying women their full right to asylum.

## **ARTICLE 61: PROPOSED AMENDMENT WHICH THREATENS TO UNDERMINE EXISTING INTERNATIONAL REFUGEE LAW AND INTERNATIONAL HUMAN RIGHTS LAW ON NON-REFOULEMENT**

Article 61 as currently drafted reads as follows:

### **Non-refoulement**

1. Parties shall take the necessary legislative or other measures to respect the principle of non-refoulement in accordance with existing obligations under international law.
2. Parties shall take the necessary legislative or other measures to ensure that victims of violence against women in need of protection, regardless of their status or residence, shall not be returned under any circumstances to any country where their life would be at risk or where they might be subjected to torture or inhuman or degrading treatment or punishment.

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<sup>20</sup> This is the exact wording of the text proposed by the Russian Federation which has been provided to Amnesty International.

The current version of Article 61 has been carefully drafted to reflect current international refugee law on every asylum-seeker's right not to be returned to a country where she or he would suffer persecution. The UK has proposed an amendment which would raise the level of risk of persecution that would have to be proved for a person to avail themselves of this right.

*The UK's proposal is:*

*"Parties shall take the necessary legislative or other measures to ensure that victims of violence against women who are in need of protection, regardless of their status or residence, shall not be returned under any circumstances to any country where their life would be a **real risk** or where they **would be at real risk of torture or inhuman or degrading treatment or punishment.**"*

This is entirely unacceptable. Women and girls who face gender-based persecution must have the same rights to protection as any other asylum seeker, and should not have to prove a higher level of risk than others seeking the same protection.

## CHAPTER IX: MONITORING MECHANISM, POWERS AND RULES OF PROCEDURE

Articles 66-70 of the current draft of CAHVIO set out the mechanisms for monitoring implementation of the treaty.<sup>21</sup>

The provisions of Chapter IX, establish the committee of independent experts, known as GREVIO, which will monitor the states' performance of their duties under the Convention to prevent, investigate, and prosecute violence against women. Amnesty International considers that the current Articles 66-70 are appropriate and effective. Amnesty International opposes any change in this section.

Article 66 and 68 are mutually reinforcing, not self-contradictory. Chapter IX promotes effective and independent action of the monitoring body, to elaborate its own rules of procedure, using the provisions of the existing treaty as its basic method of working. These

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<sup>21</sup> Draft Council of Europe Convention on preventing and combating violence against women and domestic violence is available at [http://www.coe.int/t/dghl/standardsetting/violence/CAHVIO%20\\_2011\\_%205\\_en.pdf](http://www.coe.int/t/dghl/standardsetting/violence/CAHVIO%20_2011_%205_en.pdf).

provisions have been designed as an integrated process to foster timely, effective and independent work by GREVIO.

Concerning the procedure for monitoring implementation of the Convention by GREVIO, as set out in Article 68, the Russian Federation has proposed to amend the text in order to mandate the Committee of the Parties to make decisions on publication of reports and on country visits by GREVIO. Amnesty International considers that this would lead to delay and complexity of process in matters which are properly in the remit of the independent experts nominated to serve on the GREVIO.

The Russian Federation has suggested deleting Article 79(3). This article relates to the assessments of reservations to the treaty. Amnesty International welcomes strongly the integration of a process to review reservations regularly, and to require explanation of the reasons for reservations from states. Frequently reservations are lodged which are contrary to the object and purpose of treaties, or are vague, or contradict the principle that the provisions of internal law may not be invoked to justify failure to perform a treaty: a procedure which requires the provision of detailed reasons for a reservation will therefore strengthen the effective respect for the integrity of treaties.

The Russian Federation has suggested an alternative proposal in the event that deleting the article is not accepted, which is to require the Committee of the Parties to assess reservations, rather than the GREVIO. Amnesty International considers that the GREVIO members will be well qualified to assess whether or not reservations are inhibiting the proper implementation of the treaty, and to refer the matter of reservations to the Committee of the Parties would lead to delays in dealing with these important issues.

## **AMNESTY INTERNATIONAL'S RECOMMENDATION**

Amnesty International recommends that all the proposed amendments outlined in this document be rejected by member states of the Council of Europe, so that the Draft Convention on preventing and combating violence against women and domestic violence can be adopted with the strong and effective provisions that are required to address the problem of violence against women in Europe.

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