

**RECOMMENDATIONS FROM
AMNESTY INTERNATIONAL ON
THE PROPOSAL FOR A
DIRECTIVE OF THE EUROPEAN
PARLIAMENT AND OF THE
COUNCIL ON COMBATING
VIOLENCE AGAINST WOMEN AND
DOMESTIC VIOLENCE**

POSITION PAPER

CONTENTS

INTRODUCTION	3
Note on terminology	4
1. THE PRINCIPLES OF NON-DISCRIMINATION AND EQUALITY SHOULD UNDERPIN EVERY ASPECT OF THE DIRECTIVE	4
1.1 Sex workers	5
1.2 Lesbian, bisexual, transgender, non-binary, queer and intersex people	5
1.3 Migrants	5
2. DEFINITION OF RAPE	6
3. ANALYSIS OF THE DEFINITIONS OF ONLINE CRIMES OF VIOLENCE AGAINST WOMEN	7
4. INCLUSION OF CRIMINAL OFFENCES BASED ON SEXUAL EXPLOITATION	8
4.1 Forced marriage (Article 37 of the Istanbul Convention)	8
4.2 Denial of sexual and reproductive rights	8
5. SEX WORK SHOULD NOT BE CRIMINALIZED IN THE DIRECTIVE	9
6. ENSURING EFFECTIVE PROTECTION FOR WOMEN AND CHILDREN AT RISK OF DOMESTIC VIOLENCE, INCLUDING POST-RELATIONSHIP VIOLENCE	10
7. ACCESS TO SEXUAL AND REPRODUCTIVE HEALTHCARE AS AN ASPECT OF REPARATION	11
8. COMPENSATION WHERE THE PERPETRATOR HAS NO FUNDS	13
9. REFERENCES TO COMPREHENSIVE SEXUALITY EDUCATION SHOULD BE USED CONSISTENTLY THROUGHOUT THE DIRECTIVE	13

INTRODUCTION

Amnesty International welcomes the European Commission's proposal for a Directive on combating violence against women and domestic violence (COM (2022) 105 final, 8 March 2022) (hereinafter "draft Directive"). As this draft Directive is negotiated, we urge the Parliament, Council, and the Commission to consider our recommendations that would strengthen the protection of the rights of survivors of gender-based violence and domestic violence.

We welcome that this initiative provides comprehensive solutions, incorporating prevention, protection, and prosecution for a range of criminal offences constituting gender-based violence. We encourage EU decisionmakers to incorporate in the Directive, as well as accompanying guidance and policies, **a truly effective approach to gender-based violence. Such an approach should be based on research into the specific needs** for accessing protection, support, justice and remedies of different groups of survivors of gender-based violence, look at the extent of crimes of all forms of gender-based violence in European societies and aim to address its root causes.

Additionally, to be truly effective in addressing the needs of women and girls who are targeted for gender-based violence, the EU should **ratify the Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention) within the broadest possible scope of EU competence.** We welcome current developments moving towards accession to the Istanbul Convention, after years of a stalemate mainly due to resistance of a few member states. We regret the narrow scope of this accession limited to matters regarding judicial cooperation in criminal matters and with regard to asylum and non-refoulement and **urge the EU to work towards ensuring broader accession** with urgency. In addition, we support the European Parliament's call to **include gender-based violence as a "Euro-crime"** as listed in TFEU Article 83(1) given that they are "particularly serious," have significant impact, and that there is "a special need to combat" them.

Since this Directive puts forward a number of new criminal offences under EU law, we provide input to **further reflect international human rights law and standards**, including from the Istanbul Convention. In addition to defining various forms of gender-based violence as criminal offences as per the Istanbul Convention, we also provide suggestions where the Directive can be strengthened to ensure other comprehensive policies and measures are available and accessible to all victims/survivors of gender-based violence including regarding better prevention, protection, support and access to timely, effective and transformative reparation.

Such comprehensive action reflects the international human rights law and standards which associate gender-based violence with violations of the right to life, the right to be free from torture and other ill-treatment, as well as violations of the right to equality and non-discrimination. The European Court of Human Rights, as well as the UN treaty bodies such as the Committee against Torture, and the Committee on the Elimination of Discrimination against Women have all specified the range of crimes of violence against women. This comprehensive approach to gender-based violence is reflected also in the practice of the Istanbul Convention.

All forms of gender-based violence should be addressed comprehensively however they manifest in order to address harms and ensure their prevention. As a step forward to addressing impunity and ending the stigma faced by survivors of gender-based violence, all forms of gender-based violence as listed in the Istanbul Convention should be identified as criminal offences, and other concerted efforts taken to challenge widespread harmful gender stereotypes underlying these crimes and introduce comprehensive policies for prevention of gender-based violence.

The draft Directive makes important progress in providing for various measures for prevention of gender-based violence, including education, public awareness raising campaigns and training for professionals; in providing protection for women and girls who are known to be at immediate risk of violence, and in providing accessible services to all victims/survivors of gender-based violence, taking account of the intersecting forms of discrimination victims/survivors may face, so that they can recover from the effects of gender-based violence.

NOTE ON TERMINOLOGY

Amnesty International is using the terms “victim” and “survivor” interchangeably. The term “**victim**” is customarily used to describe people whose human rights have been violated, for example, it is the term adopted in the United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power and the Rome Statute of the International Criminal Court. It is also the term used in the draft Directive and existing EU law and policy, including the Victims’ Rights Directive. While acknowledging that “victim” is the appropriate legal term, Amnesty International recognizes that the term “**survivor**” better reflects the strength and resilience of women and girls who have experienced sexual violence and is the preferred term for many women and girls, and many human rights activists.

Amnesty International is using both the terms “gender-based violence” and “violence against women (and girls)”. While the two terms are often used interchangeably, they have overlapping and different connotations.

The term “**gender-based violence**” (GBV) is broader and refers to any harmful acts against an individual or a group because of their sex/gender, sexual orientation, or gender identity or expression, or violence that affects persons of a particular sex/gender, sexual orientation, or gender identity or expression disproportionately. It is rooted in gender inequality, the abuse of power and harmful gender stereotypes and norms. The term also underscores that the structural, gender-based power differentials place certain groups and individuals at risk for multiple forms of violence. While women and girls, LGBTIQ+ and gender non-confirming people suffer disproportionately from GBV, men and boys can also be targeted for being perceived to transgress gender norms.

The term “**violence against women (and girls)**” (VAWG) refers to any act of gender-based violence that results in, or is likely to result in, physical, sexual or mental harm or suffering to women and girls, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life. Violence against women and girls encompasses, but is not limited to, physical, sexual and psychological violence occurring in the family or within the community and perpetrated or condoned by the State.

1. THE PRINCIPLES OF NON-DISCRIMINATION AND EQUALITY SHOULD UNDERPIN EVERY ASPECT OF THE DIRECTIVE

While the European Union should ratify the Istanbul Convention in full, and define all forms of gender-based violence against women and girls as “Euro-crimes”, this draft Directive is an important steppingstone for survivors of all forms of gender-based violence, in terms of prevention, protection, access to remedies and training of professionals, so that services effectively help survivors cope in the aftermath of facing violence.

However, we recommend that the Directive should be strengthened to make the benefits of the Directive fully accessible to all groups of survivors, and truly transformative.

Women and girls frequently experience intersecting forms of discrimination based on various aspects of their identity¹ for example, race, religion, migration status, status as an Indigenous person and age, among others; and for reasons arising from their situation, for example, living in rural settings, being imprisoned or detained, being involved in sex work². These identities and situations might make it more likely that they would be targeted for gender-based violence; their suffering may be exacerbated due to

¹ Intersecting forms of discrimination could be based on two or more impermissible grounds for discrimination including nationality, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or other opinion, membership of a national minorities (including Roma, Sami, and Travellers), property, birth, health status or disability, sex, gender, sexual orientation, gender identity, sex characteristics, among others.

² Situations which make it more likely that women and girls are subjected to violence, or need to seek remedies and reparation, include: living in rural areas, those without stable housing, or who are homeless, women who are responsible for care of children, migrant, asylum-seeking, refugee without resident permit, or with a resident permit based on their relationship with a perpetrator, living with addiction or other mental health conditions, women who are detained or imprisoned, involvement in sex work.

their identity or situation; or they may face particular challenges in seeking support or health services, or access to justice and remedy. To be effective and human rights-based, prevention, protection, access to justice and reparation should deal with the impact of intersectional discrimination effectively and consistently.

We recommend that Article 2.1 is amended to include the different grounds as listed in Article 35, including women with disabilities, women living in rural areas, women with dependant residence status or permit, undocumented migrant women, women applying for international protection, women fleeing from armed conflict, women affected by homelessness, women with a minority racial or ethnic background, women sex workers, women detainees, or older women.

1.1 SEX WORKERS

We welcome the inclusion of sex workers as a specific group at risk in the Directive. We also welcome the use of the term “sex worker” (preambular paragraph 56, Article 35). People involved in sex work have chosen this terminology, and usually consider terms relating to “prostitution” or “prostitutes” to be stigmatising. Multiple structural and intersecting factors are at the core of the violence and other human rights violations experienced by sex workers, including high levels of stigma, racism, transphobia, harmful stereotyping and discrimination. Due to the same factors, sex workers also experience multiple barriers in access to protection, services, justice and remedies. It is crucial that sex workers remain included in the list of groups of risk as proposed in the draft of the Commission to ensure their rights to protection, justice and reparation, and special measures to prevent violence being perpetrated against them.

1.2 LESBIAN, BISEXUAL, TRANSGENDER, NON-BINARY, QUEER AND INTERSEX PEOPLE

Similarly, **lesbian, bisexual, transgender, non-binary, queer and intersex people are often targeted for gender-based violence**. For this reason, “sexual orientation”, “gender identity and expression” and “sex characteristics” should be included as impermissible grounds for discrimination, and there should be tailored plans that account for their specific needs and concerns in policies and interventions aimed at reporting, prevention (education for respect for all), protection (victims of domestic or intimate partner violence should be able to access protection orders, irrespective of their gender, gender identity, sexual orientation or sex characteristics and/or these of their partner), and prosecution of crimes against them. The delivery of support services and reparation must also reflect the needs of LGBTQI people and must not discriminate against them, and in particular trans people, when ensuring access to shelters or any other protection and support services for survivors. We welcome the inclusion of the **different intersecting grounds that exacerbate gender-based violence** in preambular paragraph 11 of the Commission proposal. These grounds should be included in all relevant articles in the Directive, especially Article 35, “Targeted support for victims with specific needs and groups at risk.”

1.3 MIGRANTS

Migrants who suffer gender-based violence should have access to justice and remedy and be able to report and/or file legal complaints for the abuses suffered without fear of deportation or repatriation. Victims of domestic violence, in particular those whose migration status depend on their abusive partners, may be forced to live in abusive relationships because of the fear of losing their status and being deported in the event of discontinuation of cohabitation.

Migrants, asylum seekers, undocumented people, or people whose residence permit is dependent on the person perpetrating violence (for example, an abusive partner or employer) often face barriers to seek health care and support services, access to protection, justice and reparation. Frequently, this is because they fear service providers will share their personal data, including their migration status, with authorities, triggering migration enforcement measures that can have consequences on their migration status or result in their deportation.

We therefore recommend the following amendments:

- To strengthen the provision on equality and non-discrimination, we recommend **moving paragraph 11 from the recital to the operative section** of the text, as a guarantee of equality to all victims.
- **Article 4. (g) Definition of sexual harassment at work.** Include the following amendment: (g) “sexual harassment at work” means any form of unwanted verbal, non-verbal or physical conduct of a sexual nature, where it occurs in the course of, linked with, or arising in matters of employment, occupation and self-employment, **including undocumented workers**, with the purpose or effect of violating the dignity of the victim, in particular when creating an intimidating, hostile, degrading, humiliating or offensive environment;
- **Art. 16. 5.** Ensure that victims’ data is not shared nor transferred to migration authorities and that there is **a firewall** to protect survivors’ access to services from migration enforcement. Remove the provision “*at least until completion of the first individual assessment referred to in Article 18*”.
- Add a clause in Article 27 “Specialist support to victims” to require Member States to ensure that **no victim shall face adverse consequences on their migration status** through seeking services, assistance, or access to justice.
- **Access to justice and effective remedies for migrant women.** The directive does not include provisions on independent residence permits and regularization for migrant women victims of gender-based violence. **Victims of domestic violence whose immigration status depends on their abusive partner should be able to get an independent residence permit.** Irregular migrant victims of gender-based violence should be able to regularize their situation to ensure they can access justice. In this regard, we propose amendments to cover this gap and ensure compliance with article 59 of the Istanbul Convention.³ **In this sense, the Directive should include the following provision in article 35: Member States shall lay down provisions ensuring the granting of a residence permit to women victims of violence. Member States shall lay down provisions ensuring the granting of an autonomous residence permit to victims whose residence status depends on that of the spouse or partner irrespective of the duration of the marriage or the relationship. Where a return decision has been issued, Member States shall lay suspend return proceedings to enable victims to apply for a residence permit.**

2. DEFINITION OF RAPE

We welcome the inclusion of the definition of rape, which is based on the lack of consent to sex given voluntarily and freely. This Directive represents an important opportunity for harmonisation of legislation across the EU on this crucial matter. We welcome the legal recognition that there are situations in which exercise of free will is not possible due to the physical or mental state of the survivor and that “consent is not voluntarily given in a state of unconsciousness, intoxication, sleep, illness, bodily injury or disability”. We consider that the reference to “the state of the survivor” is helpful in distinguishing between a short period of incapacity versus defining certain conditions as being incapable of consenting in general. However, for better clarity we recommend removing the word ‘disability’ from the text or

³ Istanbul Convention, art. 59, “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 the 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.

adding a clarification that a person's disability cannot be automatically assumed to render a person incapable of exercising free will or consenting.

Additionally, we have a number of concerns about Article 5 as proposed in the draft Directive.

- a) References to “a woman” are unnecessarily prescriptive and excludes other victims of rape. Girls, men, boys, transgender, non-binary, queer and intersex people are also subjected to rape, therefore we recommend that “a woman” in **Article 5(1) and (3) be changed to “a person”**.
- b) There are other forms of sexual violence which do not involve penetration, which have similar serious effects on survivors. Article 36(b) of the Istanbul Convention refers to “*engaging in other non-consensual acts of a sexual nature with a person.*” We recommend the inclusion of a similar clause in the Directive.
- c) While we welcome the first part of Article 5(3), we are concerned about the confusing wording in the second part of the sentence as currently drafted.

“Consent can be withdrawn at any moment during the act. The absence of consent cannot be refuted exclusively by the woman’s silence, verbal or physical non-resistance or past sexual conduct.”

We suggest instead that this second sentence be replaced by:

“A person’s silence, verbal or physical non-resistance, or past sexual conduct do not under any circumstances indicate consent. Consent must be informed, voluntary, and active, meaning that, through the demonstration of clear words or actions, a person has indicated permission to engage in mutually agreed-upon sexual activity. Consent must be given affirmatively to reflect the principle that sexual contact is only lawful where both or all parties affirmatively and freely consent and that it can be withdrawn at any moment during the act.”

The same wording should be inserted into Article 45(9) on sexual consent by children - that is, mature adolescents whose age is between the age of consent in accordance with national legislation, and 18 years.

3. ANALYSIS OF THE DEFINITIONS OF ONLINE CRIMES OF VIOLENCE AGAINST WOMEN⁴

In Articles 7, 8, and 9 of the draft Directive, the definitions of online violence against women refer to “a multitude of end users.” While this kind of vast sharing of images, etc., is very serious and rightly included in the definition of these crimes, often women and girls are effectively blackmailed by threats to share intimate or manipulated material to one person or a small group of people, for example, a husband, parents, or immediate family.

Article 7, “Non-consensual sharing of intimate or manipulated material” should include a definition of consent which reflects the affirmative consent approach which we recommend in Article 5.

In Article 8, “Cyber stalking” subparagraph (b) should remove the word “continuous”, as any surveillance without consent should be recognized as criminal.

In Article 10, “Cyber incitement to violence or hatred”, should include intentional conduct of inciting to violence or hatred directed against a group of persons or a member of such a group defined by reference to sex or gender, **or other prohibited grounds for discrimination including sexual orientation, gender identity and expression and sex characteristics**. In line with international law and standards – notably the ICCPT and the Rabat Plan of Action - only expression that amounts to intentional advocacy of hatred

⁴ See also GREVIO General Recommendation 1 on the digital dimension of violence against women adopted on 20 October 2021.

that amounts to incitement on the basis of these protected characteristics *may*, but need not be addressed through criminalisation. States should **consider the use of non-criminal sanctions where appropriate** and in all cases adhere to the obligation to **prevent discriminatory outcomes or other human rights harms** in the application of criminal law.

Article 25, “Measures to remove certain online material” should make clear that **it should in no way be used to justify attempts to weaken encryption or require the practice monitoring of content by platforms**, which would undermine human rights.

4. INCLUSION OF CRIMINAL OFFENCES BASED ON SEXUAL EXPLOITATION

We note that the draft Directive includes the definition of Female Genital Mutilation (FGM) as a criminal offence, on the basis that it is a form of sexual exploitation. Page 8 of the draft Directive includes the rationale for this:

“The term ‘sexual exploitation’ in Article 83(1) TFEU can be understood as any actual or attempted abuse of a position of vulnerability, differential power or trust, including, but not limited to, profiting monetarily, socially or politically from a sexual act with another person. The exploitative element can refer to the achievement of power or domination over another person for the purpose of sexual gratification, financial gain and/or advancement. The criminal offences of rape and female genital mutilation presuppose these elements. Female genital mutilation is an exploitative practice **performed for the purpose of preserving and asserting domination over women and girls and to exert social control over girls and women’s sexuality**. It is sometimes performed in the context of child or forced marriage or domestic violence. On the same basis, there are other violence. This reflects the typical power-imbalance between women and men in such cases, which is also prevalent in the case of rape.”

There are other crimes that can be included in the draft Directive, on the basis of this rationale:

4.1 FORCED MARRIAGE (ARTICLE 37 OF THE ISTANBUL CONVENTION)

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.

Sexual harassment is frequently perpetrated in schools and in public places, as well as in the workplace. The Directive should therefore seek to address sexual harassment, wherever it takes place. Article 40 of the Istanbul Convention could be used as a model:

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 sanction.

4.2 DENIAL OF SEXUAL AND REPRODUCTIVE RIGHTS

International human rights law has identified the forced imposition of sexual and reproductive interventions (such as forced sterilization and abortion) as crimes of torture or other ill-treatment: the same treaty bodies have identified that denial of access to sexual and reproductive health services, particularly abortion, can also constitute violations of the right to be free from torture or other ill-treatment.

The crimes of **forced sterilization and forced abortion** have already been recognized in international human rights law, and defined in Article 39 of the Istanbul Convention.

ARTICLE 39 – FORCED ABORTION AND FORCED STERILISATION

Parties shall take the necessary legislative or other measures to ensure that the following intentional conducts are criminalised:

- a. performing an abortion on a woman without her prior and informed consent;
- b. performing surgery which has the purpose or effect of terminating a woman's capacity to naturally reproduce without her prior and informed consent or understanding of the procedure.

Forced sterilization has been frequently imposed on women and girls with disabilities and women and girls from minority communities, especially Roma; it is therefore important to include forced sterilization in the Directive as a criminal offence.

5. SEX WORK SHOULD NOT BE CRIMINALIZED IN THE DIRECTIVE

We urge the European Union decision makers to resist calls to criminalize any aspect of sex work, namely criminalisation of the purchase of sex and activities of third parties who contribute to organizational aspects of sex work, and not to conflate sex work with human trafficking or sexual exploitation. Such conflation is inaccurate and misguided and has devastating consequences for the rights of sex workers.

Criminalizing any aspect of sex work harms sex workers, as it is not possible to criminalize only one party in a transaction without stigmatizing and increasing the vulnerabilities of the other party.

Criminalization of sex work violates the human rights of sex workers, including their right to be free from any form of discrimination. It has a disproportionate negative effect on women who are engaging in sex work, including trans, migrant and racialized women, as well as women living with disabilities.

There is ample evidence that laws criminalizing aspects of sex work other than the selling of sex, namely the purchase of sex and third parties' activities, also expose sex workers to an increased risk of gender-based violence by both private individuals and law enforcement officials.

Laws that criminalize the buying of sex or general organizational aspects of sex work, such as laws regarding brothel-keeping or solicitation, often force sex workers to work in ways that compromise their safety. Bans on buying sex criminalize the transaction between the sex worker and the client. While these laws are often intended to shift police focus, and therefore blame, from the sex worker to the client, in practice they can lead to sex workers having to take risks to protect their clients from detection by law enforcement, such as visiting locations determined only by their clients. Laws prohibiting organizational aspects of sex work often ban sex workers from working together, renting secure premises, or hiring security or other support staff, meaning that they face prosecution and other penalties if they try to operate in safety. In prohibiting activities that help keep sex workers safe, criminalization denies sex workers their right to security of person.

Conflating sex work with sexual exploitation or trafficking and/or defining sex work as violence *per se* deprives sex workers of agency and the right to make decisions over their own body and life. An inherent element of agency is the capacity to give or withhold consent. This makes consent not only a key concept for sex workers, but also key in addressing violence against women, as rightly stated in the draft Directive. The conflation of sex work and sexual exploitation moreover strengthens the stigma around sex work, which increases the risk of violence, conceals actual incidences of violence against sex workers, and heightens the threshold for sex workers to report violence.

We urge the European Union decision makers to ensure that sex workers' human rights are at the core of the proposals, avoid the harmful conflation of sex work with trafficking of human beings for the purpose of sexual exploitation and forced labour and refrain from criminalising aspects of sex work, with

the view of protecting, respecting, and fulfilling the human rights of sex workers. We call on the decision makers to ensure sex workers' led organisations are meaningfully consulted throughout the negotiation of the Directive and its implementation, including any guidance provided in this process by the Commission.

6. ENSURING EFFECTIVE PROTECTION FOR WOMEN AND CHILDREN AT RISK OF DOMESTIC VIOLENCE, INCLUDING POST-RELATIONSHIP VIOLENCE

We welcome that the draft Directive mandates protective measures for all forms of gender-based violence against women and girls. However, there are important aspects which should be added to the Directive to ensure effective protection in situations of domestic violence, and post-relationship violence.

Strengthened wording is necessary to ensure the effective enforcement of protection orders and in the case of domestic violence, and a comprehensive approach aimed at the safety of the parent who is subjected to violence, as well as children. This means that the Directive should go beyond mandating neutral safe spaces for contact to take place in recital paragraph 55 of the draft and Article 34 "Safety of Children." Article 34 of the Directive should mandate robust risk assessments to decide whether any contact with a parent who has abused the other parent is safe, before assessing whether an abusive parent should be able to exercise their rights of access to children.

Cases in the European Court of Human Rights⁵ and the CEDAW Committee⁶ show that perpetrators are often extremely persistent in forcing their estranged partner and children to maintain contact without their consent, and continuing to stalk, harass and attack them, sometimes fatally,⁷ even where a protection order is in place.⁸ It is therefore very important for the Directive to make accessible and effective protection orders which are effectively enforced, and to ensure that family law rules do not allow perpetrators access to their former families.

We therefore recommend:

- Article 16 on "Reporting of violence against women or domestic violence" subparagraph 4 should be added (in bold)

Where children report criminal offences of violence against women or domestic violence, Member States shall ensure that the reporting procedures are safe, confidential, designed and accessible in a child-friendly manner and language, in accordance with their age and maturity. If the offence involves the holder of parental responsibility, Member States should ensure reporting is not conditional upon this person's consent and **take measures to ensure an immediate risk assessment for the child and any other member of the family.**

- In Article 21 on "Emergency barring, restraining and protection orders" subparagraph 1, the following addition should be included (in bold):

Member States shall ensure that, in situations of immediate danger for the victim's or their dependant's health or safety, the competent authorities issue orders addressed at an offender or suspect of violence covered by this Directive to vacate the residence of the victim

⁵ Opuz v Turkey ECHR 33401/02 (9 June 2009) Kurt v Austria, ECHR 62903/15 (15 June 2021)

⁶ González Carreño v Spain, Communication No. 47/2012, CEDAW/C/58/D/47/2012, 15 August 2014

⁷ González Carreño v Spain, Communication No. 47/2012, CEDAW/C/58/D/47/2012, 15 August 2014, Kurt v Austria, ECHR 62903/15 (15 June 2021)

⁸ Kurt v Austria, ECHR 62903/15 (15 June 2021)

or their dependants for a sufficient period of time and to prohibit the offender or suspect from entering the residence or to enter the victim's workplace, **a dependant child's school**, or contacting the victim or their dependants in any way. Such orders shall have immediate effect and not be dependent on a victim reporting the criminal offence.

This addition is to reflect the experience of the family in the ECHR case of *Kurt v Austria*, where an estranged father had a protection order imposed on him to keep away from his ex-wife's home, so he went to his child's school instead, and killed the child.

- Article 34 "Safety of children" is positive but should go much further. Perpetrators often use situations where they have family court-mandated contact with their children as an opportunity to harass, threaten or attack their former partner or their children. Even if the contact takes place in a supervised space, the situations around arriving and departing from the supervised space often give opportunities for perpetrators to commit acts of psychological or physical violence. Therefore Article 34 should be amended as follows:

Member States shall establish and maintain safe places which allow a safe contact between a child and a holder of parental responsibilities who is an offender or suspect of violence against women or domestic violence, to the extent that the latter has rights of access. **Rights of access shall be stringently determined, taking into account previous threats or acts of violence, and only permitting access to children where this is entirely safe.** Member States shall ensure supervision by trained professionals, as appropriate, and in the best interests of the child.

- This amendment reflects Article 31 in the Istanbul Convention:

Article 31 – Custody, visitation rights and safety

1. Parties shall take the necessary legislative or other measures to ensure that, in the determination of custody and visitation rights of children, incidents of violence covered by the scope of this Convention are taken into account.
2. Parties shall take the necessary legislative or other measures to ensure that the exercise of any visitation or custody rights does not jeopardise the rights and safety of the victim or children.

7. ACCESS TO SEXUAL AND REPRODUCTIVE HEALTHCARE AS AN ASPECT OF REPARATION

Survivors of gender-based violence, particularly rape, sexual assault, and FGM, often need access to specialist sexual and reproductive health services. In cases of rape, this may include emergency contraception, HIV/STI testing, counselling and post-exposure prophylaxis, pregnancy testing, and access to safe abortion. Denial of access to sexual and reproductive health services in this context, particularly denial of access to abortion in the case of rape, has been identified as a form of torture or other cruel, inhuman or degrading treatment or punishment, which underlines the mandatory nature of ensuring effective access to safe and legal abortion.

In General Recommendation 35 on violence against women, the CEDAW Committee stated clearly:

18. Violations of women's sexual and reproductive health and rights, such as forced sterilization, forced abortion, forced pregnancy, criminalization of abortion, denial or delay of safe abortion and/or post-abortion care, forced continuation of pregnancy, and abuse and mistreatment of women and girls seeking sexual and reproductive health

information, goods and services, are forms of gender-based violence that, depending on the circumstances, may amount to torture or cruel, inhuman or degrading treatment.

In support of this article, the CEDAW Committee cited cases in the European Court of Human Rights, as well as the UN treaty bodies and special procedures.⁹

The Directive should include explicit wording to ensure that no woman or girl is denied access to abortion care, neither in law nor in practice. The denial or delay of safe abortion care, forced pregnancy and forced continuation of pregnancy are violations of human rights and forms of gender-based violence, that may amount to torture or cruel, inhuman or degrading treatment, depending on the circumstances, particularly where the life and health of the pregnant woman or girls is at risk, or where carrying a pregnancy to term would cause the pregnant woman or girl substantial pain or suffering, most notably where the pregnancy is the result of rape or incest or both.

Therefore, references to “comprehensive healthcare, including the full range of sexual and reproductive services” should be included as relevant in the text, for example, the additions (in bold):

- Article 27 Specialist support to victims, Article 27(1)(b) should be enhanced as follows “referrals to medical forensic examinations, **comprehensive health services, including access to sexual and reproductive health services.**” Article 27 should consistently and explicitly refer to these services, for example, in subparagraph 4, additions (in bold):

Member States shall provide the protection and specialist support services necessary to comprehensively address the multiple needs of victims at the same premises, or have such services coordinated through a central contact point, or through one-stop online access to such services. Such combined offering of services shall include at least first-hand medical care, **including sexual and reproductive health services such as emergency contraception, counselling, testing, treatment and prophylaxis for HIV/AIDS and other sexually transmitted infections, pregnancy testing and safe abortion**, social services, psychosocial support, legal, and police services.

We further recommend to add a clause in Article 27 clarifying that all services should recognize the realities of survivors. Services must be gender-sensitive and gender-responsive, child-friendly, trauma-informed, and shall not depend on making a criminal report to the authorities or participating in prosecuting the perpetrator.

- Similarly, Article 28 “Specialist support for victims of sexual violence” should include in subparagraph 1, additions (in bold):

b. Member States shall provide for appropriately equipped, easily accessible rape crisis or sexual violence referral centres to ensure effective support to victims of sexual violence, including assisting in the preservation and documentation of evidence. These centres shall provide for medical and forensic examinations, trauma support, **access to comprehensive health services, including access to sexual and reproductive health services**, and psychological counselling, after the offence has been perpetrated and for as long as necessary thereafter. Where the victim is a child, such services shall be provided in a child-friendly manner.

⁹ Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment (A/HRC/31/57); Committee on the Elimination of Discrimination against Women, communication No. 22/2009, L.C. v. Peru, views adopted on 17 October 2011, para. 8.18; and Human Rights Committee, communications No. 2324/2013, Mellet v. Ireland, views adopted on 31 March 2016, para. 7.4, and No. 2425/2014, Whelan v. Ireland, views adopted on 17 March 2017.

8. COMPENSATION WHERE THE PERPETRATOR HAS NO FUNDS

Article 26 on “Compensation from offenders” is a good addition to the draft Directive. However, this article should be strengthened, so that where a perpetrator/offender does not have money to pay compensation, the state should provide compensation. This reflects Article 30(2) of the Istanbul Convention.

ARTICLE 30 – COMPENSATION

1. Parties shall take the necessary legislative or other measures to ensure that victims have the right to claim compensation from perpetrators for any of the offences established in accordance with this Convention.
2. Adequate State compensation shall be awarded to those who have sustained serious bodily injury or impairment of health, to the extent that the damage is not covered by other sources such as the perpetrator, insurance or State-funded health and social provisions. This does not preclude Parties from claiming regress for compensation awarded from the perpetrator, as long as due regard is paid to the victim’s safety.
3. Measures taken pursuant to paragraph 2 shall ensure the granting of compensation within a reasonable time.

9. REFERENCES TO COMPREHENSIVE SEXUALITY EDUCATION SHOULD BE USED CONSISTENTLY THROUGHOUT THE DIRECTIVE

Gender-based violence against women and girls persists in the world because of harmful gender stereotyping, that such violence is normal and acceptable. Stereotypes and myths about women’s sexuality and consent also contribute to the persistence of gender-based violence, including sexual violence.

Comprehensive sexuality education, which is mandatory, age-appropriate, gender-sensitive, evidence-based and unbiased is crucial to address harmful stereotypes around gender and sexuality. Comprehensive sexuality education, among other things, should include education about affirmative consent, bodily and sexual autonomy, and the right to bodily integrity.

Comprehensive sexuality education promotes gender equality, respect for other people’s autonomy and agency, and non-violence, and avoids the perpetuation of discriminatory stereotypes, including those based on gender, sexual orientation, gender identity or other status. It further contributes to gender equality by building awareness of the centrality and diversity of gender in people’s lives, examining gender norms shaped by historic and current cultural and social conventions, and by fostering respectful and equitable relationships based on empathy and understanding. It is therefore a vital part of transformative education to address gender discrimination, and gender-based violence.

Comprehensive sexuality education aims to equip children and adolescents with knowledge, skills, attitudes, and values that will empower them to realise their health, well-being and dignity, and develop respectful social and sexual relationships. The UN agencies UNESCO, UNAIDS, UNFPA, UNICEF, UN Women and WHO have come together to create materials to assist educators, “International technical guidance on sexuality education: an evidence-informed approach.”¹⁰

¹⁰ <https://www.unfpa.org/comprehensive-sexuality-education>

The Directive should use the terminology “comprehensive sexuality education, according to UN standards” where relevant in the text, for example, in Article 36 “Preventive measures” subparagraph 2.

“Preventive measures shall include awareness-raising campaigns, research and education programmes, **including comprehensive sexuality education, according to UN standards**, where appropriate developed in cooperation with relevant civil society organisations, social partners, impacted communities and other stakeholders.”

Amnesty International is a movement of 10 million people which mobilizes the humanity in everyone and campaigns for change so we can all enjoy our human rights. Our vision is of a world where those in power keep their promises, respect international law and are held to account. We are independent of any government, political ideology, economic interest or religion and are funded mainly by our membership and individual donations. We believe that acting in solidarity and compassion with people everywhere can change our societies for the better.

Contact



eio@amnesty.org



[facebook.com/
AmnestyGlobal](https://facebook.com/AmnestyGlobal)



[@AmnestyEU](https://twitter.com/AmnestyEU)



amnesty.eu



Amnesty International
European Institutions Office
Avenue de Cortenbergh 71,
1000 Brussels, Belgium

Index: **TIGO IOR 10/2023.4160**

Publication: **May, 2023**

Original language: **English**

© Amnesty International 2023

**AMNESTY
INTERNATIONAL**

