

The Istanbul Convention and the CEDAW framework:

A comparison¹ of measures to prevent and combat violence against women

Opened for signature in Istanbul in May 2011, the Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention) is the first legally-binding instrument in Europe in this field, and in terms of scope, the most far reaching international treaty to tackle this serious violation of human rights. It aims at zero tolerance for such violence and is a major step forward in making Europe and beyond a safer place. By accepting the Istanbul Convention, governments are obliged to change their laws, introduce practical measures and allocate resources to effectively prevent and combat violence against women and domestic violence.

The Istanbul Convention codifies established standards, jurisprudence and developments at international level, as well as best practice at national level, thereby lending them more weight and ensuring their wider application. Drawing in particular on the framework of measures of the *Convention on the Elimination of All forms of Discrimination against Women* (CEDAW) and case law developed by the CEDAW Committee, it is firmly based on the premise that violence against women cannot be eradicated without investing in gender equality and that in turn, only real gender equality and a change in attitudes can truly prevent such violence.

The following tables describe the manner in which the Istanbul Convention builds on the three sources that constitute the CEDAW framework: the Convention, General Recommendations and case law. The tables also show how the Istanbul Convention complements these instruments by establishing a more detailed catalogue of legally-binding obligations to prevent and respond to violence against women. The tables do not however contain a detailed explanation of the extensive list of obligations under the Istanbul Convention. For detailed information of the provisions contained in the treaty, please visit: www.coe.int/conventionviolence, refer to its Explanatory Report or contact conventionviolence@coe.int

¹ Working paper prepared by the Council of Europe Secretariat for reference purposes only.

CEDAW

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Purpose

- Gender-specific human rights treaty focusing on women and girls.
- Key international legally binding instrument that provides standards to prevent and combat **discrimination against women**.
- Has as purpose to **eliminate all forms of discrimination against women** that either intends to or has the effect of limiting women from participating equally in all spheres of public and private life (Article 1).

- Gender-specific human rights treaty focusing on women and girls.
- First pan European legally-binding instrument that provides standards to prevent and combat **violence against women and domestic violence**. Also serves as an instrument to promote greater equality between women and men.
- Aims to create a Europe free from violence against women and domestic violence by defining a **series of targeted purposes** (Article 1):
 - a) protection of women, and prevention, prosecution and elimination of violence against women;
 - b) contribute to eliminate all forms of discrimination against women, promote substantive gender equality and empower women;
 - c) design a comprehensive framework to protect and assist victims;
 - d) promote international co-operation in this field;
 - e) ensure the adoption of an integrated approach for the co-operation of all relevant actors.

Scope

- Applies to **all forms of discrimination against women** in the political, economic, social, cultural, civil or any other field (Article 1).
- **Does not contain a specific provision on violence against women and/or domestic violence. Tackles violence indirectly by tackling gendered stereotypes, practices and laws that perpetrate gender inequality and make violence against women acceptable.** By way of interpretation the CEDAW Committee has read gender-based violence as a form of discrimination into the Convention (see General Recommendation No. 19).

- Applies to **all forms of violence against women and girls, including domestic violence** (Article 2(1)), but leaves it to the State Party to decide on the extent to which it chooses to **apply its provisions to male, elderly and child victims of domestic violence** (Article 2 (2)).
- This expansion of the scope of application does not lessen the Convention's focus on violence against women as a form of gender-based violence.

Applicability

- Although it is not mentioned explicitly in the treaty, CEDAW is **applicable in times of peace and in situations of armed conflicts**, in line with the general understanding of applicability of human rights instruments. It is open to all member states of the UN.

- Explicitly states that it **"shall apply in times of peace and in situations of armed conflicts"** (Article 2 (2)). The Istanbul Convention is also open to non-member states (Article 76).

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Definitions

- Contains a **definition of discrimination against women** (Article 1):
- **Does not include a definition of:**
 - gender
 - gender-based violence
 - violence against women, including domestic violence
- **No definition of forced marriage but addresses it** in Article 16.

- Contains definitions of (Article 3):
 - a) violence against women;
 - b) domestic violence;
 - c) gender
 - d) gender-based violence against women.
- The convention **defines the following forms of violence against women:**
 - psychological violence (Article 33)
 - stalking (Article 34)
 - physical violence (Article 35)
 - sexual violence, including rape (Article 36)
 - forced marriage (Article 37)
 - female genital mutilation (Article 38)
 - forced abortion and forced sterilisation (Article 39)
 - sexual harassment (Article 40)

Gender Equality and non-discrimination

- **Entirely dedicated to eliminating discrimination against women and achieving de facto equality** between women and men. It is in this context that the CEDAW Committee addresses VAW in its concluding comments.
- **Condemns discrimination against women in all its forms** (Article 2) and requires states parties to undertake a series of measures in order to do so:
 - a) embody the principle of equality of men and women in national constitutions and relevant laws and ensure its practical realisation;
 - b) prohibit all discrimination against women, including by applying sanctions where appropriate;
 - g) repeal all national penal provisions which constitute discrimination against women.

- **Entirely dedicated to eliminating violence against women which is impossible without achieving equality between women and men.** It is in this context that it requires measures to be taken to achieve de facto equality between women and men.
- **Condemns all forms of discrimination against women** (Article 4 (2)) and requires to take the following measures:
 - embody in national constitutions or other legislation the principle of equality between women and men and ensure the practical realisation of this principle;
 - prohibit discrimination against women, including through the use of sanctions, where appropriate;
 - abolish laws and practices which discriminate against women.

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- Article 4(1) establishes that **temporary special measures** in order to guarantee *de facto* equality between women and men are not to be considered as discrimination.
- Article 5 (a) obliges states parties to “modify social and cultural patterns of conduct of men and women” in order to eliminate “prejudices and customary and all other practices that are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for women and men”. As such, the aim of the obligation is to modify patriarchal attitudes and stereotypes and change mentalities.
- Article 10 (c) requires parties to **eliminate stereotypes based on the roles of women and men in educational material at all levels.**

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- Article 4(4) establishes that **special measures** that are necessary to prevent and protect women from gender-based violence are not to be considered as discrimination.
- Article 4 (3) requires parties to secure the implementation of measures taken in regard to the Convention without discriminating on a non-exhaustive list of grounds.
- **Seeks to prevent violence against women through the promotion of changes in attitudes and practices** (Chapter III - Prevention):
 - Article 12 (1) requires states parties to “promote changes in the social and cultural patterns of behaviour of women and men with a view to eradicating prejudices, customs, traditions and all other practices which are based on the idea of the inferiority of women or on stereotyped roles for women and men”.
 - Article 12 (4) requires states parties to encourage all members of society, especially **men and boys to contribute actively** to preventing all forms of violence against women.
- Goes further by including **specific provisions that in conjunction aim at changing attitudes and eliminating stereotypes at the level of individuals and institutions** so that the root causes of violence against women are tackled, such as:
 - regularly run awareness-raising campaigns (Article 13);
 - take steps to include issues such as gender equality and non-violent conflict resolution in interpersonal relationships in teaching material at all levels of education (Article 14);
 - train professionals in close contact with victims (Article 15) ensure they adopt a gendered understanding of violence (Article 49(2));
 - set up treatment programmes for perpetrators of domestic violence and for sex offenders (Article 16); and
 - involve the media and the private sector in eradicating gender stereotypes and promoting mutual respect (Article 17);
 - ensure that culture, tradition or so-called “honour” are not regarded as a justification for any of the forms of violence covered by the convention (Article 12 (5) and Article 42).
- **First treaty that requires applying a gender perspective** in the design and evaluation of measures taken in its implementation (Article 6). Article 6 also requires to promote policies of equality between women and men.

The following two tables show the similarities and differences between the content and scope of general recommendations developed by the CEDAW Committee (non-binding) and the Istanbul Convention (legally-binding). The purpose of this exercise is to show the extent to which the IC is based on measures and concepts developed by the CEDAW Committee in General Recommendations No. 19 and No. 25 and how it codifies them into law.

General Recommendation No.19	Istanbul Convention
Definitions	
<ul style="list-style-type: none"> • Gender-based violence = a form of discrimination against women (paragraph 1). • Gender-based violence = “<u>violence that is directed against a woman because she is a woman or that affects women disproportionately.</u> It includes <u>acts that inflict physical, mental or sexual harm or suffering, threats of such acts, coercion and other deprivations of liberty.</u> Gender-based violence may breach specific provisions of the Convention, regardless of whether those provisions expressly mention violence” (paragraph 6). 	<ul style="list-style-type: none"> • Violence against women = a human rights violation and a form of discrimination against women (Article 3 (a)). • Violence against women: “all acts of gender - based violence that result in, or are likely to result in, <u>physical, sexual, psychological or economic harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty,</u> whether occurring in public or in private life” (Article 3(a)). • Gender-based violence against women: “<u>violence that is directed against a woman because she is a woman or that affects women disproportionately</u>” (Article 3 (d)). • Definition of violence against women goes further by including “economic harm” and explicitly establishing such violence as a human rights violation.

General Recommendation No.19

Istanbul Convention

Due diligence

- **Establishes due diligence principle** = state responsibility for gender-based violence perpetrated by public authorities but also by private actors.
- Establishes that CEDAW applies to “violence perpetrated by public authorities. Such acts of violence may breach that State's obligations under general international human rights law and under other conventions, in addition to breaching this Convention” (paragraph 8).
- Establishes that “under general international law and specific human rights covenants, States may also be responsible for private acts if they fail to act with due diligence to prevent violations of rights or to investigate and punish acts of violence, and for providing compensation.”

- **Establishes due diligence principle** = state responsibility for violence against women perpetrated by public authorities but also by private actors.
- Article 5 requires parties to:
 - “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” (paragraph 1)
 - “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” (paragraph 2).

Linking violence to stereotyped attitudes and roles

- GR 19 (paragraph 11) **recognises the link between gender-based violence and “traditional attitudes by which women are regarded as subordinate to men or as having stereotyped roles”**. It recognises that such prejudices may serve as a justification for such violence and that gender-based violence contributes to maintaining women in subordinate roles in political life, education and employment. Paragraph 12 establishes the link between “the depiction and other commercial exploitation of women as sexual objects, rather than as individuals” and gender-based violence.

- **Recognises the structural nature of violence against women** as a form of gender-based violence and that “it is one of the crucial social mechanisms by which women are forced into a subordinate position compared with men” (Preamble). For this reason its measures are firmly based on the premise that violence against women cannot be eradicated without investing in greater equality.

General Recommendation No.19

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Specific forms of violence covered

- Deals with gender-based violence, but **no detailed definition of different acts that come under this term.**
 - **Refers to: family violence and abuse, forced marriage, dowry deaths, acid attacks, female circumcision or female genital mutilation, trafficking and sexual exploitation of women, sexual assault, rape, incest, sexual harassment, compulsory sterilisation and abortion, battering, and coercion.**
 - Refers to **“family violence”** as one of the most insidious forms of violence against women (paragraph 23). The focus is however on violence within family relationships and on women who are in violent relationships, thus limiting the context under which such violence may occur.
 - **Provides a definition of sexual harassment** (paragraph 18), yet it limits it to acts that take place in the workplace.
 - **Recognises that trafficking in women, sexual exploitation, sex tourism domestic labour and organised marriages put women at special risk of violence and abuse** (paragraph 14) as does **prostitution** (paragraph 15). Recommends that specific “preventive and punitive measures are necessary to overcome trafficking and sexual exploitation” (paragraph 24 (g)).
- Covers all acts of violence against women, including domestic violence.
 - **Explicitly defines a series of acts that come under the umbrella of violence against women: psychological violence** (Article 33); **stalking** (Article 34); **physical violence** (Article 35); **sexual violence, including rape** (Article 36); **forced marriage** (Article 37); **female genital mutilation** (Article 38); **forced abortion and forced sterilisation** (Article 39); **sexual harassment** (Article 40) and **aiding or abetting and attempt** (Article 41) in all such acts. Although it does not define **crimes in the name of so-called “honour”**, these are dealt with under Article 42.
 - Covers and **defines domestic violence as all acts of violence that occur in the family or domestic unit, but also those** (Article 3(b)) **that occur between former or current spouses or partners, whether or not the perpetrator and the victim share the same residence** =
 - larger scope than family violence, covering persons who are no longer in a relationship
 - covers intimate-partner violence as well as inter-generational violence, irrespective of biological ties.
 - is a gender-neutral definition that encompasses victims and perpetrators of both sexes, while recognising that women are affected disproportionately.
 - Provides a definition of **sexual harassment that is wider than the field of employment** (Article 40). As such the Convention recognises that this type of conduct can also take place in formal and informal educational settings or for instance in leisure facilities.
 - Does not deal with **trafficking or sexual exploitation**, but covers many, if not all, of the forms of violence that women and girls in such situations may be faced with. This issue is dealt with in the Convention on Action against Trafficking in Human Beings the Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse.

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Vulnerable groups of women

- **Recognises that poor and unemployed women, prostitutes and women and girls from rural communities are at higher risk of violence.** It recommends in particular that states parties ensure that services be accessible to rural women and specialised services be provided to isolated communities (paragraph 14 (o)).

- Covers **women and girls, from any background**, regardless of their age, race, religion, social origin, migrant status, gender identity or sexual orientation, etc- (Article 4(3)).
- Obliges states parties to ensure that preventive, protective and support measures **take into account the specific needs of persons made vulnerable by particular circumstances** and place the **human rights and safety** of all victims at their centre (Article 12(3) and Article 18(3)). It recognises that such persons might be at heightened risk of violence and covers for instance: pregnant women, persons with disabilities, women living in rural areas, substance abusers, people living with HIV/AIDS, prostitutes, migrants and refugees, etc.
- Requires states to provide specialised support services for **victims of sexual violence** (Article 25) and ensure that the needs of **child witnesses** are taken into account when providing protection and support services (Article 26).
- Addresses the needs of **migrant and refugee women** (Chapter VII), by requiring states to ensure the normalisation of their residence status (Article 59), to recognise gender-based violence as a ground for asylum (Article 60) and respect the non-refoulement principle in cases of such violence (Article 61).

Specific measures covered

- **Paragraph 24 includes a series of recommendations (non-binding) for states parties to tackle gender-based violence under CEDAW:**

- All of its measures (legally-binding) offer a **holistic response** and can be grouped in 4 areas: **prevention, protection and support, prosecution and integrated policies and data collection.**

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a) **take appropriate and effective measures to** overcome all forms of gender-based violence, whether by public or private act;

c) ensure the **compilation of statistics and research**

d) take measures to ensure the **media** respect and promote respect for women

b) ensure that laws against gender-based violence give adequate protection; provide appropriate **protective and support services** for victims (including refuges, rehabilitation, counselling and trained staff (k)) and that these are available to rural women and **isolated communities** (o); ensure **gender-sensitive training** of the judicial, law enforcement officers and other public officials

r) and t) take measures to overcome and **provide protection** against family violence and gender based-violence including: **criminal penalties, civil remedies and compensation** (as well as **effective complaints procedures** (i)); legislation to **remove the defence of honour; rehabilitation programmes for perpetrators** of domestic violence; preventive measures including **public information campaigns** and **education programmes** (f).

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- Requires states parties to **implement effective comprehensive and co-ordinated policies** involving government agencies, the judiciary, police, social services, NGOs as well as national, regional and local parliaments and authorities (Articles 7 and 18(2)); **provide sufficient financial and human resources**, including to the work carried out by NGOs (Article 8); and **set-up national or relevant coordinating bodies** (Article 10).

- Article 11 requires states parties to **regularly collect disaggregated statistical data** of both administrative and prevalence type, **support research** in the field of violence against women, and **conduct regular population-based surveys**.

- Article 17 obliges parties to **partner with the private sector and the media** and encourage them to participate in the elaboration and implementation of policies and to set self-regulatory standards to prevent violence against women and enhance respect for women's dignity. States parties must also develop in co-operation with the private sectors, skills in children, parents and educators in order to deal with the information and communication environment.

- **Includes an exhaustive list of obligations** in order to protect women from violence against women, support victims, and prosecute perpetrators. These include:

- **introducing criminal offences** for the different forms of violence against women (Articles 33-41, also see "specific forms of violence covered"); and ensure that such acts are met with **effective, proportionate and dissuasive sanctions** (Article 45)

- **responding immediately to violence** (Article 50), **risk assessment and management** (Article 51)

- introducing effective **emergency barring orders** (Article 52) and **restraining or protection orders** (Article 53)

- ensuring that victims are provided with adequate **civil remedies** (Article 29) and that they can claim **compensation** (Article 30)

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- ensuring that victims are provided with **adequate information** (Article 19)
- setting-up accessible **shelters** in sufficient numbers and in adequate geographical distribution (Article 23)
- setting-up 24/7 free national **helplines**
- setting-up **specialist support services** (Article 22) as well as easily accessible **rape crisis or sexual violence referral centres** (Article 25)
- running **awareness-raising** campaigns (Article 13); introducing appropriate **teaching material** (Article 14); **training** relevant professionals (Article 15); and **setting-up treatment** programmes for domestic violence perpetrators and sex offenders (Article 16).

General Recommendation No.25

Istanbul Convention

Ending direct and indirect discrimination

- Identifies a first obligation: Ensuring that there is **no direct or indirect discrimination** in states parties' laws and that women are protected against discrimination in the public and private spheres (paragraph 7).

- Article 1 of the Istanbul Convention lists the contribution **“to the elimination of all forms of discrimination against women” and the promotion of “substantive equality between women and men, including by empowering women” as among the purposes of the Convention.** In addition, the implementation of the various measures in the Convention aimed at preventing and combating violence against women will ultimately contribute to overcoming discrimination against women and to greater gender equality.
- Article 4(2) **requires States Parties to condemn all forms of discrimination against women and to take, without delay, measures to prevent any such discrimination.** These measures include:
 - (a) enshrining the principle of equality between women and men in law and ensuring its practical realisation;
 - (b) prohibiting discrimination against women by law; and
 - (c) abolishing any discriminatory legislation or practices.

Improving the de facto position of women

- Identifies a second obligation: **improve the de facto position of women** through concrete and effective policies and programmes (paragraph 7). Recognises that it is not enough to ensure equal treatment, but in addition it is necessary to take into account “biological as well as socially and culturally constructed differences between women and men” (paragraph 8).
- Reiterates the need for **temporary special measures** for the accelerated advancement of women, as required by CEDAW Article 4(1).

- Article 6 requires States Parties to **apply a gender perspective in the design and evaluation of measures** taken in implementation of the Convention and by promoting policies of equality between women and men.
- Article 4(4) allows for **special measures** to be taken in order to prevent violence against women and protect its victims. Such measures are not to be considered as discrimination. When implementing measures in order to comply with the Convention, states parties are required not to discriminate on any ground (Article 4(3)).

Addressing gender relations and stereotypes

- Identifies a third obligation: **“address prevailing gender relations and the persistence of gender-based stereotypes that affect women not only through individual acts by individuals but also in law, and legal and societal structures and institutions”** (paragraph 7).
- Article 12(1) requires states parties to **promote changes in the social and cultural patterns of behaviour of women and men** in order to eradicate stereotypes, customs and prejudices based on the notion of women’s inferiority.
- Includes a series of **specific measures that in conjunction aim at changing attitudes and eliminating stereotypes at the level of individuals and institutions** so that the root causes of violence against women are tackled, such as:
 - running awareness-raising campaigns (Article 13);
 - introducing appropriate teaching material (Article 14);
 - training relevant professionals (Article 15), ensuring they adopt a gendered understanding of violence (Article 49(2) and ensuring that police respond promptly and appropriately to any call of for help (Article 50);
 - treatment programmes for perpetrators of domestic violence and for sex offenders (Article 16); and
 - partnering with the private sector and the media (Article 17);
 - ensuring that culture, tradition or so-called “honour” are not regarded as a justification for any of the forms of violence covered by the convention (Article 12 (5) and Article 42).

In addition to international standards and developments, the drafters of the Istanbul Convention based several of its provisions on relevant jurisprudence. As such, the Istanbul Convention not only reflects case law from the European Court of Human Rights (i.e. *M.C. v. Bulgaria*, *Opuz v. Turkey*, *Kontrova v. Slovakia*, *Bevacqua v. Bulgaria*, *Tomasic v. Croatia*) in the area of gender-based and domestic violence, but also from the body of case law from the CEDAW Committee, most of which deals with gender-based violence.

CEDAW Case law	Istanbul Convention
<div data-bbox="657 448 1413 522" style="background-color: #4a7ebb; color: white; padding: 5px; margin: 0 auto; width: fit-content;"> A.T v. Hungary, 2005 </div>	
<ul style="list-style-type: none"> • The Committee found Hungary in violation of its positive obligations to protect A.T. against domestic violence. It affirmed that : <ul style="list-style-type: none"> - gender-based violence against women is a form of sex discrimination that states parties are required to eliminate. - states parties are accountable for the conduct of private actors ‘if they fail to act with due diligence to prevent violations of rights or to investigate and punish...’ violations by such actors, including domestic violence. 	<ul style="list-style-type: none"> • Article 5 establishes the principle of due diligence and negative obligations (states parties and actors acting on its behalf must refrain from actual violence) and positive obligations (states parties are required to exercise due diligence to prevent, investigate, punish and provide reparation for all acts of violence against women and domestic violence that are perpetrated by non-state actors. Article 3(a) defines violence against women as a human rights violation and a form of discrimination.
<div data-bbox="537 873 1530 948" style="background-color: #4a7ebb; color: white; padding: 5px; margin: 0 auto; width: fit-content;"> Fatma Yildirim v. Austria, 2007 / Goekce v. Austria, 2007 </div>	
<ul style="list-style-type: none"> • The Committee stated in both cases that in domestic violence cases perpetrators’ rights cannot supersede victims’ human rights to life and to physical and mental integrity. 	<ul style="list-style-type: none"> • Article 12(3) obliges states parties to place the human rights of all victims at the centre of all preventive measures. • Article 18(3) requires all protective and support measures to focus on the human rights and safety of the victim. • Article 26 (1) requires state parties to take into account the rights and needs of child witnesses in the provision of protection and support services to victims. • Article 31 obliges states parties to ensure that the rights and safety of victim and their children supersedes visitation or custody rights. • Article 49 requires states parties to consider the rights of the victim during all stages of criminal and investigation proceedings. Article 56 requires states parties to protect the rights and interests of victims, including their needs as witnesses at all stages of investigations and judicial proceedings.

CEDAW Case law

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V.K. v. Bulgaria, 2008/ Vertido v. Philippines, 2010

- In V.K. v. Bulgaria the CEDAW Committee reiterated the **links between wrongful gender stereotyping and the freedom from gender-based violence against women as well as the right to a fair trial**. It noted that:
 - states parties are accountable under CEDAW for judicial decisions that are based on gender stereotypes, rather than law and fact.
 - “Stereotyping affects women’s right to a fair trial and the judiciary must be careful not to create inflexible standards based on preconceived notions of what constitutes domestic or gender-based violence.”
- In Vertido v. Philippines, the CEDAW Committee concluded that :
 - in failing to end discriminatory gender stereotyping in the legal process (in this case for rape) the Philippines had violated several CEDAW provisions.
 - the Philippines had failed to comply with its obligation to ensure the right to an effective remedy.
- It concluded that **states parties are obliged to take effective steps to ensure that decisions in sexual assault cases are impartial, fair and are not affected by prejudices or stereotypes**.

- Includes **specific measures that in conjunction aim at changing attitudes and eliminating stereotypes at the level of individuals and institutions** such as Articles 12 (1), 12(5), 13, 14, 15, 16, 17, 42, 49(2) and 50.
- Article 54 requires states parties to take legislative or other measures to ensure that **evidence relating to the sexual history and conduct of the victim** is only permitted in civil or criminal proceedings when it is relevant and necessary.