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**International framework on violence against women
with focus on the CEDAW**

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The next session of the UN Commission on the Status of Women will focus on prevention of violence against women, while the UN Secretary General Ban Ki Moon is leading the ongoing UN Global Campaign UNite to combat violence against women worldwide. Since its establishment in 1946 the UN Commission on the Status of Women (CSW) has been a very important standard and policy setting intergovernmental body that launched 5 global women's conferences and elaborated almost all crucial women human rights instruments¹ including the Convention on the Elimination of all Forms of Discrimination against Women² (the CEDAW) adopted in 1979, the Optional Protocol to the CEDAW adopted in 2000, the Beijing Declaration and Platform for Action adopted at the Fourth UN World Conference on Women in Beijing in 1995, and the UN Declaration on the Elimination of Violence against Women adopted in 1993.

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

¹ The Convention on Political Rights of Women (1952), the Convention of nationality of Married Women (1957), the Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages (1962). It was also influential for the preparation of the Declaration on the Elimination of Discrimination against Women (DEDAW) in 1967.

² The UN General Assembly adopted the CEDAW Convention in 1979. It was opened for signatures on March 1, 1980 in New York, and it entered into force on September 3, 1981 after twenty ratifications.

For a long time, violence against women - and especially domestic violence against women - was treated as a “private matter“ and was a hidden reality of women's lives. This approach has gradually changed to the current predominate view that violence against women is a matter of “public concern”, but unfortunately it is still the most common and widespread violation of women’s human rights.

The international human rights framework, from the Universal Declaration on Human Rights (1948) to the two Covenants on Civil and Political Rights (1966) and on Economic, Social and Cultural Rights (1966) which started with gender neutrality with respect to the specificity of human rights of women and was silent on discrimination against women within a private sphere. It was also silent on violence against women and especially domestic violence that was considered by many as a private act and was committed with widespread impunity. Today, although we do not have a specific global convention on prevention of violence against women, we do have an engendered international human rights framework established by the adoption of the UN Convention on the Elimination of all forms of Discrimination against Women in 1979 (the CEDAW Convention). The CEDAW Convention is a gender specific human rights treaty that protects women from all forms of discrimination including violence against women.

This change of attitudes and legal response happened gradually at the global and regional levels over the last three decades. Violence against women including domestic violence should be treated as a human rights violation. Traditionally states had only been held accountable for violations of human rights committed by their agents while today they have obligation under the due diligence principle to prevent human rights abuses by non–state actors. We can observe this development and application of this due diligence standard from the adoption of the UN CEDAW Convention in 1979 to the adoption of the newest Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence in 2011.³ We can also observe a transformation of the international human rights framework from a gender neutral set of human rights norms to gender specific norms (the CEDAW Convention and the Convention of Belem Do Para)⁴, or gender sensitive norms (the Istanbul Convention) aimed at focusing on and addressing discrimination and violence against women and to protecting human rights of women and girls on an equal footing with men.

In this international global framework on violence against women the UN CEDAW Convention adopted in 1979 is the central or key international instrument for the elimination of discrimination against women and violence against women. But this was not the case from its inception. Adoption of the CEDAW Convention in 1979 was a landmark achievement that added a gender perspective to the international human rights law and integrated “women rights in human rights” by establishing clear commitments and obligations for States Parties to work on the elimination of all forms of discrimination against women.

³ Council of Europe Convention on Preventing and Combating Violence against Women and Domestic, CETS no.: 210, adopted by the Committee of ministers, opened for signatures 11 may 2011 in Istanbul, 21 signatures, 1 ratification. <http://conventions.coe.int>

⁴ The Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women

The CEDAW Convention was adopted as a comprehensive women's rights treaty that superseded previous partial women's rights treaties. In addition to being a comprehensive one that deals with all human rights of women (civil, political, economic, social and cultural) it was also empowered with a treaty body. With this feature it joined the group of human rights treaties with treaty bodies. The CEDAW Convention provides for the Committee of 23 experts (the CEDAW Committee) entrusted to monitor implementation of the Convention by its States Parties. Through this monitoring function the CEDAW Convention is a "living" international women's human rights instrument. Moreover the CEDAW Convention is at the same time a women's human rights instrument, women's development instrument and a women's empowerment instrument. The CEDAW Committee started its work in October 1982 in Vienna. This year commemorates its 30th anniversary.

It is important to note that the CEDAW Convention does not contain an explicit article on violence against women or domestic violence, however it covers it implicitly. The CEDAW Committee used its mandate under article 21 to provide general recommendations and provided a logical and clear interpretation of violence against women falling under the CEDAW Convention.⁵

Let us first look at main principles of the Convention. First is the principle of non-discrimination that applied to women requires elimination of all forms of discrimination against women in the public and private life and the second is the principle of substantive equality of women and man that requires its practical realization through appropriate means. Those two principles are central for recognition of women's rights as human rights but they should be read together with definition of discrimination provided in the Article of the Convention. It broadly defines discrimination against women in all areas of life: "[...] *the term "discrimination against women" shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.*" This definition includes both direct and indirect discrimination against women, be it intentional or unintentional, in respect of law or practice, in all aspects of public and private life.

Second, the Convention requires its States Parties to: "*embody the principle of equality of men and women in their national constitutions or other appropriate legislation*" and "*to ensure the practical realization of this principle.*" This requirement of practical realization of equality makes clear that the Convention envisages substantive equality between women and men and that this goal is for the benefit of both sexes and society as a whole.

Third, it explicitly requires that States and public authorities and institutions *to refrain from engaging in any act or practice of discrimination against women (Article 2 (d))*, to eliminate private conduct detrimental to women (*Article 2 (e)*) and to take all appropriate measure,

⁵ The Committee adopts general Recommendations, concluding observations addressed to the individual State parties, Views under the Optional Protocol, and other statements on thematic issues (Role of Parliaments in reporting process, Role of NGOs, Reservations).

including legislation, to modify or abolish laws, regulations, customs and practices, which constitute discrimination against women (Articles 2 (f)).

Fourth, it requires in its Article 5 active role of State parties to modify and abolish social attitudes and cultural patterns based on idea of superiority or inferiority of either of the sexes. This requires undertaking of appropriate positive measures.

Fifth, it addresses private life and equality within the marriage and family relations in its Article 16. The previously excluded area of family and private life and discrimination of girls and women in personal matters was put on a footing equal to all other areas of women's rights and as such transferred family matters from a private into a public human rights sphere, which falls under State obligations with respect to the protection of human rights.

The CEDAW Convention contains two additional women's empowerment provisions: first is the provision on the full development and advancement of women (Article 3), the second is the provision on temporary special measures aimed at accelerating *de facto equality* between women and men and (Article 4.1).⁶

General Recommendation No. 19 on Violence against women

Using those key framework provisions provided by the Convention, its mandate under the Article 21 to make general recommendation and experience with reporting gaps in the first ten years, the CEDAW Committee first adopted in 1989 General Recommendation No. 12 on Violence against women and requested its States Parties to regularly report on this form of violence.

Soon after that, in 1992 CEDAW adopted its crucial recommendation on the matter, General Recommendation No. 19 on Violence against women, and provided clear explanation of gender based violence against women as a form of discrimination against women falling under definition of discrimination against women. The General recommendation No. 19 states: “*Gender-based violence, which impairs or nullifies the enjoyment by women of human rights and fundamental freedoms under general international law or under human rights conventions, is discrimination within the meaning of article 1 of the Convention.*”⁷

It further explains: “*The Convention in article 1 defines discrimination against women. The definition of discrimination includes gender-based violence, that is, violence that is directed against a woman because she is a woman or that affects women disproportionately. It includes acts that inflict physical, mental or sexual harm or suffering, threats of such acts, coercion and other deprivations of liberty. Gender-based violence may breach specific provisions of the Convention, regardless of whether those provisions expressly mention violence*”⁸.

⁶To “Adopt temporary special measures to accelerate advancement of women and achievement of de facto equality of women and men. This provision is now more and more used and results are visible, more than ever, women are participating in political life.” Article 4.1 CEDAW Convention.

⁷ Para 7 of the CEDAW GR No 19 (1992).

⁸ Para 6 of the CEDAW GR No 19 (1992).

The Committee further explained: “*The Convention 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.*” Further it explained that discrimination under the Convention is not restricted to actions by or on behalf of Governments and recalled that under article 2 (e) of the Convention “*States may also be responsible for private acts if they fail to act with due diligence to prevent violation of rights or to investigate or to punish such acts of violence, and for providing compensation that obliges States Parties to prevent and prosecute violence against women by private persons.*”⁹

This interpretation of the due diligence standard developed in *Velazquez Rodriguez*¹⁰ case on States responsibility for human rights violation of non-state actors and its application on violence against women committed by private persons provided missing link between human rights obligations and acts of private persons. The CEDAW Committee clarified that full implementation of the Convention requires States to apply “due diligence” standard and to take positive measures to prevent or eliminate violence against women, including domestic and sexual violence. This ‘due diligence’ standard has gained momentum in providing an understanding of violence against women committed by a private person as a human rights violation and later was incorporated in the 1993 UN Declaration on the Elimination of Violence against Women¹¹ and 1994 Inter-American Convention on Prevention, Punishment and Eradication of Violence against Women (The Convention of Belem do Para). Recently, this principle was included in 2011 the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence that for the first time provide its definition.

This progressively developed global women’s human rights protection framework under the CEDAW Convention has not yet achieved its universal acceptance. In addition to States that have not yet accepted the CEDAW Convention, it has a significant number of reservations entered by its State parties. It is the UN human rights treaty with the highest number of reservations which reveals ongoing State sponsored discrimination against women including violence against women and girls. According to the Article 28 of the Convention reservations incompatible with the object and purpose of the Convention are not permitted. In its Statement on reservations the CEDAW Committee provide its view on the impermissibility of reservations on articles 2 and 16.

Beijing Declaration and Platform for action

In addition to the CEDAW Convention the UN has adopted several specific, although non-binding, declarations and resolutions on violence against women. I would like to mention as the most significant UN Declaration on Violence against Women adopted in 1993 and the Beijing

⁹ “For example, under article 2(e) the Convention calls on States parties to take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise. 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” in Para 9 of the GR No 19 (1992).

¹⁰ *Velazquez Rodrigez v. Honduras*, 1988, Inter-Am.Ct.H.R. (ser.C) No.4,

¹¹ GA res 48/104 of 20 December 1993 A/RES/48/104, 1994, Article 4.

Declaration and Platform (the BPA) for action of 1995 that included violence against women as one of twelve critical areas of concern. Since the BPA was adopted after the adoption of the CEDAW Convention, the BPA naturally includes numerous references to the CEDAW Convention and a number of important actions aimed to strengthen its implementation. In substance the BPA provisions mirror the non-discrimination and substantive gender equality principles contained in articles 1 and 2 of the CEDAW Convention. Violence against women is a strong example of complementarity between the BPA and the Convention, as well as the reinforcing nature of both instruments. The BPA in Para 124 (F) calls States to: *Implement the CEDAW Convention, taking into account general recommendation 19 adopted by the CEDAW Committee.* The BPA contains as an area of concern, women and armed conflict and laid a ground for the UN Security Council Resolution 1325 (2000) on Women, Peace and Security. The CEDAW Committee is currently elaborating a new general recommendation on women in armed conflict that will include violence against women. This is showing dynamic nature of international human rights law and specially the CEDAW Convention and its Committee that is constantly and consistently integrating progress achieved by other bodies under the Conventions framework in order to strengthen its consistent and universal approach on women's rights.¹²

UN Declaration on Violence against Women

Let me also mention the UN Declaration on Violence against Women (DEDAW) adopted by the GA in 1993 as the only global, although not legally binding instrument on violence against women. The CEDAW Convention and the Committees General Recommendation 19 heavily influenced the DEVAW that nevertheless represented significant global consensus on the principles for addressing violence against women.

It importantly recognized “ *that violence against women is a manifestation of historically unequal power relations between men and women, which have led to domination over and discrimination against women by men and to the prevention of the full advancement of women, and that violence against women is one of the crucial social mechanisms by which women are forced into a subordinate position compared with men*”.

It calls UN Member states to "pursue by all appropriate means and without delay a policy of eliminating violence against women," including "due diligence to prevent, investigate and, in accordance with national legislation, punish acts of violence against women, whether those acts are perpetuated by the State or by private persons." DEVAW affirmed that violence against women constitutes a "violation of the rights and fundamental freedoms of women and impairs or nullifies their enjoyment of those rights and freedoms."

¹² Under Article 5 (20 the Istanbul Conventions defines the due diligence “*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 perpetrated by non-state actors*”. <http://conventions.coe.int>

Regional level

This global international framework is complemented with significant developments at the regional level. Let me briefly mention that the Organization of American States adopted in 1994 the first legally-binding convention to combat violence against women The Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (Convention of Belem Do Para) which distinguishes the fact that violence against women is a human rights violation and recognizes the rights of women to be free from violence in both the public and the private sphere.

Also the African Union in 2003 adopted the Protocol on the Rights of Women in Africa to the African Charter on Human Rights, which sets out rights of women in the public and private sphere. It explicitly calls for the protection of women against violence in public and private life.

In South Asia, States have agreed to the South Asian Association for Regional Cooperation Convention on Preventing and Combating the Trafficking in Women and Children for Prostitution and the Dhaka Declaration for Eliminating Violence against Women in South Asia.

Significant new international developments happened at the regional European level. The Council of Europe in 2011 adopted the Convention on Preventing and Combating Violence against Women and Domestic Violence – the Istanbul Convention. It is the first legally binding instrument in the world to provide for a comprehensive set of measures in the field of preventing and combating violence against women and domestic violence.

The major added value of this Convention for the international legal framework is that for the first time, in a legally-binding instrument it provides definitions of violence against women¹³, of domestic violence¹⁴ and a definition of the due diligence obligation.¹⁵ It also provides a comprehensive set of legally binding standards to combat violence against women and domestic violence and provides for variety of measures contained in the Convention that frame the eradication of violence against women within the wider context of combating discrimination against women and achieving gender equality in law and in fact. At the European level it's added valued is also the establishment of a specific monitoring mechanism named "GREVIO" which should monitor its implementation.

¹³ Istanbul Convention, Article 3 (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;*

¹⁴ Istanbul Convention Article 3b: *"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.*

¹⁵ Article 5: *"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." Under the Due Diligence "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 perpetrated by non-state actors".*

For the first time this Convention defines violence against women as a violation of human rights and a form of discrimination against women, which is the cornerstone of a strong human rights approach to combatting violence against women including domestic violence against women.¹⁶ The Convention contains provisions aimed at preventing and combating all the different types of violence against women: psychological and physical violence, sexual violence and rape, stalking and sexual harassment, traditional practices harmful to women, in particular forced marriages and female genital mutilation.

It has a specific Chapter III on prevention with six specific provisions on various measures in the areas of education, training of professionals and general awareness-raising to change attitudes, gender roles and stereotypes which tolerate or legitimize violence against women. These are provisions covering on the one hand a number of measures to raise the general public's awareness of the problem of violence against women and involve men in such activities, and on the other hand the need to introduce into school curricula, from primary school level onwards, the teaching of gender equality, non-stereotyped gender roles, mutual respect, the non-violent resolution of conflicts in interpersonal relations and concepts of honour. Under the general obligation to prevent all forms of violence (Article 12) it calls States to take far reaching necessary measures to change social, cultural, traditional, customary or other practices which are based on the idea of inferiority of women or on stereotyped roles for women and men that legitimize violence against women and domestic violence. It calls States to ensure that culture, custom, religion, tradition or so-called "honour" is not considered as justification for any acts of violence.

The main underlying idea in the general article 12 on prevention is to impose obligation to States to take positive measure to change and modify harmful stereotypes on gender roles conducive to violence and, in the same time, to undertake activities to empower women. This obligation is a reflection of the greater aim of achieving gender equality by empowerment of women and reducing their vulnerability to violence. Article 12 also prescribes that in all those preventive activities it is necessary to encourage men and boys to actively contribute to preventing all forms of violence covered by the scope of the Convention.

This Convention calls for awareness raising campaigns that are seen as a preventive tool to increase awareness on different manifestation of violence against women and domestic violence and on measures for their prevention (Article 13). Awareness raising should be used on a regular basis and at all levels in cooperation with national human rights institutions and equality bodies, civil society and non-governmental organizations, especially women's organizations.

¹⁶ Article 3 (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;

Article 14 addresses education as a preventive tool. It specifies that education at all levels should include teaching on equality between women and men, non-stereotyped gender roles, mutual respect, non-violent conflict resolution in interpersonal relationships, gender-based violence against women and the right to personal integrity. Article 15 calls for training of relevant professionals on the prevention of violence, on the needs and rights of victims and on how to prevent secondary victimization. Such training should include professionals in the judiciary, in legal practice, in law-enforcement agencies and in the fields of health care, social work and education. This should include training on coordinated multi-agency co-operation to allow for appropriate handling of referrals in cases of violence. It also establishes the obligation of States to set up specific programmes and treatment to ensure that the perpetrators of domestic violence and sexual offenses do not reoffend. It addresses (article 17) the obligation of Parties to encourage the participation of the private sector and the media, to elaborate and implement policies and self-regulatory standards to prevent violence against women and to enhance respect for their dignity.

The CEDAW jurisprudence on violence against women

The international framework on violence against women was also strengthened through the jurisprudence of the CEDAW Committee related to specific cases on violence against women under the Optional protocol to the Convention adopted in 2000, and currently accepted by 104 State Parties. The Optional Protocol provides the Committee with competence to consider complaints from individuals or groups of individuals and to inquire into reliable allegations of grave or systematic violations of the Convention. Communications or petitions provide CEDAW with an opportunity to develop its jurisprudence against the background of an individual factual situation, while the inquiry competence allows it to craft recommendations to address grave or systematic violations of women's rights.

In its jurisprudence related to cases on violence against women the CEDAW Committee often emphasizes the State's responsibility for failing to take all appropriate measures to prevent violence against women and underlines the fundamental importance of addressing violence against women in a holistic manner with involvement and co-operation of many different actors. In its first case on domestic violence *A.T. v Hungary* (No.: 2/2003) the CEDAW Committee recalled its general recommendation No.19 and explained that gender-based violence may breach specific provisions of the Convention.¹⁷ It established as a fact that the State party failed in its duty to provide the author with effective protection from the serious risk to her physical integrity, physical and mental health and her life from her former common law husband.¹⁸ For four years the author was battered by her former common law husband and was not able to request for a restraining or protection order since neither option at that time existed in the State party. She was also unable to flee to a shelter because none were equipped to accept her together with her children, one of whom is fully disabled. In its reasoning the Committee stressed: "*Women's human rights to life and to physical and mental integrity cannot be superseded by other rights, including the right to property and the right to privacy.*"¹⁹ This was later repeated in a similar case. The Committee found violation of different articles of the Convention that resulted in

¹⁷ Ibid, paragraph 9.2

¹⁸ Ibid, paragraph 9.2

¹⁹ Ibid paragraph 9.4

violation of the author's human rights and fundamental freedoms, particularly her right to security of person. In addition to recommending "immediate and effective measures to guarantee the physical and mental integrity of A. T. and her family".

It is very significant that under the General measures it called State party to:

- a) "*Respect, protect, promote and fulfill women's human rights, including their right to be free from all forms of domestic violence, including intimidation and threats of violence...*"
- b) "*Assure victims of domestic violence the maximum protection of the law by acting with due diligence to prevent and respond to such violence against women.*"²⁰

In two other domestic violence case against Austria (No. 5/2005) *Şahide Goekce* (deceased) and (No.6/2005) *Fatma Yildirim* (deceased) *v. Austria*) the Committee found a violation of the rights to life and physical and mental integrity under article 2 (a) and (c) through (f), and article 3 of the Convention read in conjunction with article 1 of the Convention and general recommendation 19 on violence against women. The Committee held Austria accountable for failing to exercise due diligence to protect the two victims from domestic violence. In both cases the Committee expressed the views "*that the perpetrator's rights cannot supersede women's human rights to life and to physical and mental integrity*". The European Court for Human Rights quoted those cases in its recent case on domestic violence against women *Opuz v. Turkey*. The ECHR recognizes that a State's *failure* to exercise due diligence to protect women against domestic violence is gender-based discrimination.

In the case *V.K. v. Bulgaria* (No.20/2008)²¹ the Committee found that the State party failed to provide the author with an effective protection order and to protect her against domestic violence. It also found that the unavailability of shelters where she and her children could have stayed constitutes a violation of the State party's obligation under article 2 (c) and (e) of the Convention to provide for the immediate protection of women from violence, including domestic violence.

In the case *Abramova v. Belarus* (No.23/2009)²² the Committee found that actions by State agents against the imprisoned author constituted sexual harassment and discrimination within the meanings of articles 1 and 5(a) of the Convention and general recommendation 19 of the Committee on violence against women. In that general recommendation, the Committee observed that sexual harassment is a form of gender-based violence and concluded that the State party failed to meet its obligations under different articles of the Convention.²³

²⁰ Ibid, paragraph 9.6. II General (a)

²¹ CEDAW/C/49/D/20/2008

²² CEDAW/C/49/D/23/2009

²³ It found violation of obligations under articles 2 (a), (b), (d), (e) and (f), 3 and 5 (a), read in conjunction with article 1 of the Convention, and with general recommendation No. 19 (1992)

The Committee concluded only one inquiry that addressed killings and disappearances of women in Ciudad Juarez, and found the State party responsible for grave or systematic violations of the Convention and provided it with extensive recommendations for action.

CEDAW Concluding observations on violence against women

As a member of the CEDAW Committee I have in the past 10 years participated in numerous examinations of the State parties reports and in all cases the Committee inquired and requested additional information related to violence against women. There was no single State party without gaps in protection of women and girls against violence. In 2008 the Committee introduced a specific follow-up to the concluding observations procedure under which it requests from each State party additional information on up to two priority concerns within a period of two years. Violence against women is very often considered under this new procedure that is calling for priority attention and implementation by the State party.

Drafting the concluding observations is one of the most important tasks of a treaty body because they can make a difference in the context of how a particular State implements the Convention. They should, therefore, focus on concrete issues and should be “implementable” by the State, providing tools the State can use to develop and strengthen their policies relating to the implementation of the Convention. Over the years, the Committee has made considerable progress in how it formulates its concluding comments, but more should be done.

I will give you a brief synopsis of the concerns raised by the Committee in regard to violence against women.

Reservations

The Committee systematically reiterates its concern at the reservations entered by the State party under the different articles of the Convention, including impermissible reservation under the Article 2 and 16 and calls for their withdrawal. Since the obligation to prevent violence against women also falls under those two articles, such reservations are hindering eradication of violence against women.

International obligations under the CEDAW

The Committee puts a high priority on the need to bring national laws, policies, and practices in line with CEDAW Convention. In this regard the Committee has been concerned about existence of discriminatory laws that perpetuate the subordination of women, including some examples of discriminatory constitutions that either directly discriminate against women or excludes family matters from protection against discrimination.

Legislation and its implementation

The Committee has been greatly concerned that domestic legislation has not been put in place in line with international obligations to address violence against women. In some State parties it notes with concern lack of specific legislation to deal with all forms of violence against women,

including lack of specific laws on domestic violence, sexual harassment, marital rape, incest, FGM, trafficking and forced marriage.

It has noted problems with scope and coverage of existing legislation. Some examples are: definitions of domestic violence that are limited to physical violence; failure to criminalize domestic violence and sexual harassment; and inadequate penalties for acts of violence against women, use of the defense of honour in cases of assault or murder of women and the related mitigation of sentences; definitions of rape that require use of force rather than lack of consent; mitigation of sentence in rape cases where the perpetrator marries the victim. It has also noted lack of effective implementation of existing legislation. Some examples are: the absence of regulations and procedures for the implementation of legislation; high dismissal and withdrawal rates of cases; low prosecution and low conviction rates; lack of legal aid for victims; and failure to apply measures to protect victims, *use of discriminatory customary law and practice*, despite laws enacted to protect women from violence.

Comprehensive approach in preventing and combating violence against women

The Committee very often emphasizes the need for coordinated *multi-sectorial and multi-stakeholder strategies* to prevent and address violence against women in a comprehensive, systematic, and sustained manner. It recommends adoption of laws on a national action plan to prevent violence against women as an effective way of putting a comprehensive policy into practice. It also calls for cooperation between all relevant actors such as government agencies, national human rights institutions and NGOs.

Attitudes and stereotypes

The Committee has highlighted that persistence of patriarchal attitudes and deep-rooted stereotypes regarding roles and responsibilities of women and men in family and society present significant impediment to implementation of the CEDAW and is a root cause of violence against women. It has called attention to the lack of social awareness and the persistence of patriarchal attitudes that consider violence against women, particularly domestic violence, private matters that are acceptable. The CEDAW points out that efforts to prevent violence against women must be firmly grounded in work to *eliminate discrimination against women* which requires not only non-discriminatory laws and policies but also efforts to change stereotypical conceptions of gender roles, including through education and media. It recommends the undertaking of a national campaign against violence against women, in line with the Secretary-general's initiative of February 2008, in order to modify social and cultural attitudes, which are the root causes of most forms of violence targeting women.

Provision of services: The Committee has expressed concern about insufficient support measures for victims of domestic violence, such as shelters and legal, medical and psychological support. It has been concerned about the inadequacy of financing and monitoring of programmes providing services to women victims of violence.

Data and research: Recognizing that data and research are necessary to highlight the prevalence of particular types of violence, to create social awareness and to establish and properly

implement policies and programmes, the Committee has consistently called attention to the limited data available on various forms of violence against women and called for data on the prevalence of violence against women.

Annex 1: Examples of CEDAW recommendations:

- Consider adopting a comprehensive law addressing violence against women;
- Give high priority to the enactment of comprehensive specific legislation on domestic violence, to put in place comprehensive measures to prevent and address violence against women and girls, including marital rape, to ensure that perpetrators are prosecuted and punished commensurate with the gravity of their crimes, in accordance with the Committee's general recommendation No. 19 (1992) on violence against women and to raise awareness among women that marital rape is criminalized;
- Consider urgently adopting comprehensive legislation to combat sexual harassment;
- Adopt a legal definition of rape in the Penal Code so as to place the lack of consent at its centre, in line with the Committee's general recommendation No. 19, and the Vertido case (Communication No. 18/2008);
- In the light of its general recommendations Nos. 14 and 19, as an act of violence against women inflicting physical, mental or sexual harm or suffering, the Committee reiterates the recommendation that the State party adopt urgently legislation criminalizing female genital mutilation;
- To accord high priority to the full implementation of the Sexual Offences Act and to put in place comprehensive measures to prevent and address violence against women and girls, recognizing that such violence is a form of discrimination against women and constitutes a violation of their human rights under the Convention and a criminal offence and ensuring that women and girls who are victims of violence have access to immediate means of redress and protection and that perpetrators are prosecuted and punished, in accordance with general recommendation No. 19 of the Committee;
- While noting the information provided regarding the current review of the Criminal Code, the Committee is deeply concerned about its article 158, a provision enabling the termination of criminal proceedings against rapists when they marry their victims. The Committee urges the State party to expeditiously repeal article 158 of the Criminal Code.
- The Committee remains concerned that several provisions of the Penal Code discriminate against women. It is particularly concerned at articles 273 and 275 identifying and criminalizing acts violating "public decency", under which women are systematically prosecuted, as well as article 232 providing that a man, or any other male relative, who kills his wife, or a female member of the family suspected of adultery, is not prosecuted with murder. The Committee urges the State party to repeal any discriminatory penal provisions of the Penal Code, including articles 273, 275 and, in particular, 232, as already proposed by the Women's National Committee several years ago, to ensure that homicides committed against women by their husbands or male relatives are prosecuted and punished in the same way as any other murders;

- To amend article 153 of the Criminal Code in order to remove diminished criminal liability and provide more stringent penalties for men who commit so-called “honour crimes”;
- To further amend the Criminal Code so as to provide equal sanctions for both men and women in relation to killings motivated by adultery;
- Committee remains deeply concerned at the persistence of adverse cultural norms, practices, traditions, patriarchal attitudes and deep-rooted stereotypes regarding the roles, responsibilities and identities of women and men in the family and in society. It notes that stereotypes contribute to the persistence of violence against women and practices harmful to women and girls, such as female circumcision, early marriage, arranged marriage and polygamy;
- The Committee also expresses serious concern about the persistence of entrenched harmful cultural norms and practices, including *ukuthwala* (forced marriages of women and girls to older men through abduction), polygamy and the killing of “witches”. The Committee is also concerned about the continuing stereotypical portrayal of women in the media, which encourages discrimination and undermines the equality of women and men;
- The Committee urges the State party to accelerate the implementation without delay of a comprehensive strategy, including review and formulation of legislation and establishment of goals and timetables, to modify or eliminate harmful practices and stereotypes that discriminate against women, in conformity with articles 2(f) and 5(a) of the Convention...More vigorously address harmful practices, such as *ukuthwala*, polygamy, the killing of “witches”, and the practice of female genital mutilation (FGM) among certain populations;
- Collect comprehensive statistical data on violence against women, disaggregated by sex, age and relationship between the victim and perpetrators, including data on the number of complaints, prosecutions and convictions, and on the sentences imposed on perpetrators of sexual and gender-based violence and include such data in its next report;
- To ensure systematic collection and publication of data, disaggregated by sex, ethnicity, type of violence, and by the relationship of the perpetrator to the victim; to collect data on the number of women killed by partners or ex-partners; and to monitor the effectiveness of legislation, policy and practice relating to all forms of violence against women and girls.
- ...The Committee also requests the State party to ensure that the systematic collection of data, disaggregated by type of violence and by the relationship of the perpetrator to the victim, is undertaken and made publicly available and that such data form the basis for monitoring the implementation of current and future policy and support measures.
- The Committee also recommends that the State party take effective measures to reduce the length of maintenance and alimony proceedings, ensure that courts take into account

the vulnerable position of the abused partner when deciding on the appropriateness of mediation and shared custody for children.

- To provide for a sufficient number and sufficient quality of shelters for all female victims of violence without restrictions linked to age or marital status.
- Establishment of counseling services for victims of violence and urges the state party to re-consider the possibility of establishing shelters for such victims
- To assist women victims to report incidents of domestic and sexual violence to the police, including by providing legal, medical and psychological assistance and rehabilitation, including adequate shelters;
- To provide regular training for the police, prosecutors and judges on effective investigation, prosecution and punishment of acts of domestic and sexual violence against women, including on the guarantees of the right to be represented by an attorney of one's own choice, and to inform the general public on the criminal nature of such acts;