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**Prevention of violence against women and girls**

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

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**Introduction**

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 very important standard and policy setting intergovernmental body that launched 5 global women's conferences and elaborated almost all crucial women's human rights instruments<sup>1</sup> including the Convention on the Elimination of all Forms of Discrimination against Women<sup>2</sup> (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.

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

<sup>1</sup> 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.

<sup>2</sup> 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 currently predominant 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 Covenant on Civil and Political Rights (1966) and the Covenant on Economic, Social and Cultural Rights (1966), started with gender neutrality and was silent on discrimination against women within the private sphere. It was also silent on violence against women and especially domestic violence, which was considered by many as a private act and was therefore committed with widespread impunity. Today, although we do not have a specific global convention on the prevention of violence against women, we do have a robust engendered international human rights framework, established in 1979 by the adoption of the UN Convention on the Elimination of all forms of Discrimination against Women (the CEDAW Convention), a gender specific human rights treaty that protects women from all forms of discrimination - including violence against women.

This change of attitudes and the international legal response was happening gradually at the global and regional levels over the last three decades. It is now clear that violence against women, including domestic violence, should be treated as a human rights violation. Traditionally states have only been held accountable for violations of human rights committed by their agents, while today they have an 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.<sup>3</sup> 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)<sup>4</sup> or gender sensitive norms (the Istanbul Convention), aimed at focusing on and addressing discrimination and violence against women and protecting human rights of women and girls on an equal footing with those of men.

### **The CEDAW Convention and CEDAW Committee**

Within this international global framework on violence against women the UN CEDAW Convention is the central or key international instrument for the elimination of discrimination and violence against women. 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” at the same time establishing clear commitments and obligations for its States Parties to work on the elimination of all forms of discrimination against women.

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<sup>3</sup> 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>

<sup>4</sup> 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. One of its important features is that it is comprehensive – unlike some other instruments which maintain the division of human rights into civil, political, economic, social and cultural, CEDAW takes the approach of indivisibility of rights. Another very important feature is that it is strengthened with an expert monitoring body, being a part of the group of UN human rights treaties with monitoring bodies, each with a specific role. The CEDAW Convention provides for establishment of the specialized Committee of 23 experts (the CEDAW Committee) entrusted to monitor the implementation or effects of the Convention in its States Parties. The CEDAW Committee started its work in October 1982 in Vienna and this year it commemorates its 30th anniversary. This feature is not only crucial as it provides for monitoring of implementation, but because it makes the CEDAW Convention a “living” international women's human rights instrument, which grows, develops and adapts through the work of the CEDAW Committee. Finally, in describing the Convention more generally, in terms of its character, one might say CEDAW is at the same time a women's human rights instrument, women's development instrument and a women's empowerment instrument.

Specifically with reference to violence against women, it is important to note that the CEDAW Convention does not contain an explicit article on violence against women or domestic violence, but it addresses it implicitly. The CEDAW Committee used its mandate under Article 21 to formulate general recommendations and has thereby provided a logical and clear interpretation of violence against women as falling under the CEDAW Convention.<sup>5</sup>

However, before examining that particular general recommendations in more depth, it is useful to first observe the main principles and key concepts of the Convention, to better understand the general framework within which this specific general recommendation operates.

Firstly, there is the principle of non-discrimination, which requires elimination of all forms of discrimination against women in the public and private life. Secondly, there is the principle of substantive equality of women and men which requires its practical realization through appropriate means. Those two principles are central for the recognition of women's rights as human rights and should be read together with the definition of discrimination provided in Article 1 of the Convention, which 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.

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<sup>5</sup> 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).

Secondly, 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 for the benefit of society as a whole.

Thirdly, it explicitly requires that States and public authorities and institution *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, including enacting or amending legislation, in order to modify or abolish laws, regulations, customs and practices which constitute discrimination against women (Articles 2 (f)).

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

Fifthly, in its Article 16 it addresses private life and equality of women within the marriage and family relations. The previously excluded area of family and private life and of discrimination of girls and women in private or personal matters has been granted equal level of protection as all other areas of women's rights. Family matters have been moved from the private into the public human rights sphere, which falls under State obligations with respect to the protection of human rights.

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

### **CEDAW Committee’s General Recommendation No. 19 on Violence against Women**

Turning to the earlier mentioned CEDAW Committee’s work on violence against women the ability of the Committee to make general recommendations was crucial for violence against women falling under the scope of the CEDAW Convention. Based on the described key framework provisions provided by the Convention, and using its mandate under the Article 21 to make general recommendation, as well as experience with reporting gaps in the first ten years, the CEDAW Committee first adopted in 1989 its 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 a provided clear explanation of gender based violence against women as a form of discrimination against women falling under the CEDAW definition of discrimination against women. The General Recommendation No. 19

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<sup>6</sup> “To 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.

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.”<sup>7</sup>

It further clarifies: “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.”<sup>8</sup>

The Committee also explained the responsibility of States with respect to the state’s actors and non-States actors: “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.”<sup>9</sup>

This interpretation of the ‘due diligence’ standard developed in the *Velazquez Rodriges* case<sup>10</sup> on State responsibility for human rights violation of non-state actors and its application on violence against women committed by private persons provided the 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 the ‘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 Women<sup>11</sup> and 1994 Inter-American Convention on Prevention, Punishment and Eradication of Violence against Women (The Convention of Belem do Para). Most recently, this principle was included in the 2011 Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence, which for the first time explicitly provided a clear definition of this standard in provisions of a human rights instrument.

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<sup>7</sup> Para 7 of the CEDAW GR No. 19 (1992)

<sup>8</sup> Para 6 of the CEDAW GR No. 19 (1992)

<sup>9</sup> “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).

<sup>10</sup> *Velazquez Rodriges v. Honduras*, 1988, Inter-Am.Ct.H.R. ( ser.C) No.4,

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

However, this progressively developed global women's human rights protection framework under the CEDAW Convention has not yet achieved its universal acceptance. In addition to certain States not yet accepting the CEDAW Convention, there are also a significant number of reservations entered by its State parties. More specifically, CEDAW is the UN human rights treaty with the highest number of reservations entered by its State parties. On one hand the high number of ratifications shows the global acceptance of the principle to eliminate discrimination against women, while on the other hand the high number and substance of reservations points to serious reluctance to fully and rapidly achieve the goal of substantive equality. However, it is important to note that according to Article 28 of the Convention reservations incompatible with the object and purpose of the Convention are not permitted and in its Statement on reservations the CEDAW Committee has provided its view on the impermissibility of reservations on Articles 2 and 16 of the Convention.

In addition to the CEDAW Convention, the UN has adopted several specific although non-binding declarations and resolutions on violence against women. The most significant is the UN Declaration on Violence against Women adopted in 1993 and the Beijing Declaration and Platform (the BPA) for action of 1995, which included violence against women as one of twelve critical areas of concern.

### **The Beijing Declaration and Platform for Action**

Since the BPA was adopted after the adoption of the CEDAW Convention, the BPA contains numerous references to the CEDAW Convention and provides for 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.

Particularly violence against women is a fine example of complementarity between the BPA and the Convention, as well as of the mutually reinforcing nature of both instruments. On one hand, the BPA in Para 124.F) calls States to: "*Implement the CEDAW Convention, taking into account general recommendation 19, adopted by the CEDAW Committee.*" On the other hand, the BPA also contains as an area of concern women and armed conflict, laying the ground for the UN Security Council Resolution 1215 (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 shows the dynamic nature of the CEDAW Convention and progressive work of its Committee.<sup>12</sup>

### **UN Declaration on Violence against Women**

The UN Declaration on Violence against Women (DEDAW) was adopted by the GA in 1993 as the only global, although not legally binding instrument on violence against women. The CEDAW

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<sup>12</sup> 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>

Convention and the Committee's General Recommendation No. 19 heavily influenced the DEVAW, reflecting emerging 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 called 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.”*

### **Developments at the Regional Level, with a particular focus on the Istanbul Convention**

This global international framework is complemented with significant developments at the regional level. The Organization of American States adopted in 1994 was 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 states 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 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.

Most recent regional developments of international significance 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 women,<sup>13</sup> of

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<sup>13</sup> 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;*

domestic violence<sup>14</sup> and a definition of the ‘due diligence’ obligation.<sup>15</sup> It also provides a comprehensive set of legally binding standards to combat violence against women and domestic violence and provides for a 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.

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.<sup>16</sup>

The Istanbul Convention contains provisions aimed at preventing and combating all 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 provisions cover 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 adequate content into school curricula, from primary school level onwards. This includes: the teaching of gender equality, non-stereotyped gender roles, mutual respect, non-violent resolution of conflicts in interpersonal relations. 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.

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<sup>14</sup> 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.

<sup>15</sup> 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”.

<sup>16</sup> 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;

The main underlying idea in the general Article 12 on prevention is to impose an obligation on States to take positive measure to change and modify harmful stereotypes on gender roles conducive to violence and, at 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 rising 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 rising should be used on a regular basis and at all levels in cooperation with national human rights institutions and equality bodies with gender equality competences and the civil society and non-governmental organizations, especially women's organizations.

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 the 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 in Article 17 the obligation of Parties to encourage the participation of the private sector and the media in elaborating and implementing policies and imposing self-regulatory standards to prevent violence against women and to enhance respect for their dignity.

### **The CEDAW Jurisprudence on Violence against Women**

Going back to the international framework on violence against women, it is important to note it 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 base violence may breach specific provisions of the Convention.<sup>17</sup> It established 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.<sup>18</sup> 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.*"<sup>19</sup> It also recommended: "*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*".<sup>20</sup>

In two other domestic violence cases against Austria: (No.5/2005) *Şahide Goekce* (deceased) v. Austria and (No.6/2005) *Fatma Yildirim* (deceased) v. Austria the Committee found violations 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 No. 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 a view that: "*the perpetrator's rights cannot supersede women's human rights to life and to physical and mental integrity*". Significantly, the European Court of Human rights cited those cases in its key recent case on domestic violence against women *Opuz v. Turkey*.<sup>21</sup> 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)<sup>22</sup> 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

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<sup>17</sup> Ibid, paragraph 9.2

<sup>18</sup> Ibid, paragraph 9.2

<sup>19</sup> Ibid paragraph 9.4

<sup>20</sup> Ibid, paragraph 9.6. II General (a)

<sup>21</sup> ECHR 33401/02 of ( June 2009).

<sup>22</sup> CEDAW/C/49/D/20/2008

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)<sup>23</sup> 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 No. 19 of the Committee on violence against women and concluded that the State party failed to meet its obligations under the Convention.<sup>24</sup>

The Committee concluded only one inquiry against Mexico that addressed killings and disappearances in case of women. In the Ciudad Juarez inquiry, it found the State party responsible for grave or systematic violations of the Convention and provided it with extensive recommendations for action.<sup>25</sup>

### **CEDAW Concluding Observations on Violence against Women**

In that respect no State party was without gaps in the protection of women and girls against violence. In 2008 the Committee introduced a specific Follow-up procedure to the concluding observations, 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 selected under this new procedure as an issue of concern which calls for priority attention of the State party.

Drafting the concluding observations is one of the most important tasks of a treaty body, because they take into account the specific national context when drafting country specific observations and can therefore make a real difference in 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 its policies relating to the implementation of the Convention. Over the years, the Committee has achieved considerable progress in formulating its concluding observations, but more remains to be done.

Finally, the following is a brief synopsis of the most important concerns raised over the years by the Committee in regard to the particular issue of violence against women:

#### **Reservations**

The Committee systematically reiterates its concern about the reservations entered by States parties 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 the eradication

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<sup>23</sup> CEDAW/C/49/D/23/2009

<sup>24</sup> 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)

<sup>25</sup> CEDAW/C/2005/OP8?Mexico ( 27 January 2005)

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 the existence of discriminatory laws that perpetuate the subordination of women, including some examples of discriminatory constitutions that either directly discriminate against women or exclude family matters from protection against discrimination.

#### Legislation and its implementation

The Committee has been greatly concerned that domestic legislation has not been in line with international obligations to address violence against women. In some States 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; 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 and 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; failure to apply measures to protect victims, as well as the 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 the adoption of a comprehensive law on violence against women and national action plans 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 equality bodies and civil society, particularly NGOs.

#### Attitudes and stereotypes

The Committee has highlighted that the persistence of patriarchal attitudes and deep-rooted stereotypes regarding roles and responsibilities of women and men in the family and in society presents a significant impediment to the implementation of 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, as private matters which 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 undertaking of a national campaign against violence against women in order to modify social and cultural attitudes, which are the root causes of most forms of violence targeting women.

#### Provision of support measures for victims of domestic violence

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 assess and better understand 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 availability of data on various forms of violence against women and has called for data collection relevant for the prevalence of violence against women.

In conclusion, much has happened regarding the attitude and legal response to violence against women in recent decades and, as was highlighted, interesting changes continue to happen, both in the international arena, particularly through the work of the CEDAW Committee, and at the regional level. It is now clear that neither the walls of private homes, nor the walls of social attitudes and cultural patterns, may stand in the way of protection from violence against women, recognizing that such violence is a form of discrimination against women and constitutes a violation of their human rights.

## Annex

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;