

Introduction

In 2008, in follow-up to the Secretary-General's in-depth study on violence against women,¹ and General Assembly resolution 61/143 (2006), the United Nations Division for the Advancement of Women (UNDAW/DESA), in collaboration with the United Nations Office on Drugs and Crime (UNODC), organized an expert group meeting on good practices in legislation on violence against women. The meeting was held in Vienna, Austria, from 26 to 28 May 2008. That expert group meeting developed a model framework for legislation on violence against women, including detailed recommendations, commentaries and examples of promising practices. While many of the framework's recommendations are applicable to all forms of violence against women, some are specific to domestic violence and sexual violence.² The framework emphasizes the importance of adopting a comprehensive and human rights-based legislative approach to all forms of violence against women that encompasses not only criminalization and the effective prosecution and punishment of perpetrators, but also the prevention of violence, the empowerment, support and protection of survivors, and the creation of mechanisms to ensure its effective implementation.³

The purpose of the expert group meeting on good practices in legislation to address harmful practices against women is to build upon the work of the prior expert group meeting held in May 2008 by focusing on effective legal frameworks to address certain other forms of violence which have been referred to as harmful traditional or customary practices. A number of different forms of violence against women have been referred to over time as such practices, including:

- female genital mutilation (FGM),
- female infanticide and prenatal sex selection,
- early marriage,
- forced marriage,
- dowry-related violence,
- acid attacks,
- crimes against women committed in the name of "honour", and
- maltreatment of widows.

Many other forms of violence against women have also been identified in this category by States, by the Special Rapporteur on violence against women, its causes and

¹ United Nations (2006) *Ending Violence against Women: from words to action, Study of the Secretary-General* (A/61/122/Add.1 and Corr.1)

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In the 1980s, the issue was taken up by the Sub-Commission on Prevention of Discrimination and Protection of Minorities of the then Commission on Human Rights,¹¹ and its Working Group on Traditional Practices Affecting the Health of Women and Children¹². In 1988, the Sub-Commission appointed the first Special Rapporteur on harmful traditional practices, Ms. Halima Embarek Warzazi.¹³

A number of world conference outcome documents, including the Vienna Declaration and Programme for Action (1993), International Conference on Population and Development Programme of Action (1994), and the Beijing Platform for Action (1995) address “harmful practices”.

This paper reviews international and regional legal and policy frameworks which relate to States’ obligation to establish and implement a comprehensive and effective legal framework to address these forms of violence, and then summarizes selected promising legal reforms that have been adopted by States.

International legal and policy framework and jurisprudence

Violence against women, and the importance of enacting legislation to address such violence, is the subject of a comprehensive legal and policy framework at the international level.¹⁴ In addition, over the past sixty years, numerous provisions in international legal and policy frameworks have called for legal measures to address “harmful practices”.

International human rights law

The obligation of States to enact legislation to address “harmful practices” has been established in international human rights treaties and taken up by the treaty bodies which monitor their implementation. The International Covenant on Economic, Social and Cultural Rights, adopted in 1966, states in article 10(2), that marriage must be

¹¹ In 2006, the Commission on Human Rights was replaced by the Human Rights Council.

¹² The Working Group on Traditional Practices Affecting the Health of Women and Children was composed of experts designated by the former Sub-Commission on the Promotion and Protection of Human Rights, United Nations Children’s Fund (UNICEF), United Nations Educational, Scientific, and Cultural Organization (UNESCO), World Health Organization (WHO), and representatives of concerned non-governmental organizations. The Working Group was established by the Commission on Human Rights resolution 1984/48 of 13 March 1984.

¹³ Mrs. Halima Embarek Warzazi was the Special Rapporteur on traditional harmful practices from 1988-2005.

¹⁴ For further information, please refer to United Nations Division for the A5(neUnit)9ueion rutona%cM3yn (n)5(idi(Di)4)4(ect)

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entered into with the free consent of the intending spouses. In its general comment no. 14¹⁵, the Committee on Economic, Social and Cultural Rights (ICESCR), notes that States are under a specific legal obligation to adopt effective and appropriate measures to abolish harmful traditional practices affecting the health of children, particularly girls, including early marriage, female genital mutilation, preferential feeding and care of male children. It also notes that States parties are obliged to prevent third parties from coercing women to undergo traditional practices, such as female genital mutilation.

The Convention on the Elimination of All Forms of Discrimination Against Women, adopted in 1979, calls upon States Parties “to take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women (article 2(f)).” In addition, the

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labour and administrative sanctions in domestic legislation to punish and redress the wrongs caused to the victims of harmful practices and provide access to judicial mechanisms. The Declaration also emphasized that Member States must condemn violence against women and not invoke any custom, tradition or religious consideration to avoid their obligation with respect to its elimination. The Programme of Action of the International Conference on Population Development, adopted in 1994, urged Governments to prohibit female genital mutilation wherever it exists,³⁴ and create a socio-economic environment conducive to the elimination of all child marriages. The Beijing Declaration and the Platform for Action, adopted by the Fourth World Conference on Women in 1995, called upon Governments to enact and enforce legislation against the perpetrators of practices and acts of violence against women, such as female genital mutilation, female infanticide, prenatal sex selection and dowry-related violence.

In 1998, the United Nations General Assembly, in its resolution on the issue of traditional or customary practices affecting the health of women and girls, emphasized “the need for national legislation and/or measures prohibiting harmful traditional or customary practices as well as for their implementation, *inter alia*, through appropriate measures against those responsible.”³⁵ This wording was strengthened in 1999 and reaffirmed in two subsequent resolutions, when the General Assembly called upon Member States “to develop and implement national legislation and policies prohibiting traditional or customary practices affecting the health of women and girls, including female genital mutilation, *inter alia*, through appropriate measures against those responsible, and to establish, if they have not done so, a concrete national mechanism for the implementation and monitoring of legislation, law enforcement and national policies.”³⁶ In 2002, Member States reiterated their call for an end to harmful traditional or customary practices, such as early and forced marriage and female genital mutilation, which violate the rights of children and women.³⁷ In 2006, the General Assembly again committed to strengthening, *inter alia*, legal measures for the promotion and protection of women’s full enjoyment of all human rights and the elimination of all forms of violence against women and girls, including harmful traditional and customary practices.³⁸

In 2000, 2002 and 2004, the United Nations General Assembly adopted resolutions on so-called honour crimes, calling on Governments to intensify efforts to prevent and eliminate crimes against women committed in the name of honour by using, *inter alia*, legislative measures.³⁹

³⁴ Programme of Action of the International Conference on Population Development (1994), para 4.22.

³⁵ United Nations General Assembly resolution 52/99 para 2(b).

³⁶ United Nations General Assembly resolution 53/117 para. 3(c), see also United Nations General Assembly resolution 54/133 and United Nations General Assembly resolution 56/128.

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In 2002, the Committee of Ministers to Member States of the Council of Europe adopted recommendation no. 5 on the protection of women against violence. The recommendation defines violence against women as any act of gender-based violence including, but not limited to, crimes committed in the name of honour, female genital and sexual mutilation and other traditional practices harmful to women, such as forced marriages. It urges Member States to review their legislation and policies with a view to guaranteeing women the recognition, enjoyment, exercise and protection of their human

Legal responses at the national level

In recent years, an increasing number of States have developed legal frameworks in line with their international obligations to address violence against women, including “harmful practices”. These legal frameworks vary significantly in nature, from constitutional provisions, to single provisions amending the Penal Code, and comprehensive laws calling not only for the criminalization of these forms of violence,

