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United Nations Division for the Advancement of Women**

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**BACKGROUND PAPER FOR THE EXPERT GROUP MEETING ON GOOD
PRACTICES IN LEGISLATION ON VIOLENCE AGAINST WOMEN**

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Introduction

In 2006, the Secretary-General of the United Nations launched his in-depth study on all forms of violence against women (hereinafter the Secretary-General's study) which noted that, while progress has been made in addressing violence against women, significant deficiencies persist in national legal frameworks to address the issue.¹ In response to the Secretary-General's study, the General Assembly adopted resolution 61/143 of 19 December 2006, calling upon Member States and the United Nations system to intensify their efforts to eliminate all forms of violence against women. The resolution sW6 2. 0 TD7iosr1341 Tw -

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against women committed in the name of “honour”, maltreatment of widows; femicide; sexual violence by non-partners; sexual harassment and violence in the workplace and elsewhere, trafficking in women; and forced sterilization.⁴

International legal and policy framework and jurisprudence

Over the past two decades, violence against women has come to be understood as a form of discrimination and a violation of women’s human rights. Violence against women, and the obligation to enact laws to address violence against women, is now the subject of a comprehensive policy and legal framework at the inter

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Accordingly, it is now the practice of States Parties to provide relevant information on violence against women to the human rights treaty bodies.

During their review of States parties' reports, the treaty bodies have expressed concern where the States parties' legal systems lack specific legislation or legislative provisions to criminalize violence against women and/or retain discriminatory laws that increase women's vulnerability to violence. They have also expressed concern about problems with existing legislation, including scope and coverage, and the lack of effective implementation of such legislation. Furthermore, in countries where customary law prevails alongside codified law, treaty bodies have been concerned about the use of discriminatory customary law and practice, despite laws enacted to protect women from violence.

In light of these concerns, the treaty bodies, and in particular the Committee on the Elimination of Discrimination against Women, have called upon States parties to ensure that:

- violence against women is prosecuted and punished;
- women victims of violence have immediate means of redress and protection; and
- public officials, especially law enforcement personnel, the judiciary, health-care providers, social workers and teachers, are fully familiar with applicable legal provisions and sensitized to the social context of violence against women.

The Committee on the Elimination of Discrimination against Women has also addressed the obligation of States parties to enact, implement and monitor legislation to address violence against women in its work under the Optional Protocol to the Convention on the Elimination of all Forms of Discrimination against Women. In the case of *AT v Hungary*,¹⁰ the Committee found that the lack of specific legislation to combat domestic violence and sexual harassment constituted a violation of human rights and fundamental freedoms, particularly the right to security of person. In the cases of *Sahide Goekce (deceased) v. Austria*,¹¹ and *Fatma Yildirim (deceased) v. Austria*,¹² the Committee recommended that the State party "[s]trengthen implementation and monitoring of the Federal Act for the Protection against Violence within the Family and related criminal law, by acting with due diligence to prevent and respond to such violence against women and adequately providing for sanctions for the failure to do so".¹³ In its inquiry under article 8 of the Optional Protocol into the abduction, rape and murder of women in and around Ciudad Juárez, State of Chihuahua, Mexico, the Committee recommended that Mexico "sensitize all state and municipal authorities to the need for violence against

¹⁰ *A.T. v Hungary*, communication No. 2/2003, views adopted 26 January 2005.

¹¹ *Sahide Goekce (deceased) v. Austria*, communication No. 5/2005, views adopted 6 August 2007

¹² *Fatma Yildirim (deceased) v. Austria*, communication No. 6/2005, views adopted 6 August 2007.

¹³ *Sahide Goekce (deceased) v. Austria*, supra note 11, para. 12.3(a) and *Fatma Yildirim (deceased) v. Austria* supra note 12, para. 12.3(a).

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women to be regarded as a violation of fundamental rights, in order to conduct a substantial revision of laws from that standpoint.”¹⁴

Other international treaties

In addition to the international human rights treaties, other international instruments have been adopted which create obligations for States parties to enact legislation addressing violence against women. These instruments include the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (the Palermo Protocol), and the Rome Statute of the International Criminal Court (the Rome Statute).

The *Palermo Protocol* requires States parties to:

- adopt necessary legislative and other measures to establish trafficking in persons as a criminal offence when committed intentionally (article 5);
- ensure that their domestic legal or administrative system contains measures that provide to victims information on court and administrative proceedings and assistance to enable their views and concerns to be presented and considered during criminal proceedings against offenders (article 6);
- ensure that their domestic legal systems contain measures that offer victims the possibility of obtaining compensation for damage suffered (article 6);
- adopt or strengthen legislative or other measures to discourage the demand that fosters all forms of exploitation of persons, especially women and children, that leads to trafficking (article 9); and
- consider adopting legislative or other measures that permit victims of trafficking to remain in their territory, temporarily or permanently, in appropriate cases (article 7).

The *Rome Statute* provides the broadest statutory recognition of gender-based violence as a crime under international criminal law to date. In article 7(1)(g), the Rome Statute classifies “rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilisation, or any other form of sexual violence of comparable gravity” committed “as part of a widespread or systematic attack directed against any civilian population” as crimes against humanity. These same offences are classified in article 8(2)(b)(xxii) as serious violations of the laws and customs applicable to international armed conflict and thereby classifiable as war crimes. Under the principle of complementarity established by the Statute, States parties have primary responsibility for bringing those responsible for genocide, crimes against humanity and war crimes to justice. The preamble of the Rome Statute recalls that “it is the duty of every State to exercise its criminal jurisdiction over those responsible for international crimes”. It has therefore been argued that it is “essential for all states parties, as well as other states, to amend existing legislation or

¹⁴ Report on Mexico produced by the Committee on the Elimination of Discrimination against Women under article 8 of the Optional Protocol to the Convention, and reply from the Government of Mexico, CEDAW/C/2005/OP.8/MEXICO, para. 286.

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domestic violence against women.¹⁹ These resolutions have routinely called on Member States to strengthen their legal frameworks.²⁰

Regional legal and policy instruments and jurisprudence

The international legal and policy framework outlined above has been accompanied by the adoption of various legal and policy frameworks at the regional level. The

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measures to ensure that trafficking is an offence under their respective criminal laws and punishable by appropriate penalties.

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and by different stakeholders to facilitate and encourage action to address violence against women. In 1996, the

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- adopting specific legislation or legislative provisions to criminalize forms of violence against women, particularly domestic violence, marital rape,³⁶ incest, sexual harassment,³⁷ and harmful traditional practices;

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