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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 stresses the need to treat all forms of violence against women and girls as a criminal offence punishable by law, and highlights States' obligations to exercise due diligence to prevent, investigate and punish perpetrators of violence against women and girls, and to provide protection to victims/survivors of such violence.

The Expert Group Meeting on good practices in legislation on violence against women convened by the United Nations Division for the Advancement of Women, in collaboration with the United Nations Office on Drugs and Crime, will bring together experts from around the world to analyze different approaches in the law for addressing all forms of violence against women, assess lessons learned in the implementation of legislation on violence against women, and identify effective approaches and good practices in legislation on violence against women, with particular attention to different forms of violence against women.²

This paper reviews existing international and regional legal and policy frameworks which relate to States' obligation to establish and implement a comprehensive and effective legal framework as a critical element in addressing violence against women. It then provides examples of model laws and measures that have been elaborated in relation to violence against women, and summarizes selected promising legal reforms that have been adopted by States.

The paper utilizes the definition of violence against women adopted by the Secretary-General's study, wherein violence against women is understood to mean "any act of gender-based violence that is directed against a woman because she is a woman or that affects women disproportionately".³ The Secretary-General's study addresses, inter alia, the following forms of violence against women: intimate partner violence; harmful traditional practices, including female genital mutilation/cutting, female infanticide and prenatal sex selection, early marriage, forced marriage, dowry-related violence, crimes

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), see, inter alia, pp. 96-97 setting out concerns of the international human rights treaty bodies.

² This work will follow on from the work of the United Nations Expert Group Meeting on "Good practices in combating and eliminating violence against women" organized by the United Nations Division for the Advancement of Women in collaboration with the United Nations Office on Drugs and Crime in Vienna, Austria from 17 to 20 May 2005, report available online: <http://www.un.org/womenwatch/daw/egm/vaw-gp-2005/index.html>.

³ United Nations (2006), supra. note 1, p. 6.

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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 international level.

International human rights treaties

Over time, the treaty bodies established to monitor implementation of the international human rights treaties have increasingly taken up States parties’ obligations to address violence against women. In its general recommendation No. 19 (1992) on violence against women, the Committee on the Elimination of Discrimination against Women confirmed that “[u]nder general international law and specific human rights covenants, States may ... 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.”⁵ In relation to national legal frameworks, the Committee on the Elimination of Discrimination against Women recommended that States parties:

- ensure that laws against family violence and abuse, rape, sexual assault and other gender-based violence give adequate protection to all women, and respect their integrity and dignity;⁶ and
- take all legal and other measures that are necessary to provide effective protection of women against gender-based violence, including effective legal measures, including penal sanctions, civil remedies and compensatory provisions to protect women against all kinds of violence.⁷

The Committee also requested that States parties include information on legal measures that have been taken to overcome violence against women, and the effectiveness of such measures, in their reports under the Convention.⁸ The Human Rights Committee has similarly requested that States parties provide “information on national laws and practice with regard to domestic and other types of violence against women, including rape” in their reports under the International Covenant on Civil and Political Rights.⁹

⁴ United Nations (2006), supra. note 1, Chapter IV.

⁵ Committee on the Elimination of Discrimination against Women, general recommendation No. 19 (1992) on violence against women, para. 9.

⁶ Committee on the Elimination of Discrimination against Women supra note 5 para. 24(b).

⁷ Committee on the Elimination of Discrimination against Women supra note 5 para. 24(t).

⁸ Committee on the Elimination of Discrimination against Women supra note 5 para. 24(v)), see also Committee on the Elimination of Discrimination against Women general recommendation No. 12 (1989) para. 1.

⁹ Human Rights Committee general comment No. 28 (2000) on article 3 (equality of rights between women and men).

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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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enact new national legislation defining the crimes in accordance with international law.”¹⁵

International policy instruments

The international conventions and protocols outlined above have been complemented by the development of policy instruments at the international level that provide detailed guidance on the steps to be taken by States and other stakeholders to strengthen the legal framework for addressing all forms of violence against women. These instruments include declarations and resolutions adopted by United Nations bodies, and documents emanating from United Nations conferences and summit meetings. For example, article 4 of the 1993 Declaration on the Elimination of Violence against Women,¹⁶ adopted by the General Assembly, requires Member States to:

- condemn violence against women and not invoke custom, tradition or religion to avoid their obligations to eliminate such violence;
- develop penal, civil, labour and administrative sanctions in domestic legislation to punish and redress the wrongs caused to victims;
- provide access to the mechanisms of justice and, as provided for by national legislation, to just and effective remedies; and
- ensure that the re-victimization of women does not occur because of laws insensitive to gender considerations, enforcement practices or other interventions.

Similarly, the Beijing Platform for Action, adopted by the Fourth World Conference on Women in Beijing in 1995,¹⁷ calls on Governments to:

- enact and reinforce penal, civil, labour and administrative sanctions in domestic legislation to punish and redress the wrongs done to victims;
- adopt, implement and review legislation to ensure its effectiveness in eliminating violence against women, emphasizing the prevention of violence and the prosecution of offenders; and
- take measures to ensure the protection of women subjected to violence, access to just and effective remedies, including compensation and indemnification and healing of victims, and rehabilitation of perpetrators.

This call was reiterated during the five-year review of the Beijing Platform for Action in 2000.¹⁸

In recent years, General Assembly resolutions have addressed violence against women in general, as well as specific forms and manifestations of such violence, including trafficking in women and girls, traditional or customary practices affecting the health of women and girls, crimes against women committed in the name of “honour”, and

¹⁵ Amnesty International *International Criminal Court: Guidelines for Effective Implementation* available online at: <http://www.amnesty.org/en/library/info/IO40/013/2004/en/>.

¹⁶ General Assembly resolution 48/104 of 19 December 1993.

¹⁷ *Report of the Fourth World Conference on Women*, Beijing, China, 4-15 September 1995 (United Nations publication, Sales No. E.96.IV.13), para. 124

¹⁸ See General Assembly resolution S-23/3, annex para. 69

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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 *Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women*, otherwise known as the Convention of Belém do Pará, is the only Convention directed solely at eliminating violence against women. It requires that States parties apply due diligence to prevent, investigate and impose penalties for violence against women and contains detailed provisions regarding the obligations of States to enact legislation. Under article 7, States parties are obligated to:

- adopt legal measures to require the perpetrator to refrain from harassing, intimidating or threatening the woman;
- take all appropriate measures, including legislative measures, to amend existing laws or to modify legal or customary practices which sustain the persistence and tolerance of violence against women;
- establish fair and effective legal procedures for victims; and
- establish the necessary legal and administrative mechanisms to ensure that victims have effective access to just and effective remedies.

The *Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa* addresses violence against women within many of its provisions, and establishes obligations related to legal reform. Under the Protocol, States Parties are required to:

- enact and enforce laws to prohibit all forms of violence against women (article 4(2));
- adopt legislative, administrative, social and economic measures to ensure the prevention, punishment and eradication of all forms of violence against women (article 4(2));
- take all necessary legislative and other measures to eliminate harmful practices (article 5); and
- enact national legislative measures to guarantee that no marriage shall take place without the free and full consent of both parties and that the minimum age of marriage for women is 18 years (article 6).

In South Asia, the South Asian Association for Regional Cooperation (SAARC) has adopted the *Convention on Preventing and Combating the Trafficking in Women and Children for Prostitution* which obligates States Parties under Article III to take effective

¹⁹ The functional commissions of the Economic and Social Council, including the Commission on the Status of Women, the Commission on Human Rights (replaced by the Human Rights Council) and the Commission on Crime Prevention and Criminal Justice, have also regularly adopted resolutions on violence against women.

²⁰ See, for example, General Assembly resolutions 59/166, 58/147 and 56/128.

ENGLISH only

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

Action has also been mandated by the Council of Europe in its Recommendation (2002)5 of the Committee of Ministers to member States on the protection of women against violence. The recommendation urges member States to ensure that:

- all acts of violence are punishable;
- swift and effective action is taken against perpetrators; and
- redress, compensation and protection and support is provided for victims.

In addition to the development of legal and policy instruments at the regional level, there is also an increasing body of jurisprudence on violence against women under the regional human rights treaties. Cases heard by the European Court of Human Rights and the Inter-American Commission on Human Rights have directed States to:

- create appropriate criminal legislation;
- review and revise existing laws and policies; and
- monitor the manner in which legislation is enforced.

In *X and Y v the Netherlands*,²¹ the European Court of Human Rights found that the Netherlands had breached its human rights responsibilities under the European Convention for the Protection of Human Rights and Fundamental Freedoms (article 8) by failing to create appropriate criminal legislation applicable to the rape of a mentally handicapped young woman. The need to review and revise existing laws and policy to eliminate discrimination against women was addressed by the Inter-American Commission on Human Rights in the case of *Maria Mamerita Mestanza Chávez v Peru*²² which dealt with forced sterilization. In *MC v Bulgaria*²³ the European Court of Human Rights highlighted the importance of monitoring the manner in which legislation is enforced. The case found that although the article prohibiting rape in Bulgaria's penal code did not mention any requirement of physical resistance by the victim, physical resistance appeared to be required in practice to pursue a charge of rape. The importance of appropriately enforcing legislation was also emphasized by the Inter-American Commission on Human Rights in the case of *Maria da Penha v Brazil*²⁴ in which the Commission found the Brazilian Government in breach of its human rights obligations due to significant judicial delay and incompetence in the investigation of domestic violence.

Model laws and strategies

As States' obligations to address violence against women, including through legislation, have been clarified, model laws, strategies and measures have been developed over time

²¹ *X and Y v. the Netherlands*, European Court of Human Rights 8978/80, 1985.

²² *Maria Mamerita Mestanza Chavez v Peru*, Inter-American Commission of Human Rights, Case 12.191, No. 66/00, 2000.

²³ *MC v. Bulgaria*, European Court of Human Rights 39272/98, 4 December 2003.

²⁴ *Maria da Penha v Brazil* Case 12.051, Report No. 54/01, OEA/Ser.L/V/II.111 Doc. 20 rev. at 704 (2000)

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and by different stakeholders to facilitate and encourage action to address violence against women. In 1996, the United Nations Special Rapporteur on violence against women, its causes and consequences, presented a framework for model legislation on domestic violence.²⁵ The framework urges States to adopt legislation which, inter alia:

- contains the broadest possible definition of acts of domestic violence and relationships within which domestic violence occurs;
- includes complaints mechanisms and duties of police officers, including that the police must respond to every request for assistance and protection in cases of domestic violence and explain to the victims their legal rights;
- provides for *ex parte* restraining orders and protection orders;
- addresses both criminal and civil proceedings; and
- provides for support services for victims, programmes for perpetrators and training for police and judicial officials.

In 1997, the United Nations General Assembly adopted model strategies and practical measures on the elimination of violence against women in the field of crime prevention and criminal justice.²⁶ Pertinent aspects of this model urge Member States to:

- revise their laws to ensure that all acts of violence against women are prohibited (para.6);
- revise their criminal procedure to ensure that the primary responsibility for initiating prosecution lies with prosecution authorities, that police can enter premises and conduct arrests in cases of violence against women, that measures are available to facilitate the testimony of victims, that evidence of prior acts of violence is considered during court proceedings, and that courts have the authority to issue protection and restraining orders (para. 7);
- ensure that acts of violence are responded to and that police procedures take into account the need for safety of the victim (para. 8(c));
- ensure that sentencing policies hold offenders accountable, take into account their impact on victims and are comparable to those for other violent crimes (para. 9(a));
- adopt measures to protect the safety of victims and witnesses before, during and after criminal proceedings (para.9(h)); and
- provide for training of police and criminal justice officials (para. 12(b)).

Initiatives to develop model approaches in addressing violence against women have also been undertaken by the Caribbean Community secretariat (CARICOM) in 1991;²⁷ the Pan-American Health Organization (PAHO), a regional office of the World Health Organization (WHO), in coordination with the Inter-American Commission of Women (CIMI/OAS), the United Nations Population Fund (UNFPA), United Nations

²⁵ Report of the Special Rapporteur on violence against women, its causes and consequences (1996) "A framework on model legislation" E/CN.4/1996/53/Add.2.

²⁶ Annex to General Assembly resolution 52/86, Crime prevention and criminal justice measures to eliminate violence against women.

²⁷ Available online at:

http://www.caricom.org/jsp/secretariat/legal_instruments/model_legislation_women_issues.jsp

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Development Fund for Women (UNIFEM), and regional non-governmental organizations, in 2004;²⁸ by various States, such as Australia,²⁹ and by other entities, such as the National Council of Juvenile and Family Court Judges in the United States of America.³⁰

Legal responses at the national level

Since the 1990s, many States have adopted or revised legislation on violence against women. These legal reforms have varied significantly in terms of the forms of violence they address, the type of action they mandate and the area of law (civil and/or criminal) they reform. Some States have enacted legislation which addresses multiple forms of violence in a single piece of legislation.³¹ However, most legislation to date has addressed one or a few forms. Similarly, some States have enacted a single, comprehensive piece of legislation on violence against women, amending various legal codes and making provision for services and other preventative measures, while others have addressed the issue through incremental reforms. In addition, some countries have addressed violence against women in their Constitutions.³²

The Secretary-General's study identifies a number of promising practices in legislation to address violence against women, as well as persisting issues related to States' legal frameworks. A number of States have implemented promising legislative practices and/or taken steps to rectify problems in their existing legislation, including, inter alia:³³

- addressing violence against women as a form of gender-based discrimination;³⁴
- removing discriminatory penal laws;³⁵

²⁸ Available online at: <http://www.paho.org/Spanish/DPM/GPP/GH/LeyModelo.htm>

²⁹ Partnership Against Domestic Violence (1999) *Model Domestic Violence Laws Report*, available online at: http://www.ag.gov.au/www/agd/agd.nsf/Page/Publications_Modeldomesticviolencelaws-report-April1999.

³⁰ Advisory Committee of the Conrad N. Hilton Foundation Model Code Project of the Family Violence Project (1994) *Model Code on Domestic and Family Violence*, available online at: http://www.ncjfcj.org/images/stories/dept/fvd/pdf/modocode_fin_printable.pdf

³¹ See for example, the Mexican *Ley General de Acceso de las Mujeres a una Vida Libre de Violencia* (2007), the Guatemalan *Law Against Femicide and Other Forms of Violence Against Women* passed April 2008, and the Bangladeshi *Suppression of Violence against Women and Children Act* (2000) which deals with rape, abduction, dowry-related violence, trafficking, sexual harassment and domestic violence.

³² For example, article 15 of the Constitution of the Democratic Republic of the Congo requires that public authorities ensure the elimination of sexual violence. See American Bar Association (2008) *Gender-based violence laws in Sub-Saharan Africa*, available online at: www.reproductiverights.org/pdf/GBV_Laws_in_Sub_Saharan_Africa.pdf, p. 12.

³³ The following examples focus primarily upon recent legislative initiatives.

³⁴ See, amongst others, the Spanish *Organic Act No. 1/2004 on Integrated Protection Measures against Gender Violence* the Philippine *Anti-Violence Against Women Act (R.A. 9262)*, and the Brazilian Law 11.340/06, known as the *Maria da Penha Law*. Other States have chosen to enact 'gender-neutral' legislation, including Austria (*Protection from Violence Act*) and South Africa (*Sexual Offences Act*).

³⁵ For example, "virginity testing" in rape cases has been banned in Jordan and Turkey: United Nations (2006), supra. note 1, p. 109. However, laws still exist in some countries which criminalize a false declaration of rape and thereby dissuade victims from bringing cases. See for example the *zina* laws in Nigeria and Sudan: American Bar Association (2008), supra. note 32 p. 30; and Human Rights Watch *Five*

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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;³⁸
- making available civil remedies such as civil protection orders, anti discrimination laws,³⁹ civil laws to sue perpetrators and State agents for compensation, and victim compensation funds that cover cases of violence against women;
- adopting comprehensive laws on trafficking;⁴⁰
- adopting specific provisions for a gender-sensitive approach in asylum and immigration laws;⁴¹
- adopting laws which criminalize early or forced marriage;⁴²
- treating sexual violence against women as a violation of women's right to bodily integrity;⁴³
- defining domestic violence as broadly as possible, without limiting it to physical violence;⁴⁴

Years on: No justice for sexual violence in Darfur p. 18, available online at:

<http://www.hrw.org/reports/2008/darfur0408/>

³⁶ Reforms to the Turkish Penal Code in 2004 explicitly criminalized marital rape. However, many States have still not criminalized this form of violence. For instance, during the passage of two relatively recent pieces of legislation, Ghana's *Domestic Violence Act* and Kenya's *Sexual Offences Act*, the offence of marital rape was removed from the legislation and thus, impunity still exists for this offence.

³⁷ For example, article 341bis of Algeria's Criminal Code criminalizes sexual harassment.

³⁸ For example, Law No. 3 of 2003 on the *Repression of the Practice of Female Genital Mutilation* in the Republic of Benin.

³⁹ For example, the South African *Promotion of Equality and Prevention of Unfair Discrimination Act* explicitly recognizes gender-based violence as unfair discrimination.

⁴⁰ For example, Cambodia passed its *Law on Anti-Human Trafficking in Sexual Exploitation* in 2007. The new law includes 56 articles and updates a 1996 law which had only 10 articles: see <http://www.humantrafficking.org/updates/767> for further details.

⁴¹ For example, the Netherlands has a policy whereby sexual or other violence within a relationship constitutes separate grounds for granting residence status for persons in possession of dependent residence permits (CEDAW/C/NLD/4 p. 17). In addition, the Netherlands' *Interim Supplement to the Aliens Act Implementation Guidelines* (TBV 2003/48) provides that, if a girl is at risk of female genital mutilation, she and her family may be granted residence status in Netherlands. See also the United States of America *Violence Against Women Act* (2005 reauthorization), Title VIII 'Protection of Battered and Trafficked Immigrant Women'.

⁴² For example, Norway amended its Penal Code in 2003 to penalize forced marriage. See also the United Kingdom *Forced Marriage (Civil Protection) Act 2007* which provides for civil protection orders in cases of forced marriage.

⁴³ See, for example, the reform of the Turkish Penal Code in 2004 which redefined crimes of sexual violence from "Felonies against Public Decency and Family Order" and "Crimes against Society" to "Crimes against Sexual Inviolability": Women for Women's Human Rights *Turkish Civil and Penal Code Reforms from a Gender Perspective* p. 57 available online at

<http://www.wvhr.org/files/CivilandPenalCodeReforms.pdf>; see also the Swedish law reforms of the late 1990s, collectively referred to as the 'Kvinnofrid reform package': Leander, Karen (2005) 'Reflections on Sweden's Measures against Men's Violence against Women' *Social Policy & Society* 5(1) pp. 115-125.

⁴⁴ Domestic violence legislation in Ghana, Namibia, South Africa, Zimbabwe includes emotional, verbal and psychological abuse, as well as economic abuse: see American Bar Association (2008), *supra*. note 32 pp. 37 and 38. The *Maria da Penha* law of Brazil includes physical, psychological, patrimonial and moral violence.

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- defining rape by lack of consent;⁴⁵
- removing the defence of “honour” in cases of violence against women and the related mitigation of sentences;⁴⁶
- removing provisions allowing mitigation of sentences in rape cases where the perpetrator marries the victim;⁴⁷
- protecting the victim/survivor’s rights during criminal trials, particularly in cases of rape;⁴⁸
- providing gender-sensitivity training of law enforcement officials, prosecutors and judges;⁴⁹
- establishing mechanisms such as ombudspersons, national rapporteurs, and observatories to monitor and evaluate legislation;⁵⁰
- providing for periodic review and revision of laws;⁵¹
- requiring that regulations be developed to specify the manner in which the legislation will be implemented;⁵² and
- creating specialized courts for matters related to violence against women.⁵³

As noted in the Secretary-General’s study, up to 30 April 2006, 89 States had enacted some legislative provisions that specifically address domestic violence, marital rape could be prosecuted in at least 104 States, 90 States had some form of legislative

⁴⁵ For example, Bill C-49 (1991) in Canada introduced section 277 of the Criminal Code which requires that a person charged with sexual violence have taken reasonable steps to determine whether there was consent, as opposed to the victim having to establish resistance: see United Nations (2006) supra note 1 p. 107.

⁴⁶ For example, Tunisia has eliminated reduced penalties, and crimes of so-called “honour” are now punishable by life imprisonment in Turkey. See United Nations (2006) supra note 1 p. 108.

⁴⁷ See for example, Egypt, Costa Rica, Ethiopia, Peru and Turkey: United Nations (2006) supra note 1 p. 109. See also Uruguay’s *Ley 17.938* which repealed article 116 of the Penal Code.

⁴⁸ Including laws that prevent the introduction of unrelated evidence about a victim’s sexual behaviour during rape trials, (eg Philippines Rape Victim Assistance and Protection Act 1998) and laws related to courtroom procedures that protect the privacy of victims during trial. See United Nations (2006) supra note 1 p. 109.

⁴⁹ Some States, for example Spain, have provided for such training in the legislation they have adopted, while others, for instance Austria, have developed a practice of providing such training without mandating it in legislation. See United Nations (2006), supra. note 1, p. 105 for further examples.

⁵⁰ For example, Article 30 of the Spanish *Organic Act 1/2004 on Integrated Protection Measures against Gender Violence* establishes a State Observatory on violence against women.

⁵¹ Although this may not always be provided for in the legislation itself, many States have undertaken reviews. For example, the Swedish ‘Kvinnofrid reform package’ was subjected to a year-long review, resulting in a report in late 2004. See also United Nations (2006), supra. note 1, pp. 107-108 for further examples. In Latin America, the Bolivarian Republic of Venezuela, Brazil, Chile, Costa Rica and Mexico have all revised their laws on domestic violence: see Economic Commission on Latin America and the Caribbean (2007) *No more! The right of women to live a life free of violence in Latin America and the Caribbean* p. 81, available online at: <http://www.eclac.cl/mujer/publicaciones/xml/4/32194/Nomore.pdf>.

⁵² Some legislative efforts, for example section 46 of the Philippines *Anti-Violence Against Women and Children Act (R.A. 9262)*, have mandated that regulations be established within a specific time period following the commencement of the legislation. Others state that the relevant Minister ‘may’ create regulations, eg Ghana’s *Domestic Violence Act* and Kenya’s *Sexual Offences Act*.

⁵³ For example, Title V Chapter I of the Spanish *Organic Act 1/2004 on Integrated Protection Measures against Gender Violence* and article 14 of the Brazilian *Maria da Penha Law*.

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provision against sexual harassment, 93 States had some legislative provision regarding trafficking in human beings, and 15 of the 28 African States where female genital mutilation/cutting is prevalent had enacted laws.⁵⁴

Conclusion

Violence against women is a critical concern for the international community. There exists an international legal and policy framework which establishes standards for States to address violence against women, including through the enactment of legislation. These standards have been further elaborated through initiatives, including model legislation. However, while States have made a great deal of progress in the enactment of legislation to address violence against women, numerous gaps and challenges remain. This Expert Group Meeting provides a timely opportunity to focus on national legal reforms on violence against women, identify strengths and weaknesses in legislation, and highlight effective approaches and good practices in order to assist States and other stakeholders in enhancing existing, and developing new, legislation. With over ten years of experience now accumulated in the enactment and implementation of legislation to address violence against women, the Expert Group Meeting provides a forum in which to take stock of diverse experiences and develop a model framework for legislation on violence against women that responds to lessons learned.

⁵⁴ United Nations (2006), *supra*. note 1, p. 114.