

International tools to promote women's rights and to protect victims of violence and discrimination

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INTRODUCTION

Thank you for providing me with an opportunity to share information with you on my mandate and also to discuss the challenges of effectively addressing violence against women. It has been stated by UN Secretary-General Ban Ki Moon that: "... there is one universal truth, applicable to all countries, cultures and communities: violence against women is never acceptable, never excusable, [and] never tolerable.¹ Violence against women violates the human dignity of women, as well as numerous rights, including the right to equality, non-discrimination, physical integrity and freedom from violence. I believe that equality and equal protection doctrines demand that we address violence against women, in all its manifestations, as discrimination against women.

The protection, promotion and fulfilment of all rights, requires a holistic and intersectional approach. States' have a responsibility to eliminate violence against women through numerous measures, including through legal and policy frameworks, through a responsive criminal justice system, through the provision of social services and also through economic empowerment policies. The due diligence standard requires States' to promote the right to be free from all forms of violence, both private and public; and also to develop and implement prevention, protection, punishment and compensation laws, policies and programs. Significant progress achieved in recent years, in the international legal response to violence against women, has resulted in the explicit recognition of violence against women as a human rights concern. However, the reality on the ground shows that many forms and manifestations of violence against women remain endemic around the world, cutting across national boundaries, race, class and religion, amongst other factors.

INTERNATIONAL FRAMEWORK

Despite the existence of provisions on non-discrimination on the basis of sex in formal international legal instruments since 1945 (e.g. the United Nations Charter and the 1979 Convention on the Elimination of all Forms of Discrimination against Women), the promotion and protection of women's human rights remains a challenge. The Convention on the Elimination of All Forms of Discrimination against Women (1979) is the most extensive international instrument dealing with the rights of women and girls less than 18 years of age. Although violence against women is not specifically addressed in the Convention, except in relation to trafficking and

¹ <http://www.un.org/News/Press/docs/2008/sgsm11437.doc.htm>

prostitution (Article 6), many of the anti-discrimination clauses protect women from violence. Relevant provisions in the CEDAW Convention with regard to sexual violence include Article 2 noting the commitment of States Parties to pursue a policy of eliminating discrimination against women, and to adopt legislative and other measures prohibiting all discrimination against women; Article 5 (a) calling on State Parties to take all appropriate measures to modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women; and Article 6 calling on States Parties to take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation or prostitution of women.

With the adoption of General Recommendation 19 by the CEDAW Committee (1992), the definition of discrimination against women set out in article 1 of the Convention now 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”. General Recommendation 19 also refers to the prevalence of family violence in all society, including battering, rape, other forms of sexual assault, mental and other forms of violence, which are perpetuated by traditional attitudes.

In 1993 the UN General Assembly adopted the Vienna Declaration and Programme of Action which stressed that the human rights of women and girl-children are an inalienable, integral and indivisible part of universal human rights. This declaration also acknowledged that certain gender specific abuses (e.g. violence against women) constitute violations of women’s human rights and, that states have an obligation to eliminate such abuses. In addition, the 1993 Declaration on the Elimination of Violence against Women and the 1994 Commission on Human Rights Resolution to appoint a Special Rapporteur on Violence against Women, its Causes and Consequences, represent a political consensus at the UN level to address the challenges of promoting and protecting women’s human rights generally with a particular focus on addressing the pervasive problem of all forms violence against women.

Violence against women and girl-children, whether occurring in the family, in the general community or perpetrated and condoned by the State, is encompassed in the definition of violence against women provided for in Article 2 of the 1993 UN Declaration on the Elimination of Violence against women. The Declaration defines violence against women as “any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether

occurring in public or in private life.” Article 2 states that “violence against women shall be understood to encompass, but not be limited to, the following:

- Physical, sexual and psychological violence occurring in the family, including battering, sexual abuse of female children in the household, dowry-related violence, marital rape, female genital mutilation and other traditional practices harmful to women, non-spousal violence and violence related to exploitation;
- Physical, sexual and psychological violence occurring within the general community, including rape, sexual abuse, sexual harassment and intimidation at work, in educational institutions and elsewhere, trafficking in women and forced prostitution;
- Physical, sexual and psychological violence perpetrated or condoned by the State, wherever it occurs.”

A crucial provision contained in the Declaration on the Elimination of Violence against Women, is Article 4(c). This article of the Declaration refers to the due diligence obligation to prevent, investigate and punish acts of violence against women, whether those acts are perpetrated by the State or by private persons. State responsibility for failing to provide adequate protection against torture and ill-treatment in the home has also been raised by the Human Rights Committee which indicated that domestic violence can give rise to violations of the right not to be subjected to torture or ill-treatment under article 7 of the ICCPR². In line with this statement, the Committee has mentioned the need for States to adopt specific legislation combating domestic violence, including legislation criminalizing marital rape³.

The 1995 Beijing Platform of Action - by including among its 12 critical areas of concern, violence against women, along with women and armed conflict and the human rights of women- specified other forms of sexual violence against women that were not specifically mentioned in the DEVAW. These include violation of the human rights of women in situations of armed conflict, in particular murder, systematic rape, sexual slavery and forced pregnancy (Article 115) and forced sterilization and forced abortion, coercive/forced use of contraceptives, prenatal sex selection and female infanticide (Article 115 bis). The review of the implementation of the Platform for Action, the special session on Beijing +5 that took place during the 23rd Special Session of the General Assembly, in 2000, went a step further in calling for the criminalization of violence against women. The document notes that all governments shall treat all forms of violence against women and girls of all ages as a criminal offence punishable by law, including violence based on all forms of discrimination” (par. 69).

² Human Rights Committee general comment No. 28 (2000) on article 3 (The equality of rights between men and women), para. 11.

³ See CCPR/CO/79/LKA, para. 20.

MANDATE OF THE SPECIAL RAPPORTEUR

The mandate broadly includes the following:

- a) Seeking and receiving information on violence against women, its causes and consequences; and responding to such information including via the transmission of urgent appeals and communications to States
- b) Recommending measures, ways and means to eliminate violence against women, its causes and remedy its consequences, at the national, regional and international levels
- c) Conducting of fact-finding country visits
- d) Working with other human rights mechanisms to ensure that they regularly and systematically include in their reports, available information on human rights violation affecting women
- e) Cooperating with regional intergovernmental organisations and any other organisations and individuals engaged in the promotion of women's human rights
- f) Furthering the development of international law in this area, including through the submission of relevant annual thematic reports
- g) Adopting a comprehensive and universal approach to the elimination of violence against women, its causes and consequences; including causes of violence against women relating to the civil, political, economic, social and cultural spheres.

FUNCTIONING OF THE MANDATE

The Declaration on the Elimination of Violence against Women places emphasis on the issue of violence in the family, violence in the community and violence perpetrated or condoned by the state. Over the last fifteen years, the mandate of the Special Rapporteur on Violence against Women has evolved at both a conceptual and a practical level. At the conceptual level, the mandate has evolved to capture a wider spectrum of acts as they manifest from the home to the transnational arena i.e. ranging from domestic violence, global trafficking of women, to the impact of globalisation on women. At the practical level, the mandate involves regional networking, implementation of international laws, technical assistance and monitoring of international laws. The current approach emphasises the universality of violence against women, the multiplicity of its forms, the intersectionality of diverse kinds of discrimination against women, and, its linkage to other systems of domination based on inequality and subordination.

The mandate requires an analytical as well as a practical focus to address complex issues and to find concrete ways to move from theory to effective implementation of international standards for the promotion and protection of women's rights broadly, and the elimination of violence against women, in particular. It also requires a national, regional and international focus which is premised on both historical and current social contexts and realities. The mandate requires engagement with international and regional laws and also international and regional human rights institutions. As regards substantive aspects, a crucial focus relates to the issues of due diligence and state obligations; and impunity and state accountability as regards the realisation of women's human rights.

The mandate undertook a critical review in 2009 and the report sought to take stock of the achievements of the 15 years of the mandate, including the conceptual and paradigm shifts that have taken place since its inception, the lessons learned and the many challenges still ahead in combating violence against women. The mandate has contributed to ensuring that violence against women is not understood in isolation from gender-based discrimination, but is addressed as part of States' efforts to ensure gender equality and women's empowerment. The review reaffirms that the mandate of the Special Rapporteur on Violence against Women is a significant forum which has contributed amongst others to the explicit recognition of violence against women as a human rights concern; has developed legal standards and doctrines for addressing distinct forms of gender-based violence; has stressed the necessity of prevention through tackling root causes of gender inequality; has ruptured the public/private dichotomy by expanding the accountability principle to be applicable to both state and non-state actors; has demonstrated that in situations of armed conflict, that sexual violence is not an outcome of war, but that women's bodies are an important site of war and that sexual violence is an integral part of wartime strategy, and that there is a strong link between wartime violence and patriarchal gender hierarchies; and finally, the mandate has in many instances, provided another forum for access to justice and accountability.

The 2009 thematic report to the Human Rights Council was devoted to the political economy of women's human rights. The motivation behind this theme included: (i) the tension between women's economic/social rights and the prevailing macro-economic policy environment; (ii) the tension caused by the dichotomization of political/civil rights and economic/social rights, which characterizes the latter not as entitlements but as aspirations. This theme was both timely and relevant in the context of the economic crisis the world has experienced over the last year, and also the growing recognition that social and economic rights are essential to women's ability to enjoy the full range of their human rights. Using a political economy approach the report analyses the challenges of the neo-liberal policy environment and makes explicit the interconnections between the economic, social and political realms. The report demonstrates how power operates not only through coercion but also through the structured relations of production and reproduction that govern the

distribution and use of resources, benefits, privileges and authority within the home and society at large. Yet, this is often neglected in the analyses of women's human rights and is rarely included in strategies to address violence against them.

The report focuses on the long standing feminist critique of the dichotomization between the 'first generation' and 'second generation' rights as contained in the two Covenants. We know that unless women can develop their capabilities and achieve economic independence, the human rights they are promised will remain abstract concepts. The primacy accorded to civil and political rights has perpetuated a bias toward violations of human rights in the public sphere. The report looks at the specific linkages between violence against women and women's access to particular economic and social rights, such as the right to housing, land and property, food, water, health, education, and the right to decent work and social security. Thus, demonstrating that economic and social security is crucial for enhancing women's capabilities, their empowerment and for preventing violence against women. In this respect, a strong appeal is made in that report for the adoption of an integrated perspective that combines the obligations set out in both Covenants. The findings in the report stress that the current approaches to understanding and responding to violence against women should be broadened to take account of causes and consequences of violence which is often evident in women's poverty and labour exploitation, their socio-economic inequality with men, and their exclusion from decision-making, both in the private and public sector.

CONCLUSION

Based on a preliminary review of the work of the mandate over the last 15 years, as well as the broader body of work on women's human rights during this period, I have identified a number of areas which would require focused and timely attention. With regard to the due diligence standard, the review report highlights two areas that require further conceptual development. These include the issue of redress and reparations for wrongs committed (both by omission and commission) by the State, its agents and non-State actors and secondly, the issue of prevention measures. In my thematic report to the Human Rights Council in 2010, I propose to address the former issue. Both CEDAW and DEVAW place upon the State the duty to prevent, investigate, punish and provide compensation for all acts of violence wherever they occur. Article 4 of DEVAW states that women who are subjected to violence should be informed about and provided with access to the mechanisms of justice, as well as to just and effective remedies for the harm that they have suffered, as provided by national legislation.

The upcoming Beijing +15 and the review of the implementation of the Platform for Action; the 30th anniversary celebrations and reflections on the achievements of the CEDAW; and the recent Security Council Resolution 1888 strengthening the

response to the issue of sexual violence in conflict situations, all provide us with the opportunity to intensify our efforts towards protection, prosecution, prevention and provision of effective redress to women who have been subjected to violence. It is only by placing women's human rights, including the right to be safe from violence, at the center of such efforts that we will be able to build a more secure world, based on the common goal and the shared obligation of ensuring that human rights are universally and equally enjoyed.

The Secretary-General's campaign titled "UNiTE to end violence against women" identifies five key outcomes in its Framework of Action. These include:

- 1) The adoption and enforcement of national laws.
- 2) The adoption and implementation of multi-sectoral national plans of action that emphasise prevention and are adequately resourced.
- 3) The establishment of data collection and analysis systems, on the prevalence of various forms of violence against women and girls.
- 4) The establishment of national and/or local campaigns and the engagement of civil society in preventing violence and in supporting women and girls who have been abused.
- 5) The adoption of systematic efforts to address sexual violence in conflict situations and to protect women and girls from rape as a tactic of war, and the full implementation of related laws and policies.

The above outcomes and also the due diligence standard provides us with an opportunity to address impunity and to demand accountability. Holding both state and non-state actors accountable for acts of violence against women is an imperative that cannot be ignored.

Thank you.