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United Nations Economic Commission for Africa**

**Expert Group Meeting on good practices in legislation
to address harmful practices against women**

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**BACKGROUND PAPER FOR THE EXPERT GROUP MEETING ON
GOOD PRACTICES IN LEGISLATION TO ADDRESS
HARMFUL PRACTICES AGAINST WOMEN**

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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)

² See United Nations Division for the Advancement of Women (2008) *Final report of the expert group meeting on good practices in legislation to address violence against women*, available online at: [http://www.un.org/womenwatch/daw/egm/vaw_legislation_2008/Report%20EGMGPLVAW%20\(final%2011.11.08\).pdf](http://www.un.org/womenwatch/daw/egm/vaw_legislation_2008/Report%20EGMGPLVAW%20(final%2011.11.08).pdf) (last accessed 12 May 2009), pp. 9-65.

³ See United Nations Division for the Advancement of Women (2008) *supra* note 2, particularly pp. 13 to 16.

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consequences, and by the Special Rapporteur on harmful traditional practices.⁴ This paper uses the term “harmful practices” to refer to these forms of violence against women collectively in accordance with their treatment in international legal and policy documents.⁵

The forms of violence referred to as “harmful practices” have been addressed since the early years of the United Nations. While earlier attention focused on the effects of “harmful practices” on the health of women and children, and on the importance of marriage based on the full and free consent of the intending spouse, it was not until later that such practices became clearly acknowledged as forms of violence against women constituting gender-based discrimination and a violation of women’s human rights.

Article 16 of the Universal Declaration of Human Rights (1948)⁶ declares that no marriage shall be entered into unless it is with the full and free consent of the intending spouse. Similarly, the Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriage (1962)⁷ prohibits marriages that are not entered into with the full and free consent of both parties. In addition, the Convention obliges States Parties to take legislative action to specify a minimum age for marriage. International human rights treaties adopted since the 1960s, and their monitoring bodies, have addressed “harmful practices” more comprehensively.

The United Nations General Assembly has adopted many resolutions addressing one or more “harmful practices”. It first took up the issue in 1954,⁸ when it adopted a resolution highlighting “customs, ancient laws and practices relating to marriage and the family” inconsistent with the principles set forth in the Universal Declaration of Human Rights. The resolution called on all States to abolish such customs, laws and practices by ensuring, complete freedom in the choice of a spouse; abolishing the practice of the bride-price; guaranteeing the right of widows to the custody of their children and their freedom as to remarriage; eliminating completely child marriages and the betrothal of young girls before the age of puberty, and establishing appropriate penalties where necessary. In 1958⁹ and 1961¹⁰, the United Nations Economic and Social Council (ECOSOC) invited the World Health Organization (WHO) to study the persistence of customs subjecting girls to ritual operations, and the medical aspects of operations based on customs.

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

⁵ The paper also, however, acknowledges that this terminology, and the grouping of many forms of violence against women under this heading, has been contested: see for example the Special Rapporteur on violence against women, its causes and consequences (2007) *Report of the Special Rapporteur on violence against women, its causes and consequences: Intersections between culture and violence against women* (A/HRC/4/34) paras. 32 to 34.

⁶ United Nations General Assembly resolution 217(III), 1948.

⁷ United Nations General Assembly resolution 1763(XVII), 1962.

⁸ United Nations General Assembly resolution 843 (IX)

⁹ United Nations Economic and Social Council resolution 680 BII (XXVI), 1958.

¹⁰ United Nations Economic and Social Council resolution 821 II (XXXII), 1961.

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 Advancement of Women (2008) *Background paper for the expert group meeting on good practices in legislation to address violence against women*, United Nations, New York, available online at: http://www.un.org/womenwatch/daw/egm/vaw_legislation_2008/Background%20Paper%20vaw%20legislation.pdf, last accessed 23 April 2009.

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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 Convention contains specific provisions in relation to forced marriage (article 16(1)(b)) and early marriage (article 16 (2)). It calls upon States parties to take all necessary action, including legislation, to specify a minimum age of marriage (article 16(2)).

General recommendation No. 14¹⁶ of the Committee on the Elimination of Discrimination Against Women recommends that States parties take appropriate and effective measures with a view to eradicating the practice of female circumcision. General recommendation no. 19¹⁷ of the Committee highlights that traditional attitudes by which women are regarded as subordinate to men or as having stereotyped roles, perpetuate widespread practices involving violence or coercion, including forced marriage, dowry deaths, acid attacks and female circumcision. The Committee recommends that States parties take effective legal measures, including penal sanctions, civil remedies and compensatory provisions to protect women against all kinds of violence. It specifically recommends that legislation remove the defence of honour in regard to the assault or murder of a female family member. In its general recommendation No. 24,¹⁸ the Committee specifically recommends that States parties enact and effectively enforce laws that prohibit female genital mutilation and marriage of girl children.

The Convention on the Rights of the Child, adopted in 1989, requires States parties to take all effective and appropriate measures with a view to abolishing traditional practices prejudicial to the health of children (article 24(3)). The Committee on the Rights of the Child’s general comment No. 4 strongly urges States parties to “develop and implement ... legislation aimed at changing prevailing attitudes, and address gender roles and stereotypes that contribute to harmful traditional practices,” and to “protect adolescents from all harmful traditional practices, such as early marriages, honour

¹⁵ Committee on Economic, Social and Cultural Rights, general comment No. 14 (2000) on the right to the highest attainable standard of health, para. 35.

¹⁶ Committee on the Elimination of Discrimination Against Women (CEDAW), general recommendation No. 14 (1990) on female circumcision.

¹⁷ CEDAW, general recommendation no. 19 (1992) on violence against women.

¹⁸ CEDAW, general recommendation no. 24 (1999) on women and health.

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killings and female genital mutilation.”¹⁹ It also recommends that States parties review and, where necessary, reform their legislation and practice to increase the minimum age for marriage with and without parental consent to 18 years, for both girls and boys.

Other human rights treaty bodies have called on States parties to take legal measures to address “harmful practices” in their concluding observations on States parties’ reports. For example, the Committee on the Elimination of Racial Discrimination (CERD) has expressed concern regarding continuing practices of child marriage and dowry, and *devadasi*.²⁰ The Committee against Torture (CAT) has called upon States parties to enact legislation banning FGM and to take the necessary steps to end the practice, including through awareness-raising campaigns, prevention and detection measures, and punishment of perpetrators.²¹ The Human Rights Committee (HRC) has recommended that States parties enact legislation to address FGM, and ensure that perpetrators are punished,²² discourage the persistence of customary practices that are highly detrimental to women’s rights,²³ remove discriminatory provisions from the penal code, including those that provide lesser penalties for crimes committed by men in the name of honour,²⁴ and raise the minimum age of marriage and ensure that it is respected in practice.²⁵

International criminal law

In 2008, the Special Court for Sierra Leone recognized forced marriage as a crime against humanity under international criminal law for the first time in history. In the case of *The Prosecutor vs. Alex Tamba Brima, Ibrahim Bazy Kamara and Santigie Borbor Kanu (The AFRC-case)*²⁶ the Appeals Chamber found that forced marriage is an independent crime not to be conflated with sexual slavery,²⁷ and defined forced marriage in the context of the Sierra Leone conflict as follows:

“forced marriage describes a situation in which the perpetrator through his words or conduct, or those of someone for whose actions he is responsible, compels a person by force, threat of force, or coercion to serve as a conjugal partner resulting in severe suffering, or physical, mental or psychological injury to the victim.”²⁸

In doing so, the Chamber found that forced marriage constitutes an “Other Inhumane Act” capable of incurring individual criminal responsibility in international law.

¹⁹ Committee on the Rights of the Child, general comment No. 4 (2003) on adolescent health and development in the context of the Convention on the Rights of the Child, paras. 24 and 39(g).

²⁰ See for example, CERD/C/IND/CO/19 para. 18.

²¹ See for example, CAT/C/KEN/CO/1 para. 27.

²² See for example, CCPR/C/SDN/CO/3 para. 15, and CCPR/C/CAF/CO/3 para. 11.

²³ See for example, CCPR/C/BWA/CO/1 para. 11.

²⁴ See for example, CCPR/CO/84/SYR para. 16.

²⁵ See for example, CCPR/CO/84/YEM para. 21.

²⁶ The case of *The Prosecutor vs. Alex Tamba Brima, Ibrahim Bazy Kamara and Santigie Borbor Kanu (The AFRC-case)* concluded with the Appeal Judgment on 22 February 2008.

²⁷ *The AFRC-case* (2008), supra note 26 para. 195.

²⁸ *The AFRC-case* (2008), supra note 26 para. 196.

Subsequently, in the case of *The Prosecutor vs. Foday Saybana Sankoh, Sam Bockarie, Issa Hassan Sesay, Morris Kallon and Augustine Gbao (The RUF-case)*²⁹ the Trial Chamber of the Court applied the Appeals Chamber's findings with regard to forced marriage. Accordingly, it issued an historical judgment convicting three senior leaders of the Revolutionary United Front (RUF) of participating in a joint criminal enterprise to force young girls and women to marry rebel soldiers or command responsibility for forced marriages.

International policy framework

Since the 1950s, a significant number of policy recommendations have been developed which call for the adoption of legislation in relation to "harmful practices". In 1979 the World Health Organization Seminar in Khartoum on traditional practices affecting the health of women and children recommended, when and where appropriate, the enactment of legislation prohibiting female circumcision," and legislation to stop childhood marriage.³⁰

In 1986, the report of the Working Group on Traditional Practices Affecting the Health of Women and Children of the Sub-Commission on Prevention of Discrimination and Protection of Minorities suggested that an appeal be made to Governments "which had not yet had the possibility of adopting clear-cut policies and appropriate legislation to abolish female circumcision, to take such action" and it was noted that "to ensure the implementation of such legislation there is a need to set up an effective mechanism."³¹ This recommendation was reinforced in 1994 when the Sub-Commission adopted a Plan of Action for the Elimination of Harmful Traditional Practices Affecting the Health of Women and Children³², which called for the drafting of "legislation prohibiting practices harmful to the health of women and children, particularly female genital mutilation."

In 1993, the Declaration on the Elimination of Violence against Women, adopted by the United Nations General Assembly,³³ explicitly acknowledged "harmful practices" as forms of violence against women, and required Member States to develop penal, civil,

²⁹ The case of *The Prosecutor vs. Foday Saybana Sankoh, Sam Bockarie, Issa Hassan Sesay, Morris Kallon and Augustine Gbao (The RUF-case)* concluded with the Trial Judgment on 25 February 2009.

³⁰ World Health Organization Regional Office for the Eastern Mediterranean (1979) *Report of the Seminar on traditional practices affecting the health of women and children* WHO/EMRO Technical Publication No. 2, available online at: http://whqlibdoc.who.int/emro/tp/EMRO_TP_2.pdf, last accessed 28 April 2009.

³¹ United Nations Economic and Social Council (1985) *Report of the Working Group on Traditional Practices Affecting the Health of Women and Children* E/CN.4/1986/42 (4 February 1986), paras. 121 and 123.

³² The Plan of Action was prepared by the second United Nations Regional Seminar on Traditional Practices Affecting the Health of Women and Children, held at Colombo, Sri Lanka, from 4 to 8 July 1994 (E/CN.4/Sub.2/1994/10/Add.1 and Corr.1). It was adopted by resolution 1994/30 of the Sub-Commission on Prevention of Discrimination and Protection of Minorities.

³³ United Nations General Assembly resolution 48/104.

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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.

³⁷ United Nations General Assembly resolution S-27/2. A world fit for children, para. 44, sub-para. 9

³⁸ United Nations General Assembly resolution 60/262. Political Declaration on HIV/AIDS para. 31

³⁹ United Nations General Assembly resolution 55/66 para. 4(b); see also United Nations General Assembly resolution 57/179 para 3(b).

In 2007, the Commission on the Status of Women adopted a resolution on ending female genital mutilation which emphasized the importance of adopting legislation to address female genital mutilation. It urged Member States to take all necessary measures to protect girls and women from female genital mutilation, including by enacting and enforcing legislation to prohibit this form of violence and to end impunity. It also urged Member States to review and, where appropriate, revise, amend or abolish all laws, regulations, policies, practices and customs, in particular female genital mutilation, that discriminate against women or have a discriminatory impact on women and girls, and to ensure that provisions of multiple legal systems, where they exist, comply with international human rights obligations, commitments and principles. The resolution called on Member States to develop policies, protocols and rules to ensure the effective implementation of national legislative frameworks and to put in place adequate accountability mechanisms at national and local levels to monitor adherence to, and implementation of, these legislative frameworks.⁴⁰ Also in 2007, the Commission on the Status of Women adopted a resolution on forced marriage of the girl child. The resolution urged States to enact and strictly enforce laws to ensure that marriage is entered into only with the free and full consent of the intending spouses and, in addition, to enact and strictly enforce laws concerning the minimum legal age of consent and the minimum age for marriage and to raise the minimum age for marriage where necessary.⁴¹

Regional legal and policy frameworks

The international legal and policy framework outlined above has been supplemented over time by the adoption of legal and policy frameworks at the regional level.

The legal and policy framework addressing “harmful practices” in the African region began to be formulated in the 1990s. The *African Charter on the Rights and Welfare of the Child*, which was adopted in 1990, and entered into force in 1999, obligates States parties to take all appropriate measures to eliminate harmful social and cultural practices affecting the welfare, dignity, normal growth and development of the child, as well as to prohibit child marriage through legislation and take action to specify the minimum age of marriage to be 18 years. This was followed in 1998, by the adoption by the Organization for African Unity (the predecessor of the African Union) of the Addis Ababa Declaration on Violence against Women, which calls for national laws against FGM, and calls on African governments to ensure that by the year 2005 the practice of FGM will have been completely eradicated or its incidences drastically reduced. In 1999, the Ouagadougou Declaration was adopted by the member countries of the West African Economic and Monetary Union (UEMOA), which recommends the

⁴⁰ United Nations Commission on the Status of Women (CSW) resolution 51/2 of 2007, paras. 9, 10 and 12.

⁴¹ CSW resolution 51/3 of 2007, para. 1(a).

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effective implementation of the Addis Ababa Declaration through the adoption of national legislation condemning the practice of FGM.

The *Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa* was adopted by the African Union in 2003. It requires that States parties take all legislative and other measures to eliminate all forms of harmful practices which negatively affect the human rights of women including complete prohibition, through legislative measures backed by sanctions, of all forms of female genital mutilation and all other practices in order to eradicate them. The Protocol also requires States parties to enact appropriate national legislative measures to guarantee that no marriage takes place without the free and full consent of both parties and that the minimum age of marriage for women is 18 years. The *African Youth Charter*, adopted in 2006, also requires states parties to take all appropriate steps to eliminate harmful social and cultural practices that affect the welfare and dignity of youth.

In the Americas, the *Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women* (Convention of Belem do Para), adopted in 1994, requires that States parties condemn all forms of violence against women and undertake to take all appropriate measures, including legislative measures, to amend or repeal existing laws and regulations or to modify legal or customary practices which sustain the persistence and tolerance of violence against women.

“Harmful practices”, and in particular FGM and so-called honour crimes, have been the subject of significant attention in Europe. In 2001, the European Parliament adopted a detailed resolution on female genital mutilation,⁴² which contains strong recommendations for legislative action by its Member States. It calls on Member States to: regard any form of female genital mutilation as a specific crime, irrespective of whether or not the woman concerned has given any form of consent, and to punish anybody who helps, encourages, advises or procures support for anybody to carry out any of these acts on the body of a woman or girl; pursue, prosecute and punish any resident who has committed the crime of female genital mutilation, even if the offence was committed outside its frontiers (extraterritoriality); approve legislative measures to allow judges or public prosecutors to adopt precautionary and preventive measures if they are aware of cases of women or girls at risk of being mutilated; and adopt administrative provisions concerning health centres and the medical profession, educational centres and social workers, as well as codes of conduct, decrees and ethical codes, to ensure that health professionals, social workers, teachers and educators report cases of which they are aware or instances of people at risk who need protection and, furthermore, carry out simultaneously the task of education and awareness-raising among families. In the same year, the Council of Europe adopted resolution 1247 on female genital mutilation, calling on Member States to introduce specific legislation prohibiting genital mutilation and declaring genital mutilation to be a violation of human rights and bodily integrity.

⁴² European Parliament resolution 2001/2035(INI)

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 rights and fundamental freedoms and to exercise due diligence to prevent, investigate and punish such acts of violence. In 2003, the Parliamentary Assembly of the Council of Europe adopted resolution 1327 (2003) on so-called “honour crimes”, calling on Member States to adopt the following legal measures regarding the prevention and prosecution of so-called “honour crimes”: a) amend national asylum and immigration law in order to ensure that immigration policy acknowledges that a woman has the right to a residence permit, or even to asylum, in order to escape from “honour crimes”, and does not risk deportation or removal if there is, or has been, any actual threat of a so-called “honour crime”; b) enforce the legislation more effectively to penalise all crimes committed in the name of honour and ensure that allegations of violence and abuse are treated as serious criminal complaints; c) ensure that such crimes are effectively (and sensitively) investigated and prosecuted. The courts should not accept honour in mitigation, or as a justifiable motive, of the crime; d) take the necessary measures to implement the laws related to these crimes and to give policy makers, the police and the judiciary a better understanding of the causes and consequences of such crimes; and e) ensure a stronger female presence within the judicial bodies and the police.

In March 2009, the European Parliament adopted resolution 2008/2071 (INI) on combating female genital mutilation in the EU. The resolution calls on Member States to either adopt specific legislation on FGM or under their existing legislation to prosecute each person who conducts female genital mutilation. It also calls on Member States to enforce their existing laws on FGM, or legislate penalties for the grievous bodily harm resulting from it, and to do their utmost to achieve the greatest possible degree of harmonisation of the laws in force across all 27 Member States. In April 2009, the Parliamentary Assembly of the Council of Europe adopted a resolution inviting Member States to adapt their national legislation in order to prohibit and penalise forced marriages, female genital mutilation and any other gender-based violations of human rights.⁴³ Most recently, in May 2009, the Committee on Equal Opportunities for Women and Men of the Parliamentary Assembly of the Council of Europe adopted a draft resolution on the urgent need to combat so-called “honour crimes”.

⁴³ Council of Europe Press Release (2009) *PACE calls for prohibition and penalisation of gender-based human rights violations* 28/04/2009, available online at: <http://assembly.coe.int/ASP/Press/StopPressView.asp?ID=2168>, last accessed 4 May 2009.

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, but also for preventive, and other, measures to be undertaken. The following summary provides selected illustrative examples of existing legal frameworks.⁴⁴

A State’s constitution establishes the fundamental principles by which the State is governed. Enshrining the right of a woman to be free from “harmful practices” within the national constitution is, therefore, a fundamentally important act – committing the Government to action, and representing the ultimate condemnation of these forms of violence against women by the State. Article 35(4) of the Ethiopian Constitution, enacted in 1994, exemplifies this approach, and states: “The State has the duty to guarantee the right of women to be free from the influence of harmful customary practices. All laws, stereotyped ideas and customs which oppress women or otherwise adversely affect their physical and mental well-being are prohibited.”

Several countries have now enacted comprehensive laws addressing one or more “harmful practices”, mandating preventative measures, as well as protection, support and assistance for the victim/survivor, in addition to criminalizing the act of violence.⁴⁵ In addition, numerous countries have undertaken legal reforms in relation to “harmful practices”, including amendments to penal codes,⁴⁶ family law,⁴⁷ laws on reproductive

⁴⁴ The information contained in this section is drawn from the United Nations Secretary-General’s database on violence against women, available online at: <http://www.un.org/esa/vawdatabase>, last accessed 12 May 2009.

⁴⁵ See for example Italy’s *Law No. 7 of 9 January 2006 on female genital mutilation*, which not only creates new offences but also provides for the development of informative campaigns, training of health workers, the creation of a toll-free number, international cooperation programmes. The law also calls for doctors to educate patients and communities on FGM, and mandates a budget of 5 million euro per year from 2005 to 2007, for its implementation. See also the *Acid Control Act 2002* and *Acid Crime Prevention Act 2002* of Bangladesh, which mandates the: establishment of a National Acid Control Council Fund; establishment of Rehabilitation Centre; medical treatment and legal aid for victims/survivors; measures to prevent the sale of acid; and specific legal proceedings and tribunals for cases of acid crimes.

⁴⁶ See for example, the *Act No. 386 of 28 May 2003* amending the Danish Penal Code and the amendment to the Djibouti Penal Code in 1995, with regard to FGM; *Law no. 06/019* modifying and supplementing the Code of Criminal Procedure in the Democratic Republic of the Congo with regard to forced marriage; and the *Criminal Law (Amendment) Act 2004* in Pakistan and *Act No. 93-72 of 12 July 1993* in Tunisia, with regard to so-called honour crimes; and the *Criminal Code (Amendment Act) 1998 (Act 554)* of Ghana, which addresses both FGM and maltreatment of widows.

⁴⁷ See for example the Benin *Family Code (Law 2002-08)*, which addresses forced marriage and early marriage.

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health,⁴⁸ codes elaborating children's rights,⁴⁹ anti-discrimination laws,⁵⁰ immigration law,⁵¹ and civil law.⁵² Several states have enacted laws that provide for extra-territorial jurisdiction in cases involving "harmful practices."⁵³ Acknowledging the importance of ensuring that perpetrators of violence against women receive a sentence commensurate with the crime they have committed, some States have taken action to remove discriminatory penal laws, and the elimination of the defence of "honour" in cases of violence against women.⁵⁴ Moreover, in many countries, valuable lessons have been learned, and experiences gained, through the implementation of strategies such as community mobilization, awareness-raising, and public health responses.⁵⁵

Conclusion

This expert group meeting provides a timely opportunity to consider legislation to address "harmful practices." The international legal and policy framework makes clear that States are obligated to enact and effectively implement legislation to address these forms of violence. However, while States have made a great deal of progress, numerous gaps and challenges remain.

With over ten years of experience now accumulated in the enactment and implementation of legislation on these forms of violence against women, the expert group meeting provides a forum in which to take stock of diverse experiences, identify

⁴⁸ See for example *Law No. 6/PR/2002 on the promotion of reproductive health* in Chad, which addresses, inter alia, FGM and early marriage, as well as other forms of violence against women, and Article 13 of *Act L/2000/010/AN* of 10 July 2000 on reproductive health in Guinea, which addresses FGM.

⁴⁹ See for example Kenya's *Children's Act No. 8 of 2001* which addresses, inter alia, early marriage and FGM.

⁵⁰ See for example section 8 of the *Promotion of Equality and Prevention of Unfair Discrimination Act (No. 20876)* in South Africa which addresses, inter alia, FGM.

⁵¹ See for example the Netherlands' *Regulation on provisions for certain categories of foreign nationals (Rvb) (2007)* regarding so-called honour crimes, which allows those threatened with so-called honour crimes to apply for financial support and health assistance; and the Netherlands' *Interim Supplement to the Aliens Act Implementation Guidelines (TBV 2003/48)* which states that if a girl is at risk of female genital mutilation, she and her family may apply for residence status in the Netherlands.

⁵² See for example, the *Forced Marriage (Civil Protection) Act 2007* of the United Kingdom of Great Britain and Northern Ireland, which provides for protection orders in cases of forced marriage.

⁵³ See for example the United Kingdom of Great Britain and Northern Ireland *Female Genital Mutilation Act (2003)*, and *Constitutional Act 3/2005* in Spain regarding FGM.

⁵⁴ For example, Act No. 93-72 of 12 July 1993 amending certain articles of the Penal Code in Tunisia made the existence of a marital bond an aggravating circumstance in criminal cases, and repealed former article 207 of the Penal Code which had granted the benefit of attenuating circumstances to a husband who murdered his wife or her accomplice caught in flagrante delicto of adultery in as much as the crime of voluntary manslaughter was regarded as a simple misdemeanour. See United Nations (2006) supra note 1 p. 108

⁵⁵ For an examination of experiences/lessons learned and best practices in the abandonment of FGM, see United Nations Population Fund (UNFPA) (2008) *Global consultation on female genital mutilation/cutting: Technical report* New York, UNFPA, particularly sections VI and VII, available online at: http://web.unfpa.org/upload/lib_pub_file/829_filename_unfpa_fgm_2008.pdf (last accessed 12 May 2009).

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promising practices, and develop specific recommendations in order to supplement the model framework for legislation on violence against women developed in 2008.⁵⁶ It is hoped that the outcome of this expert group meeting will assist States and other stakeholders in enhancing existing, and developing new, and comprehensive legislation on these forms.

The United Nations is supporting these efforts through a number of initiatives. In 2008, the Secretary-General of the United Nations launched his Campaign “UNiTE to End Violence Against Women”, 2008-2015. Acknowledging the critical importance of legislation, he identified the adoption of national laws by 2015 to address and punish *all forms* of violence against women and girls, in line with international human rights standards, as one of the five key outcomes of his campaign.⁵⁷ In 2008, ten United Nations entities adopted a Joint Statement on eliminating female genital mutilation.⁵⁸ In 2009, the Deputy-Secretary General of the United Nations launched the Secretary-General’s database on violence against women which contains information on measures undertaken by Member States to address violence against women, including summaries and the full text of legislation. This database will encourage exchange on initiatives and ideas, and the transfer of promising practices.

⁵⁶ See United Nations Division for the Advancement of Women (2008) *supra* note 2.

⁵⁷ For further information regarding the Secretary-General’s Campaign “UNiTE to End Violence against Women” please visit the campaign website: <http://endviolence.un.org>.

⁵⁸ The first Joint Statement was adopted in 1997: World Health Organization (WHO) (1997) *Female Genital Mutilation, A joint WHO/UNICEF/UNFPA statement*, WHO, Geneva, available online at: http://www.childinfo.org/files/fgmc_WHOUNICEFJointdeclaration1997.pdf. In 2008, an updated Joint Statement was issued by the Office of the High Commissioner for Human Rights (OHCHR), the Joint United Nations Programme on HIV/AIDS (UNAIDS), United Nations Development Programme (UNDP), United Nations Economic Commission for Africa (UNECA), United Nations Educational, Scientific, and Cultural Organization (UNESCO), United Nations Population Fund (UNFPA), United Nations High Commissioner for Refugees (UNHCR), United Nations Children’s Fund (UNICEF), United Nations Development Fund for Women (UNIFEM), and World Health Organization (WHO): *Eliminating Female genital mutilation: An interagency statement*, available online at: http://www.unfpa.org/webdav/site/global/shared/documents/publications/2008/eliminating_fgmpdf