



Protection against violence

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Why focus on human rights? Amnesty International's answer

Amnesty International has used a human rights framework to guide its campaigning work to stop violence against women.

By using a human rights framework to oppose violence against women, we help to **change the perception of violence against women from a private matter to a public concern** that requires action from recognized authorities.

Use of the framework also enables Amnesty International to use international human rights standards and laws to cut across national boundaries, cultures and religions to protest violence against women in all its forms.

And perhaps most importantly, it makes it possible to use international remedies to **hold governments accountable** if they fail to meet their obligations to protect women from violence, regardless of who commits it or where it's committed



Overview: legal sources

- CEDAW (1979)
 - General Recommendation no. 19 (1992)
 - State reporting
 - Optional Protocol: individual complaints, inquiry procedure
- Declaration on the Elimination of Violence Against Women (DEVAW, 1994)
- CESCRC
 - General Comment no. 14 (2000)
 - General Comment no. 16 (2005)
- Regional instruments



CEDAW

Article 2: States Parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women and, to this end, undertake:

- (a) To embody the principle of the equality of men and women in their national constitutions or other appropriate legislation if not yet incorporated therein and to ensure, through law and other appropriate means, the practical realization of this principle;
- (b) To adopt appropriate legislative and other measures, including sanctions where appropriate, prohibiting all discrimination against women;
- (c) To establish legal protection of the rights of women on an equal basis with men and to ensure through competent national tribunals and other public institutions the effective protection of women against any act of discrimination;
- (d) To refrain from engaging in any act or practice of discrimination against women and to ensure that public authorities and institutions shall act in conformity with this obligation;
- (e) To take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise;
- (f) To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women;
- (g) To repeal all national penal provisions which constitute discrimination against women.



CEDAW Gen. Rec. No. 19: "Violence against women" (1992)

Background: VAW as discrimination

Para. 1: "Gender-based violence is a form of discrimination that seriously inhibits women's ability to enjoy rights and freedoms on a basis of equality with men."



GR 19 para. 6: Definition of VAW

6. The Convention in article 1 defines discrimination against women. The definition of discrimination 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. Gender-based violence may breach specific provisions of the Convention, regardless of whether those provisions expressly mention violence.



GR 19, para. 7: Related rights

7. Gender-based violence, which impairs or nullifies the enjoyment by women of human rights and fundamental freedoms under general international law or under human rights conventions, is discrimination within the meaning of article 1 of the Convention. These rights and freedoms include:
- (a) The right to life;
 - (b) The right not to be subject to torture or to cruel, inhuman or degrading treatment or punishment;
 - (c) The right to equal protection according to humanitarian norms in time of international or internal armed conflict;
 - (d) The right to liberty and security of person;
 - (e) The right to equal protection under the law;
 - (f) The right to equality in the family;
 - (g) The right to the highest standard attainable of physical and mental health;
 - (h) The right to just and favourable conditions of work.



GR 19 paras. 8 and 9: Public/ private

8. The Convention applies to **violence perpetrated by public authorities**. Such acts of violence may breach that State's obligations under general international human rights law and under other conventions, in addition to breaching this Convention.
9. It is emphasized, however, that discrimination under the Convention is not restricted to action by or on behalf of Governments (see articles 2(e), 2(f) and 5). For example, under article 2(e) the Convention calls on States parties to take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise. Under general international law and specific human rights covenants, **States may also 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.**



GR 19, para.11: traditional attitudes and stereotypes

Articles 2(f), 5 and 10(c)

11. **Traditional attitudes** by which women are regarded as subordinate to men or as having stereotyped roles perpetuate widespread practices involving violence or coercion, such as family violence and abuse, forced marriage, dowry deaths, acid attacks and female circumcision. Such prejudices and practices may justify gender-based violence as a form of protection or control of women.

The effect of such violence on the physical and mental integrity of women is to deprive them the equal enjoyment, exercise and knowledge of human rights and fundamental freedoms. While this comment addresses mainly actual or threatened violence the underlying consequences of these forms of gender-based violence help to maintain women in subordinate roles and contribute to the low level of political participation and to their lower level of education, skills and work opportunities.



GR 19, para. 22: equality in marriage and family

Article 16 (and article 5)

22. **Compulsory sterilization or abortion** adversely affects women's physical and mental health, and infringes the right of women to decide on the number and spacing of their children.
23. **Family violence** is one of the most insidious forms of violence against women. It is prevalent in all societies. Within family relationships women of all ages are subjected to violence of all kinds, including battering, rape, other forms of sexual assault, mental and other forms of violence, which are perpetuated by traditional attitudes. Lack of **economic independence** forces many women to stay in violent relationships. The abrogation of their family responsibilities by men can be a form of violence, and coercion. These forms of violence put women's health at risk and impair their ability to participate in family life and public life on a basis of equality.



Comments to state reports: Iceland (UN Doc. A/51/38)

245. While noting that the State party has taken a positive legal and welfare approach towards preventing violence against women, including domestic violence, the Committee expresses concern at the light penalties for crimes of sexual violence, including rape.
246. The Committee urges the State party to continue its efforts to **implement and strengthen current laws, policies and programmes** aimed at combating violence against women, and to increase its **awareness-raising activities and work with male perpetrators**. It also urges the State party to **reconsider the current penal provisions which impose light sentences on perpetrators of sexual violence, including rape**. It also encourages the State party to consider the issue of violence against women under the provisions of the Convention and the Committee's general recommendation 19 on violence against women. The Committee requests the State party **to provide more information in the next report** on efforts to combat violence against women, including measures taken to provide training of the police and the judiciary.



Comments to state reports: Canada (UN Doc. A/58/38)

369. Despite the commendable measures taken by the State party to combat violence against women and girls, including criminal law reforms, the Committee notes with concern that violence against women and girls persists. The Committee is particularly concerned about the inadequate funding for women's crisis services and shelters.

370. The Committee urges the State party to step up its efforts to combat violence against women and girls and increase its **funding for women's crisis centres and shelters** in order to address the needs of women victims of violence under all governments.



Comments to state reports: Switzerland (UN Doc. A/58/38)

119. The Committee recommends that the State party urgently take all appropriate measures, including legislation, to eradicate the harmful traditional practice of **female genital mutilation**.

(...)

121. The Committee recommends that revocation of the temporary residence permits of **foreign married women who experience domestic violence**, and any legislative changes with regard to residency requirements that may be under consideration, be undertaken only after a full assessment of the impact of such measures on those women.



Comments to state reports: Kenya (UN Doc. A/58/38)

212. The Committee urges the State party to accord priority attention to the adoption of comprehensive measures to address violence against women and girls, taking into account its general recommendation 19 on violence against women.

The Committee calls on the State party to enact or review, as appropriate, **legislation on all forms of violence against women**, including domestic violence, as well as legislation concerning all forms of sexual harassment, in order to ensure that women and girls who are victims of violence and sexual harassment have **access to protection and effective redress and that perpetrators of such acts are prosecuted and punished**.

The Committee also recommends **gender-sensitive training for public officials**, particularly law enforcement personnel, the judiciary and health services providers.

It also recommends **the establishment of shelters and counselling services for victims of violence and sexual harassment**.



Declaration on the Elimination of Violence Against Women (DEVAW)

UN GA resolution 48/104 (1993)

Article 1: definition

For the purposes of this Declaration, the term "violence against women" means 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.



DEVAW Art. 2: locations of VAW

2. Violence against women shall be understood to encompass, but not be limited to, the following:
 - (a) 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;
 - (b) 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;
 - (c) Physical, sexual and psychological violence perpetrated or condoned by **the State**, wherever it occurs.



DEVAW Art. 3: Related rights

3. Women are entitled to the equal enjoyment and protection of all human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field. These rights include, inter alia:
- (a) The right to life;
 - (b) The right to equality;
 - (c) The right to liberty and security of person;
 - (d) The right to equal protection under the law;
 - (e) The right to be free from all forms of discrimination;
 - (f) The right to the highest standard attainable of physical and mental health;
 - (g) The right to just and favourable conditions of work;
 - (h) The right not to be subjected to torture, or other cruel, inhuman or degrading treatment or punishment.



DEVAW Art. 4: state obligations and the cultural defence

4. States should **condemn** violence against women and should not invoke any **custom, tradition or religious consideration** to avoid their obligations with respect to its elimination. States should pursue by **all appropriate means** and **without delay** a policy of eliminating violence against women and, to this end, should:

(a-q)



DEVAW Art. 4 c: due diligence

4(c): Exercise **due diligence** to prevent, investigate and, in accordance with national legislation, punish acts of violence against women, whether those acts are perpetrated by the State or by private persons



CESCR Art. 3: women's equal enjoyment of human rights

Article 3:

The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all economic, social and cultural rights set forth in the present Covenant.




CESCR GC no. 14 (2000): “The right to the highest attainable standard of health (Art. 12)”

21: To eliminate **discrimination against women**, there is a need to develop and implement a comprehensive national strategy for promoting women's right to health throughout their life span. Such a strategy should include interventions aimed at the prevention and treatment of diseases affecting women, as well as policies to provide access to a full range of high quality and affordable health care, including sexual and reproductive services. **A major goal should be reducing women's health risks, particularly lowering rates of maternal mortality and protecting women from domestic violence.** The realization of women's right to health requires the removal of all barriers interfering with access to health services, education and information, including in the area of sexual and reproductive health. It is also important to undertake preventive, promotive and remedial action to shield women from the impact of harmful traditional cultural practices and norms that deny them their full reproductive rights.



CESCR GC no. 14 (2000): “The right to the highest attainable standard of health (Art. 12)”

35. Obligations to *protect* include, *inter alia*, the duties of States to adopt legislation or to take other measures ensuring equal access to health care and health-related services provided by third parties; to ensure that privatization of the health sector does not constitute a threat to the availability, accessibility, acceptability and quality of health facilities, goods and services; to control the marketing of medical equipment and medicines by third parties; and to ensure that medical practitioners and other health professionals meet appropriate standards of education, skill and ethical codes of conduct. States are also obliged to ensure that harmful social or traditional practices do not interfere with access to pre- and post-natal care and family-planning; **to prevent third parties from coercing women to undergo traditional practices, e.g. female genital mutilation; and to take measures to protect all vulnerable or marginalized groups of society, in particular women, children, adolescents and older persons, in the light of gender-based expressions of violence.** States should also ensure that third parties do not limit people's access to health-related information and services.



CESCR GC no. 16 (2005): “The equal right of men and women to the enjoyment of all economic, social and cultural rights (Art. 3)”

Para 27:

Article 10, paragraph 1, of the Covenant requires that States parties recognize that the widest possible protection and assistance should be accorded to the family, and that marriage must be entered into with the free consent of the intending spouses. **Implementing article 3, in relation to article 10, requires States parties, inter alia, to provide victims of domestic violence, who are primarily female, with access to safe housing, remedies and redress for physical, mental and emotional damage;** to ensure that men and women have an equal right to choose if, whom and when to marry - in particular, the legal age of marriage for men and women should be the same, and boys and girls should be protected equally from practices that promote child marriage, marriage by proxy, or **coercion**; and to ensure that women have equal rights to marital property and inheritance upon their husband's death. **Gender-based violence is a form of discrimination that inhibits the ability to enjoy rights and freedoms, including economic, social and cultural rights, on a basis of equality. States parties must take appropriate measures to eliminate violence against men and women and act with due diligence to prevent, investigate, mediate, punish and redress acts of violence against them by private actors.**



Regional instruments

- **The European Convention on Human Rights**
- **Africa:**
 - **The African Charter on Human and Peoples' Rights**
 - **Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa**
- **Americas:**
 - **The American Convention on Human Rights**
 - **Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women (Convention of Belem do Para)**



African Protocol on the Rights of Women

Art. 1(j):

- Violence against women means all acts perpetrated against women which cause or could cause them **physical, sexual, psychological, and economic** harm, including the threat to take such acts; or to undertake the imposition of arbitrary restrictions on or deprivation of fundamental freedoms in **private or public** life in **peacetime** and during situations of **armed conflicts or of war**.



African Protocol on the Rights of Women


- Art. 3 (4):
States parties shall **protect** women from all forms of violence, particularly sexual and verbal violence
- Art. 4 (2):
State parties shall take **appropriate and effective** measures to enact and enforce laws to prohibit all forms of violence against women including unwanted or forced sex whether the violence takes place in **private or public**.



African Protocol on the Rights of Women

- Art. 11:

States parties undertake to protect **asylum seeking women, refugees, returnees and internally displaced** persons, against all forms of violence, rape and other forms of sexual exploitation, and to ensure that such acts are considered war crimes, genocide, and/or crimes against humanity and that their **perpetrators are brought to justice** before a competent jurisdiction.



Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women (Convention of Belem do Para)

Article 2:

Violence against women shall be understood to include physical, sexual and psychological violence:

- that occurs within the family or domestic unit or within any other interpersonal relationship, whether or not the perpetrator shares or has shared the same residence with the women, including, among others, rape, battery and sexual abuse,
- that occurs in the community and is perpetrated by any person, including, among others, rape, sexual abuse, torture, trafficking in persons, forced prostitution, kidnapping and sexual harassment in the workplace, as well as in educational institutions, health facilities or any other place; and
- that is perpetrated or condoned by the state or its agents regardless of where it occurs.



Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women (Convention of Belem do Para)

Article 3:

Every woman has the right to be free from violence in both the public and the private spheres.

Article 4:

- Right to life
- Physical, Mental and Moral integrity respected
- Personal liberty and security
- Right not to be subjected to torture
- Inherent dignity of her person and protection of family
- Equal protection before the law and of the law
- Simple and prompt recourse to a competent court for protection against acts that violate her rights
- Right to associate freely
- Freedom of religion and beliefs within the law
- Equal access to public service



Group Work, VAW

- Individual complaint, CEDAW committee: Fatma Yildirim (deceased) v. Austria, 6/2005
- Read:
 - paras. 1-2.14 (facts of the case, p. 3-4)
 - paras. 12.1.1-12.3 (consideration of the merits, p. 18-20)
- Discuss in groups:
 1. Find the legal sources
 2. How does the committee apply the legal standards on the facts of the case?
 3. What is said about due diligence and state obligations for violations in the private sphere?
 4. What recommendations does the committee give Austria?



CEDAW: Individual complaints

- A.T. v. Hungary, 2/2003
- Şahide Goekce (deceased) v. Austria, 5/2005
- Fatma Yildirim (deceased) v. Austria, 6/2005
 - Domestic violence in all cases, subsequent murders in F and S
 - Violations of Article 2 a and c-f (read in conjunction with other provisions of the convention)
 - GR 19 para. 9
 - A.T v. Hungary: also violation of Article 5



CEDAW: individual complaints (ctd)

- A.S v. Hungary, 4/2004
 - sterilisation without consent
 - Arts. 10(h), 12, and 16(1)e
 - GR 19 para. 22
- See also the inquiry report on VAW in Mexico (Ciudad Juarez)
 - CEDAW/C/2005/OP.8/MEXICO