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REGIONAL ISSUES**FRAMEWORKS FOR COMBATING VIOLENCE AGAINST WOMEN
IN THE ARAB COUNTRIES: NATIONAL LAWS
AND INTERNATIONAL STANDARDS****Summary**

Violence against women is a serious human rights violation. In accordance with international conventions and agreements, member countries are expected to prevent violence against women, prosecute its perpetrators and provide its victims with compensation along with remedial and protective services. This paper compares national laws and procedures in the member countries of the Economic and Social Commission for Western Asia (ESCWA) with international standards and tools, as specified particularly in the due diligence standard and the United Nations model framework for legislation on violence against women.

ESCWA member countries are institutionalizing mechanisms relevant to violence against women and have undertaken specific measures in line with international standards that include creating specialized police units, recruiting female officers to deal with reported cases, and formulating national strategies to combat violence against women. Nevertheless, challenges in the area of legal reform undermine the ability of member countries to enact comprehensive laws to protect women from various types of crimes committed against them. In addition, despite the provision of different services to victims of violence against women, including medical, legal, counselling, hotlines and shelters, the lack of an integrated referral system in most countries remains a serious obstacle to efficient and well-coordinated delivery of protection.

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Introduction

1. Violence against women is a serious human rights violation. In accordance with international conventions and agreements, member countries are expected to prevent violence against women, prosecute perpetrators and provide victims with compensation along with remedial and protection services. This paper compares national laws and procedures in the member countries of the Economic and Social Commission for Western Asia (ESCWA) with international standards and tools, specifically the due diligence standard and the United Nations model framework for legislation on violence against women. This paper will introduce the essentials of the due diligence standard and the model framework as the conceptual foundation of the analysis. Against that backdrop, the paper will then examine violence against women in the ESCWA region in terms of the following: (a) constitutional, institutional and procedural structures; (b) governmental protection services available to victims; and (c) prevention efforts undertaken at the national level. The paper concludes with recommendations to assist member countries in their efforts to eradicate violence against women in the region. It also identifies country-level gaps in adherence to international requirements as embodied in the due diligence standard and the model framework.

2. The analysis in this paper draws on a desk review of existing literature on violence against women in the ESCWA region. More specifically, its findings and recommendations are based largely on three publications that ESCWA plans to publish in 2013, namely *Combating Domestic Violence against Women and Girls: Policies to Empower Women in the Arab Region*; *Multisectoral Efforts to Address Violence against Women in the ESCWA Region*; and *Trafficking of Women and Children in the Arab Region*.

I. THE DUE DILIGENCE STANDARD AND THE MODEL FRAMEWORK: A PRIMER

A. DUE DILIGENCE STANDARD

3. The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), adopted in 1979, prohibited discrimination against women and specified a comprehensive list of civil, political, social, economic and cultural rights that women should enjoy in the public and the private spheres. The substantive articles of the Convention, however, failed to include references to violence against women. This omission was later corrected in a series of international instruments such as General Recommendation No. 12 (1989) and General Recommendation No. 19 (1992) of the CEDAW Committee,¹ and the Declaration on the Elimination of Violence against Women (1993). Together, the Declaration and General Recommendations provide the defining elements of the due diligence standard, which in turn represents the basis for the model framework on violence against women.

4. General Recommendation No. 12 highlights the obligation of States to protect women from violence in the family, workplace, or any other area of social life under articles 2, 5, 11, 12 and 16 of the Convention. General Recommendation No. 19 takes the issue of violence against women a step further in confirming that “gender-based violence may breach specific provisions of the Convention, regardless of whether those provisions expressly mention violence”. It adds that “discrimination under the Convention is not restricted to action by or on behalf of Governments” and that “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”. Furthermore, it provides a list of measures that member countries must undertake to combat violence against women.

5. According to General Recommendation No. 19, laws should be put in place to protect women from family violence and abuse, rape, sexual assault and other acts of gender-based violence. It also clarifies that effective legal measures should include penal sanctions, civil remedies and compensatory provisions.

¹ The General Recommendations are available from <http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm>.

Preventive measures are defined to include educational programmes to change engrained discrimination and stereotypical attitudes toward women; while protective measures include “refuge, counselling, rehabilitation and support services for women who are the victims of violence or who are at risk of violence”. Such services should be accessible to women living in rural areas and isolated communities. Furthermore, States should report periodically on efforts to eliminate all forms of violence against women. Reports are expected to document all available data on the occurrence of each form of violence and on its effects on victims.

6. The Declaration on the Elimination of Violence against Women reflects provisions found in General Recommendation No. 19, but is more thorough and explicit. The Declaration asserts State responsibility to “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”.² The Declaration defines violence against women to include “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.”³ In this context, domestic violence perpetrated by an intimate partner or other family member may be manifested in the following ways:

(a) Physical abuse, which includes slapping, beating, arm twisting, stabbing, strangling, burning, choking, kicking, threats with an object or weapon and murder;

(b) Sexual abuse, which includes coerced sex through threats, intimidation or physical force, forcing unwanted sexual acts;

(c) Psychological abuse, which includes intimidating behaviour and can take the form of threats of abandonment or abuse, confinement to the home, surveillance, threats to take away custody of the children, destruction of objects, isolation, verbal aggression and constant humiliation;

(d) Economic abuse, which includes acts such as the denial of funds or earned income, refusal to contribute financially, denial of food and basic needs, and controlling access to health care, or employment.⁴

7. Following these three instruments (Declaration on the Elimination of Violence against Women, General Recommendation No. 12, and General Recommendation No. 19), more focus has been placed on the responsibility of States to eliminate violence against women and define relevant due diligence standards. The Beijing Declaration and Platform for Action (1995) increased the significance of these standards by issuing a list of due diligence steps to be taken by States as follows:

“Adopt and/or implement and periodically review and analyse legislation to ensure its effectiveness in eliminating violence against women, emphasizing the prevention of violence and the prosecution of offenders; 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”.⁵

8. Furthermore, Security Council resolution 1325 (2000) emphasized the responsibility of States to end impunity and hold accountable those responsible for war crimes including sexual and other types of violence against women in conflict settings. The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational

² Declaration on the Elimination of Violence against Women, 1993. article 4 (c).

³ Ibid., article 1.

⁴ UNICEF, 2000, p. 2.

⁵ Beijing Declaration and Platform for Action, 1995, section 124 (d).

Organized Crime, also mentions due diligence or the responsibility of the State to prevent trafficking, prosecute perpetrators and protect victims.

9. The importance of due diligence and State responsibility to eliminate violence against women was reaffirmed by the General Assembly through resolution 65/187 of 21 December 2010 on the “Intensification of efforts to eliminate all forms of violence against women” and the United Nations Human Rights Council resolution 14/12 of 30 June 2010 on “Accelerating efforts to eliminate all forms of violence against women: ensuring due diligence in prevention”.

10. The Special Rapporteur on violence against women has also played an essential role in bringing further focus on the due diligence standard and in enhancing its definition. Due diligence is stipulated as context-specific and dependent on the substantive international legislation at issue. Furthermore, it is an obligation of conduct, requiring States to take legal and administrative measures against State and non-State actors responsible for human rights violations.⁶ States must act with due diligence to eliminate violence against women through the five Ps, specifically: “the promotion of the right to a life free of violence; prevention, protection, investigation and punishment; and the provision of reparations”.⁷ As it relates to the elimination of all forms of violence against women, due diligence entails individual and systemic commitment and action.

11. Individual due diligence is specifically “the obligations States owe to particular individuals, or groups of individuals, to prevent, protect, punish and provide effective remedies on a specific basis”, thus, reflecting the needs and preferences of the victim. Protection services at this level include offering victims access to safe shelters, hotlines, financial aid, legal assistance, psychological counselling, and health-care services. States should also empower victimized women in all relevant areas, especially economically, compensating them for any financial damage and assisting them to access information about protection measures. “Individual due diligence also requires States to punish not just the perpetrators, but also those who fail in their duty to respond to the violation.”⁸

12. By contrast systemic due diligence entails “the obligations States must take to ensure a holistic and sustained model of prevention, protection, punishment and reparations for acts of violence against women”. It targets societal transformative change to end discrimination against women through the adoption or modification of legislation, provision of relevant services, and development of related strategies, action plans and awareness-raising campaigns. Systemic due diligence also requires that States allocate adequate resources at the national level to combat violence against women along with developing the capacity of all stakeholders, such as police, prosecutors and judges and hold accountable “those who fail to protect and prevent, as well as those who perpetrate violations of human rights of women”.⁹

B. UNITED NATIONS MODEL FRAMEWORK FOR LEGISLATION ON VIOLENCE AGAINST WOMEN

13. In 2010, the United Nations issued the Handbook for Legislation on Violence against Women to support stakeholders in adopting and implementing legislation to prevent violence against women, punish perpetrators and protect the rights of survivors. It includes a model framework that provides practical and comprehensive guidance on the establishment of laws that hold perpetrators accountable while providing justice, support, protection and remedies to victims.

⁶ United Nations Human Rights Council, 2013.

⁷ Ibid., para. 66.

⁸ Ibid., para. 70.

⁹ Ibid., para. 71.

14. The model framework recommends that legislation include broad definitions of all forms of violence against women aligned with international human rights standards. It provides guidance on the definition of domestic and sexual violence, and “recommends that legislation explicitly recognize violence against women as a form of gender-based discrimination and a violation of women’s human rights”.¹⁰ Legislation should include a comprehensive definition of domestic violence, to feature physical, sexual, psychological and economic abuse. Furthermore, legislation should apply to all forms of violence against women, whether perpetrated by members of the family or the community, including the following: domestic violence; sexual violence, including sexual assault and sexual harassment; harmful practices, including early marriage, forced marriage, female genital mutilation, female infanticide, prenatal sex-selection, virginity testing, HIV/AIDS cleansing, so-called honour crimes, acid attacks, crimes committed in relation to bride-price and dowry, maltreatment of widows, forced pregnancy, and trying women for sorcery/witchcraft; femicide/femicide; trafficking; and sexual slavery.¹¹

1. *Provisions of laws on violence against women: Criminalizing the act*

15. The model framework calls for the formulation of an all-encompassing law that must “be comprehensive and multidisciplinary, criminalizing all forms of violence against women, and encompassing issues of prevention, protection, survivor empowerment and support (health, economic, social and psychological), as well as adequate punishment of perpetrators and remedies for survivors”.¹² Sentences should be issued in accordance with the gravity of crimes, and therefore, legislation must be abolished which provides leniency or reduced penalties and/or acquits perpetrators in cases of so-called honour crimes; or pardons a perpetrator if he subsequently marries the victim. Such clauses flagrantly discriminate against women and perpetuate the culture of impunity.

16. Other issues addressed in the model framework pertain to the type of law used to process cases of violence against women. The model framework states that “the processing of a case under customary and/or religious law does not preclude it from being brought before the formal justice system.”¹³ It also identifies linkages between laws specific to violence against women and other broader types of legislation related to family, social security and employment.

17. The model framework also proposes the use of civil law to further guarantee the rights of victims and facilitate their access to justice. Legislation should permit complainants “to bring civil lawsuits against perpetrators; and abolish requirements forbidding women to bring lawsuits against a husband or other family member, or requiring the consent of a husband or other family member in order for a woman to bring a lawsuit”. Civil lawsuits in certain cases have advantages over criminal proceedings. They are governed by a lower burden of proof than criminal cases. In addition the complainants usually have control over the process, and the relief offered may include “compensatory damages, punitive damages, declaratory and injunctive relief, and a court order requiring the defendant to pay the prevailing plaintiff’s attorney fees.”¹⁴

18. The model framework also points out that legislation should not be contradictory. To guarantee the rights of the victim, there must be consistency between laws on violence against women and the provisions of laws in other areas, such as family and divorce, property, housing, social security and employment.

¹⁰ DESA, 2010, p. 2.

¹¹ Ibid., pp. 23-24.

¹² Ibid., p. 14.

¹³ Ibid., p. 16.

¹⁴ Ibid., p. 54.

Box 1. Guaranteeing the rights of victims across laws and regulations

Special focus should be placed on guaranteeing the following rights to victims of violence against women:

- (a) Divorce from a violent husband and adequate alimony to women and children;
- (b) Survivor's right to stay in the family dwelling after divorce;
- (c) Social insurance and pension rights of survivors who divorce the perpetrator;
- (d) Expedited distribution of property, and other relevant procedures;
- (e) Careful screening of all custody and visitation cases to determine whether there is a history of violence;
- (f) A statutory presumption against awarding child custody to a perpetrator;
- (g) Availability, in appropriate cases, of professionally run supervised visitation centres;
- (h) A survivor of violence who has acted in self-defence, or fled in order to avoid further violence, should not be classified as a perpetrator, or have a negative inference drawn against her, in custody and visitation decisions;
- (i) Child abuse and neglect proceedings should target the perpetrators of violence and recognize that the protection of children is often best achieved by protecting their mothers.

Source: DESA, 2010, p. 55.

2. Institutionalizing relevant mechanisms

19. To satisfy the need for due diligence, cases of violence against women should be promptly processed, especially when the life of the victim might be endangered. Therefore, the model framework recommends the creation of specialized courts or special court proceedings guaranteeing timely and efficient handling of such cases. These specialized mechanisms would include training relevant staff and sensitizing them to issues related to gender and violence against women. Other necessary mechanisms and tools include national action plans and strategies on violence against women. The model framework recommends that legislation on violence against women should have “an organic link to a comprehensive national action plan or strategy”. This would require the allocation of resources and budgets to provide capacity-building activities for all stakeholders and support services to victims. States should also elaborate on rules and regulations and create special protocols to guarantee that laws are comprehensive and effective.¹⁵ Enforcement is another aspect that must be addressed through appropriate monitoring, evaluation and enforcement mechanisms.

3. Police and prosecution procedures

20. The model framework recommends the establishment of specialized police and prosecution units to handle cases of violence against women, which should include trained staff, especially female police officers or prosecutors. One important aspect highlighted by the model framework is the prohibition of mediation in all cases of violence against women, both before and during legal proceedings.

21. The model framework specifies that “responsibility for prosecuting violence against women lies with prosecution authorities and not with complainants”.¹⁶ This measure is needed since victims may be pressured by society or family to withdraw their complaints and may face stigmatization that usually accompanies such crimes. To further assist victims, the model framework also states that free legal aid, especially in criminal proceedings, should be provided to victims. That recommendation is also reflected in the Beijing Declaration and Platform for Action and General Recommendation No. 19.

¹⁵ DESA, 2010, p. 2.

¹⁶ DESA, 2010, p. 36.

22. Protection orders can be instrumental in safeguarding victims of all forms of violence against women and preventing future abuse and violence. The model framework recommends issuing these orders whether in criminal or civil proceedings and criminalizing violations of protection orders so that defendants take them seriously. Furthermore, protection orders should ensure the housing rights of the victim and that the perpetrator stays a specified distance from the victim and her children. Protection orders may also include provisions on ordering the accused “to provide financial assistance to the victim, including payment of medical bills, counselling fees or shelter fees, monetary compensation and, in addition, in cases of domestic violence, mortgage, rent, insurance, alimony and child support”.¹⁷

4. Provision of compensation and restitution

23. The model framework highlights the importance of compensation and restitution for victims of violence against women. This notion is important because it reaffirms that these crimes are not private matters, but are public criminal acts that entail not only imprisonment but also compensation for the harm and injury caused to the victim. The model framework recommends the creation of a national fund for compensation and restitution.¹⁸ Thus, the responsibility to provide relief and compensation to victims of violence against women is not solely that of the perpetrator; but should also be a matter of national concern and priority. The essence of this requirement corresponds to the obligation of States to ensure systemic due diligence as described by the Special Rapporteur on violence against women to ensure a holistic and sustained model of addressing violence against women.

5. Protection of victims and prevention of violence against women

24. As mentioned above, the model framework asserts the rights of victims of violence against women to receive full protection and support, including medical, psychological and social services accessible at specialized clinics, shelters, listening centres, and hotlines.¹⁹ In addition, these services should be available to all women including those living in rural and remote areas. The model framework recommends a minimum standard of availability of support services that Governments should provide to survivors of violence against women (box 2). Ideally, the services should be part of a prompt and efficient integrated referral system in each country. Special protocols and cooperation mechanisms are needed to coordinate between different concerned parties and stakeholders.

Box 2. Minimum standards of availability of support services for survivors of violence against women

1. One national women’s phone hotline where all complainants/survivors of violence may get free assistance and referrals 24 hours a day.
2. One shelter/refuge for every 10,000 inhabitants, providing safe emergency accommodation, qualified counselling and assistance in securing long-term housing.
3. One women’s advocacy and counselling centre for every 50,000 women, to provide proactive support and crisis interventions, including legal advice with specialized services for immigrants, survivors of trafficking and sexual harassment victims.
4. One rape crisis centre for every 200,000 women to provide reproductive health care and HIV prophylaxis.

Source: DESA, 2010, p. 31.

¹⁷ Ibid., p. 46.

¹⁸ Ibid., p. 52.

¹⁹ Malaysia successfully introduced a one-stop-shop to support victims of violence against women. See www.arrow.org.my/publications/AFC/v8n2.pdf.

25. The model framework highlights that protection services for victims of violence against women should include a component that assists them with their overall rights, especially on issues of employment and housing. It stipulates that victims should not be at the risk of losing their employment in case they require rehabilitation during their recovery period.²⁰ Like the Beijing Declaration and Platform for Action and General Recommendation No. 19, the model framework recommends the provision of rehabilitation services for victims of violence against women. In addition, female immigrants should not be deported if they report violence against them. The fear of deportation may deter many immigrant women from coming forward.

26. In terms of prevention, the model framework requires legislation to include a component targeting three areas: (a) awareness-raising; (b) sensitization of the media; (c) and inclusion of material on violence against women and women's human rights in educational curricula.

II. NATIONAL LEGAL FRAMEWORKS IN THE ARAB REGION ON VIOLENCE AGAINST WOMEN

27. The previous chapter introduced the United Nations model framework for legislation on violence against women, which was formulated in line with principles of due diligence and the five Ps, specifically the promotion of the right to a life free of violence; prevention, protection, investigation and punishment; and the provision of compensation and reparations. This chapter examines the congruence between established international standards and the legislative structures of ESCWA member countries. It also provides a general account of the main governmental services and support systems available for victims of violence against women. Although this examination does not provide an exhaustive presentation of all laws and all available services, it nevertheless aims to reveal the following: progress towards the objective of eliminating all forms of violence against women; and gaps and ongoing challenges that undermine this objective.

A. CONSTITUTIONAL LAWS AND CRIMINALIZATION OF VIOLENCE AGAINST WOMEN

28. In most Arab countries, national constitutions include clauses on the principle of equality between men and women. Gender equality, however, is neither directly nor effectively reflected in all national laws and policies. While most constitutions refer to the prohibition of harm and violence, established legal systems do not necessarily translate this requirement into comprehensive protection of women from all types of violence. In addition, certain penal codes include provisions that either directly discriminate against women or contradict other established laws on violence against women. What is especially lacking is an all-encompassing law that includes prevention, protection and compensation, as stipulated in the model framework. The following section provides an overview of laws on violence against women in the region.

1. Domestic Violence

29. Domestic violence is not criminalized in all ESCWA member countries, although progress on this issue has been made in some countries. In Jordan, a law that specifically covers domestic violence was issued in 2008. In August 2013 in Saudi Arabia, the Council of Ministers approved a law that recognized domestic violence as a punishable crime. In July 2013 in Lebanon, a parliamentary panel unanimously approved a draft law "for the protection of women and all members of the family from domestic violence". In Tunisia, domestic violence is also classified as a criminal offence, while in Kuwait the protection of a woman from violence by her husband has been included in the civil code, allowing women to make use of civil proceedings and file complaints against their aggressors, in harmony with the recommendations of the model framework.

²⁰ Rehabilitation includes psychological assistance such as counselling and anger management courses.

30. In countries such as Bahrain, Oman and Qatar where penal regulations do not specifically refer to domestic violence, sharia law explicitly prohibits a husband from carrying out mental or physical violence against his wife. Furthermore, in Bahrain, Iraq and Palestine, draft laws on domestic violence have been submitted and await formal adoption and/or implementation. These developments indicate a trend towards the enactment of national laws on domestic violence as recommended by the model framework.

2. Rape and sexual harassment

31. Rape is a severe criminal offense in most penal codes in the region and may carry the death penalty as is the case in Egypt,²¹ Kuwait, Qatar and the United Arab Emirates. However, in Bahrain, Iraq, Jordan, Lebanon, Libya, Palestine, the Syrian Arab Republic and the Sudan, penal provisions offer the rapist a more lenient sentence or complete impunity if he marries his victim. As per international conventions (mainly article 2 of CEDAW) and the recommendations of the model framework, such provisions are considered discriminatory and therefore must be amended. Civil society organizations, often with support from legislators and policymakers, have exerted pressure on Governments to eliminate such provisions and some changes have already taken place. In January 2013 in Morocco, the Commission on Justice and Legislation within the Upper House of Parliament unanimously adopted a proposal to remove the second paragraph of article 475, which allowed a rapist to escape prosecution if he married the victim.

32. Sexual harassment whether in the private and public sphere is not explicitly included in penal legislation of all countries in the region. Where there is such a provision, it either falls under forms of assault or only applies to sexual harassment in the workplace. Countries that penalize sexual harassment in their criminal codes include Bahrain, Jordan, Morocco, Palestine, Qatar, the Syrian Arab Republic, Tunisia and the United Arab Emirates.

3. Spousal rape, incest and sexual abuse

33. Although the model framework clearly includes spousal or marital rape as forms of violence against women, neither is recognized as a crime in any country in the region with the exception of Tunisia. Sexual abuse in the family and incest are considered punishable crimes in the penal codes of most Arab countries. In Egypt, for example, the rape of a minor can carry a life sentence if perpetrated by a father or a guardian.²² Although incest is often committed against girls under 15 years of age, it remains a largely underreported issue, not just in the region but also throughout the world.

4. Trafficking

34. To date, 11 ESCWA member countries have issued legislation that includes specific penalties for crimes of trafficking.²³ These penalties range from temporary imprisonment and fines of small amounts, to more serious penalties including long terms of imprisonment and capital punishment. Iraq and Kuwait stipulate the death penalty for trafficking crimes that lead to the death of the victim.²⁴

5. 'Honour' killing

35. Penal provisions on so-called honour killing include clauses that offer perpetrators lenient sentences based on mitigating circumstances. However, some countries in the region have begun to take steps to

²¹ Article 267 of Egypt Penal code states that the penalty for committing rape can range anywhere from 15 years imprisonment to the death penalty, if rape is committed along with another crime.

²² Zuhur, 2005, p. 40.

²³ Bahrain, Egypt, Iraq, Jordan, Kuwait, Lebanon, Oman, Qatar, Saudi Arabia, the Syrian Arab Republic and the United Arab Emirates.

²⁴ ESCWA, 2013, p. 5.

reform such discriminatory provisions, in line with the recommendations of the model framework. For example, in 2009 the Syrian Arab Republic amended its penal code to require a minimum two-year sentence for perpetrators of honour killing.²⁵ In 2011, the parliament of Lebanon annulled article 562 of its penal code, which allowed for a reduced sentence for perpetrators who claim to have killed their female family members to protect family honour.²⁶ Similarly, in 2011 Palestine abolished penal clauses permitting reduced sentences based on mitigating circumstances for perpetrators of honour killing. In the United Arab Emirates, penal regulations impose prison sentences equally for male and female perpetrators of honour crimes. By contrast, in Tunisia, honour crimes are criminal offenses and may entail the death penalty.

6. *Early and forced marriage*

36. Most personal status laws in the region allow marriage before the age of 18. Some countries even allow marriage as early as puberty or 9 years of age for girls and 13 for boys.²⁷ Even after age 18, women in some countries may be forced by a male guardian to marry. According to the model framework, early and forced marriages are discriminatory and constitute a form of violence against women.

7. *Female Genital Mutilation/Cutting (FGM/C)*

37. FGM/C is practiced in only a few countries in the region. In 1996, the practice was prohibited in Egypt, except for medical purposes, and in 2008 the practice was totally criminalized by the parliament.²⁸ However, according to a report issued by the United Nations Children's Fund and the United Nations Population Fund, 12 cases where parents or doctors were accused of carrying out FGM/C in 2010 remain pending in court. United Nations agencies have since urged the Ministry of Health in Egypt to monitor physicians more closely and to implement the national law banning and criminalizing the practice.²⁹ In Iraqi Kurdistan, a 2011 law on family violence outlawed FGM/C; however, it is not yet enforced effectively, with indications from the Directorate to Combat Violence against Women that instructions or explanations on the enforcement of the ban have not been properly circulated.³⁰ In the Sudan, FGM/C is not banned at the national level. Only four states have outlawed the practice, and only three have effectively enforced the ban.³¹ In Yemen, a 2001 decree prohibited health facilities from performing FGM/C, although the prohibition is reportedly ineffective. Efforts in 2009 to totally ban the practice at all levels were met with fierce opposition from conservative members of the parliament.³²

B. HARMONIZATION OF LAWS

38. The model framework stipulates that in addition to enacting legislation to combat violence against women, existing laws that undermine the rights of victims, especially in the areas of family affairs and employment, must be amended. Laws must be harmonized to guarantee the full rights of victims of violence against women to eliminate contradictions and/or loopholes in the overall legal system and to prevent retaliation. For instance, the enforcement of a law on violence against women should be supported with other measures that protect the victim from being evicted from her home, dismissed from employment, or deprived of the custody of her children. A close examination of personal status laws in the region indicates a lack of harmonization with laws on violence against women. This is most apparent in the case of divorce and guardianship of children.

²⁵ <http://www.hrw.org/news/2009/07/28/syria-no-exceptions-honor-killings>.

²⁶ <http://www.hrw.org/news/2011/08/11/lebanon-law-reform-targets-honor-crimes>.

²⁷ ESCWA, 2011, p. 19

²⁸ UNICEF, 2009, pp. 108-110.

²⁹ UNFPA and UNICEF, 2011, p. 3.

³⁰ <http://www.hrw.org/news/2012/08/29/iraqi-kurdistan-law-banning-fgm-not-being-enforced>.

³¹ UNFPA and UNICEF, 2011, p. 3.

³² <http://www.giz.de/Themen/de/dokumente/giz-fgm-EN-jemen-2011.pdf>.

39. The legal systems in Arab countries have different standards for men and women when it comes to personal status. In most countries, a man can simply divorce his wife without any justification. By contrast, women must go before a judge and show concrete reasons supported by tangible evidence in order to seek divorce. In many countries, including Egypt, Iraq, Jordan, Kuwait and Lebanon, domestic abuse may be used as grounds for divorce but a woman must prove that she was beaten and/or have credible witnesses testify against her husband. In some cases, a woman can file for *Khul'a* or no-fault divorce, but she risks losing her dowry or *mahr* in the process. The economic participation of women across the Arab region is very low, meaning that women are generally financially dependent on male family members. Women who are economically dependent face considerable challenges if they attempt to separate from an abusive spouse and many simply accept their situation and live with abuse and violence.

40. In the event of divorce, guardianship of minor children is almost always given to the father even if the basis of separation was related to violence against women.³³ In most countries in the region, custodial rights are only afforded to mothers when their children are very young, unless they re-marry in which case they are typically forced to forfeit these rights. This is not the case for fathers who remarry. As such, it is evident that even in the countries in the region where laws on violence against women have been enacted, family laws often carry discriminatory elements that undermine the rights of women. Laws on violence against women cannot be fully effective if laws in other areas perpetuate discrimination.

C. INSTITUTIONALIZATION OF MECHANISMS RELATED TO VIOLENCE AGAINST WOMEN

41. As indicated in chapter I, the model framework calls for the implementation of tools and mechanisms, such as family courts, to help survivors access justice. Among ESCWA member countries, Egypt, Morocco, Palestine, Qatar, the Sudan and the United Arab Emirates have implemented mechanisms to provide speedy processing of family cases, including those related to violence against women. Moreover, the model framework recommends that legislation be linked to a national action plan or strategy on violence against women. The purpose of the link is to establish coordination mechanisms between different stakeholders, and to allow for the efficient allocation of resources to prevent violence against women, protect victims and provide them with compensation and restitution. In ESCWA member countries, there are three types of strategies: (a) national development strategies that have a component targeting the female population; (b) national strategies for the advancement of women, some of which include elements related to violence against women; and (c) national strategies formulated specifically to address violence against women. At least five countries, namely Jordan, Morocco, Palestine, the Sudan and Tunisia, have recently developed comprehensive strategies to combat violence against women that include raising awareness on domestic violence, enhancing judicial responses to violence through legal amendments, and promoting research on violence. Some also include establishing specialized medical units attached to temporary shelters that aim to provide counselling to survivors of domestic violence.

D. POLICE AND PROSECUTION PROCEDURES IN ESCWA MEMBER COUNTRIES

42. Notwithstanding some variations in national laws and jurisdiction, police stations in most member countries follow the same procedures when addressing complaints of violence against women. Typically, the process starts by receiving the complaint and having the perpetrator sign a pledge not to subject the victim to further harm. It is to be noted, however, that the reliability of these written statements is questionable in the absence of or lack of implementation of laws criminalizing certain forms of violence against women, notably domestic violence.

43. Furthermore, as ESCWA recently found, police officers often engage in informal mediation between the parties which could lead to intimidating victimized women, instead of arresting perpetrators. Police officers also sometimes engage religious leaders to foster reconciliation. According to the model framework,

³³ ESCWA, 2011. pp. 16-18.

this approach should not be pursued, especially as it could undermine rights of the victim and her access to the formal justice system. Many ESCWA member countries have exerted efforts to establish special police units to receive the complaints of victims of violence against women, and some have recruited and trained female officers to handle these specific cases. Female police officers handle cases of violence against women in Bahrain, Jordan and Yemen. In most countries, however, police stations are not equipped to receive victims of violence against women and often do not guarantee victim's privacy upon medical and forensic examination.³⁴ Moreover, although all women, including refugees and foreign domestic workers, would benefit from police services, they may be unavailable outside urban areas and major cities. Thus the police have a limited ability to protect or respond promptly to the pleas of a large proportion of women living in rural and remote areas.

E. PROVISION PROTECTION SERVICES TO VICTIMS OF VIOLENCE AGAINST WOMEN

44. Due diligence and the model framework require member countries to provide victims of violence against women with compensation and restitution. This requirement is met in only a few ESCWA member countries, such as Kuwait, Palestine and Yemen. Services offered to victims of violence against women in the region are described in this section.

1. *Health and medical services*

45. Recent research conducted by ESCWA has revealed that most member countries provide medical services free of charge to victims of violence against women.³⁵ In Palestine women must be enrolled in government health insurance to benefit from these services. In many countries, foreign domestic workers are not eligible for free medical services. In addition, as is the case with specialized police services indicated in the previous section, victimized women in rural and remote areas are unlikely to have access to such medical and health services.

46. One of the most important gaps in the provision of medical services to victims of violence against women lies in the lack of common protocols to establish partnerships in various medical fields.³⁶ In the absence of an institutionalized referral system, victims of violence against women are not formally referred by governmental medical facilities to other needed services. Member countries are also marked by two additional challenges that undermine medical service provision to victims of violence against women: the lack of specialized training and expertise of medical workers in dealing with victims of violence against women; and the refusal of victims to pursue treatment, especially psychological treatment. In most countries, concerned parties are not entirely aware of all international standards related to the availability, accessibility, acceptability and quality of health services.³⁷

2. *Legal assistance*

47. With the exception of Egypt and Lebanon, ESCWA member countries are active in providing legal assistance to victims of violence against women free of charge. Governmental legal assistance includes consultations and court representation and these services seem to be mostly centred in the capital and major cities, with the exception of Bahrain, Jordan and the Sudan. In certain countries, refugees and domestic foreign workers are excluded from these governmental services. Non-governmental organizations are also active in this field. Member countries face two challenges in relation to legal service provision: limited governmental financial allocation for legal services to victims of violence against women; and limited

³⁴ ESCWA and ABAAD, 2013.

³⁵ Including but not limited to Bahrain, Egypt, Iraq, Jordan, Kuwait, Lebanon, Qatar, the Sudan and Yemen.

³⁶ ESCWA and ABAAD, 2013.

³⁷ United Nations Economic and Social Council, <http://www.refworld.org/docid/4538838d0.html>.

training for prosecutors and judges to sensitize them to gender issues in general and particularly to violence against women.

3. Counselling and listening services

48. Governmental counselling and listening services are offered in ESCWA member countries. Non-governmental organizations are also very active in this field, sometimes supplementing governmental efforts and filling gaps. These services, however, are centred in urban areas and major cities, leaving behind many women living in rural areas. In the presence of a formal referral system, these centres could be more effective. With an institutionalized referral system, victims would have better access to these services, and would derive greater benefit from the moral support and guidance they offer.

4. Hotline services

49. Several ESCWA member countries have a government hotline for victims of violence against women.³⁸ In Lebanon and Palestine, non-governmental organizations are very active in trying to fill the gap in this area. Most women can benefit from these services, with the exception of refugees (in Egypt and Bahrain), foreigners (Egypt), and domestic workers (Qatar). These services cover all areas in the countries where they exist, with the exception of rural areas in the Sudan, due to power shortage and the lack of landline infrastructure. It is to be noted that Jordan, Palestine and Qatar are in the process of implementing a system whereby a victim could be referred to other services based on her phone call to the hotline.

50. One of the main challenges is the lack of legal structures to support the work of hotline centres. Legal structures in many countries do not allow police or specialized units to intervene based on a phone call or communication received by the hotline centre. Thus, governmental and non-governmental hotlines exist without the needed legal framework to guide their work or empower them to provide appropriate assistance to victims of violence against women. Once again, an institutionalized referral system is needed to ensure that hotlines are able to provide effective governmental and non-governmental services to victims of violence against women in member countries.

5. Shelter Services

51. Several ESCWA member countries have government shelters for victims of violence against women.³⁹ The Government of Lebanon has contracted four shelters managed by non-governmental organizations to provide this service. Most shelters in the region provide medical assistance, including psychological support as well as rehabilitation services. They focus mostly on protecting women and their children from perpetrators and the majority of them have police or security protection that guarantee the safety of the victims and members of their families.

52. Based on responses to a questionnaire administered as part of an ESCWA study, most member countries are not fully aware of international standards related to operating and managing a shelter for victims of violence against women. They acknowledged that services offered in government shelters are neither periodically monitored nor evaluated. Furthermore, in most cases, indicators to monitor the quality of the service rendered have not been identified. Government institutions have a great need for skilled staff to deal with cases of violence against women.

³⁸ Including but not limited to Bahrain, Egypt, Iraq, Jordan, Kuwait, Qatar, the Sudan and Yemen.

³⁹ Including but not limited to Bahrain, Egypt, Iraq, Jordan, Palestine, Qatar and Yemen.

6. *Capacity-building services*

53. Member countries tend to focus on providing literacy and economic empowerment programmes to victims of violence against women. There are ample opportunities for further partnerships and cooperation between governmental and non-governmental parties to provide better services in this area. In Kuwait, Morocco, Palestine, the Sudan, Tunisia and Yemen, government rehabilitation programmes target perpetrators of violence.

F. PREVENTION OF VIOLENCE AGAINST WOMEN

54. Member countries are active in launching campaigns to combat violence against women. In fact, the use of media to target policy change was noted in several ESCWA member countries. Some of the campaigns targeted religious men in Bahrain, Iraq, Qatar and Yemen. Furthermore, ESCWA member countries have launched awareness-raising campaigns to sensitize the public at large about gender issues and violence against women. Most of their campaigns coincide with the annual event, “16 Days of Activism to End Violence against Women”, and are usually organized jointly with non-governmental organizations.

III. CONCLUSION AND RECOMMENDATIONS

55. It is evident that ESCWA member countries are actively institutionalizing mechanisms related to violence against women. In line with due diligence and the model framework, member countries have undertaken specific measures, such as the creation of specialized police units and recruitment of female officers, and the formulation of national strategies to combat violence against women. Nevertheless, most countries are still far (some more than others) from reaching full compliance with international standards. Legal reforms are needed if member countries are to enact comprehensive and all-encompassing laws to protect women from crimes committed against them. In addition, despite the provision of different services to victims of violence against women, including medical, legal, counselling, hotlines and shelters, the lack of an integrated referral system in most countries remains a serious obstacle to efficient and well-coordinated protection of victims of violence against women.

56. The analysis above has also shown that the prevention of violence against women is not established as a legal obligation in most countries in the region. Existing laws fail to address violence against women from all angles and at every level, and stipulations related to the protection of victims are also missing in most of the region. In other words, member countries place greater importance on criminalization rather than on the prevention of violence, the protection of victims or the provision of compensation and restitution. Although most member countries criminalize certain forms of violence against women, their overall legal systems are not fully in line with the five Ps, the due diligence standard and the model framework. Moreover, in some countries in the region, there is an overlap between penal legislation and faith-based personal status laws. This might have negative implications on the processing of cases of spousal rape or other specific types of violence against women. Contradictions between various laws are most vivid in countries where women are denied access the formal justice system unless they have the approval of a male guardian, a situation in which deprives many victimized women of justice even when laws are in place to protect them.

57. Government services for victims of violence against women in most Arab countries suffer from a number of gaps. First, there is no institutionalized referral system, meaning that victims of violence against women are not automatically referred to the service that they require unless they first submit a complaint at the police station. Only the police or a specialized unit may refer victims to shelters or medical and legal services. Second, women in many rural and remote communities do not have access to necessary government services, such as counselling centres, shelters and hotlines. Third, there is a general lack of awareness of international standards related to the provision of protection and rehabilitation services to victims of violence against women. There is a need build the skills and knowledge of medical and police personnel to deal with victims of violence against women.

58. Based on the above, the following recommendations are proposed to enhance the capacity of member countries to respond to violence against women in line with international standards and tools, particularly the due diligence standard and the model framework.

(a) *Criminalization of all types of violence against women*

- (i) Member countries must enact comprehensive and multisectoral laws criminalizing all forms of violence against women, and encompassing all elements of prevention, protection, punishment of perpetrators and remedial services for victims;
- (ii) Member countries must amend legislation that discriminates against women and provides leniency or reduced penalties in cases of so-called honour crimes or when a perpetrator of violence agrees to marry his victim;
- (iii) It is highly recommended that member countries allow cases of violence against women to be brought before the formal justice system even if they have been addressed under customary and/or religious laws. Victims must have the right to bring civil lawsuits against perpetrators, given that civil law generally requires a lower burden of proof and may offer rapid relief and compensation to the complainants;
- (iv) Member countries are highly encouraged to harmonize all laws and abolish contradictory legislation that undermine the rights of victims, especially in the area of family affairs.

(b) *Institutionalization of relevant mechanisms*

- (i) Member countries should establish specialized courts and special court proceedings guaranteeing timely and efficient handling of cases of violence against women;
- (ii) Member countries should formulate comprehensive national action plans and strategies on violence against women to allow for the allocation of resources at the national level. The national action plan should cover service provision, and it should sensitize all stakeholders on gender issues, particularly violence against women.

(c) *Police and prosecution procedures*

- (i) Member countries are highly encouraged to create specialized units with trained staff, including female officers to address cases of violence against women;
- (ii) Member countries should ensure that police stations have appropriate infrastructure to receive and handle cases of violence against women, including rooms equipped for medical and forensic examination;
- (iii) Member countries should ensure that the responsibility for prosecuting cases of violence against women lies with the authorities and not with the victims.

(d) *Provision of protection services to victims of violence against women*

- (i) Member countries must institutionalize an integrated referral system that responds to all the needs of victims of violence against women. Protection services should be made available to all, including foreign domestic workers and women living in rural and remote areas;
- (ii) Member countries need to identify appropriate indicators to monitor and regularly evaluate the quality of services rendered to victims of violence against women.

(e) *Prevention of violence against women*

Member countries must adopt more comprehensive prevention measures to combat violence against women by focusing on three areas: (1) awareness-raising; (2) sensitization of the media; and (3) revisions of educational curricula to include material on violence against women and on women's human rights. Coordination and partnership with non-governmental organizations would increase the effectiveness and outreach of these measures.

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