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Norms and Legal Instruments on Preventing Violence against Women and Domestic Violence. Highlights from the Istanbul Convention

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Abstract: Women's rights are human rights and violence against women is actually a violation of human rights and a form of discrimination. For many decades, a form of violence against women is so called "intimate partner violence". This kind of violence includes physical, sexual, and emotional abuse and even the control of behavior by an intimate partner. Thus, this paper aims at analyzing, in a legal and sociological paradigm, the Istanbul Convention on preventing and combating violence against women and domestic violence, developed by the Council of Europe, an instrument that could lead to a growing integration of human rights combating the biases that accept the violence against women. Through these norms, instruments and education women should be empowered to break the cycle of accepting subordination and violence. Therefore, the conclusions resulting from the study are that cultural and religious customs and traditions that are used to justify violence against women must be forbidden. A lot of campaigns for raising awareness on this issue have to be launched aim aiming at challenging their acceptance in society.

Keywords: Istanbul Convention; women; violence; victims; bias

Introduction

The present study is based on the legal documents and statistics published by international and European organizations in the field of human rights.

The women's rights issue preoccupied the whole world but the first steps in their defender were made only after the international organizations like United Nations, African State Organization, Latin and South American Organizations and recently, the regional organizations from Europe such as Council of Europe and the European Union got involved. All these entities created legal binding instruments aiming at preventing, combating and protecting the human rights. Thus, this study is divided in three parts that approach, chronologically and historically, the phases in which the problematic of women was subject of debates in the public sphere as a unique entity with rights and duties able to act at every level of a society and in all fields of life. The important successes of today wouldn't be possible if it hadn't been guided by the principle of equal opportunities, non-discrimination and the day to day fight against prejudices, cultural habits, and religious belief. From all forms and actions that break the women's rights we focus on violence against women and on domestic violence in this relation being involved the intimate partner violence.

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1. The Legal Framework Evolution on Women's Rights

In a great number of legal documents, the women's rights, generally, and the principle of equal opportunity and nondiscrimination, specially, are defined and legislated. United Nations World Conference on Human Rights held in Vienna, in June 1993, is considered as a cornerstone in the women's rights movement. Before the World Conference in Vienna, women's human rights were unrecognized on a large scale and merely absent from the international human rights agenda. At that time, the main approach was to divide the public sphere from private. Thus, the human rights agenda concern itself only with acts taking place in the public sphere which, principally, included those affecting the men.

One of the main objective, at the twentieth anniversary of the adoption of the Beijing Declaration and Platform for Action, was a recognition that the women's rights issues are at a turning point. It had to be accepted that realizing gender equality, the empowerment of women and the human rights of women and girls must be a pressing and central task.

In this context, Dr. Phumzile Mlambo-Ngcuka said: "Gender equality is a shared vision of social justice and human rights. Everyone has a responsibility to act, particularly governments as the primary duty bearers. We must seize all opportunities at national, regional and global levels and give new impetus to the achievement of gender equality, the empowerment of women and women's and girls' enjoyment of their human rights".¹

An important global actor and women's right defender is UN Women that supports UN member states as they set global standards for achieving gender equality, and works with governments and civil society to design laws, policies, programmes and services needed to implement these standards. It stands behind women's equal participation in all aspects of life, focusing on five priority areas: 1. increasing women's leadership and participation; ending violence against women; 2. engaging women in all aspects of peace and security processes; 3. enhancing women's economic empowerment; 4. making gender equality central to national development; 5. planning and budgeting. UN Women also coordinates and promotes the UN system's work in advancing gender equality.

Also, European Union made steps in the direction of human rights defense, focus on women's rights, by adopting regulations, and here we could mention, in 2004, the Guidelines on Human Rights Defenders (revised in 2008) to provide support to defenders and their work. The EU has also adopted Guidelines on violence against women, which specify that "(T)he EU will ensure that it gives appropriate consideration to the synergies between the implementation of these guidelines and other EU guidelines on human rights, in particular those relating to children's rights and human rights defenders."²

2. Definitions and Approaches on the Concepts of "Violence against Women" and "Domestic Violence"

Literature in the field of human rights, and, mainly, of equal opportunities and nondiscrimination use the terms of vulnerable persons or groups. Cook and Cusack used the term "vulnerable groups" to refer to "persons made vulnerable by particular circumstances". The sources of vulnerability are rather to be found in social, economic and cultural processes and inequalities that are changing and shifting over time, so that indeed certain groups are "made" vulnerable. Stereotyping is part of human nature being a

¹ Dr. Phumzile Mlambo-Ngcuka, Under-Secretary-General, Executive Director UN Women (www.un.org/UNwomen).

² European Union. EU guidelines on violence against women and girls and combating all forms of discrimination against them, para. 3.2. 2008. Web. February 4, 2014. <http://www.consilium.europa.eu/uedocs/cmsUpload/16173cor.en08.pdf>.

way people categorize individuals, often unconsciously, into particular types or groups, in part to simplify the world around us.¹ Stereotypes are both descriptive (perceiving all members of a certain group to have the same attributes regardless of individual differences) and prescriptive (setting the parameters for “acceptable” behavior). Gender stereotypes perpetuate myths about women and men as “truths”. For example, in many societies and cultures, women are thought to be more “emotional” and less rational and, consequently, less reliable and trustworthy than men.

Such notions often reflect historic and contemporary discriminatory (patriarchal) attitudes and perceptions of women. These attitudes are frequently rooted in cultural, religious and traditional values. Stereotyping becomes problematic when it is used as a vehicle to degrade and subjugate women both in general and in particular.²

The General Recommendation of the United Nations (UN) Committee on the Elimination of Discrimination against Women (CEDAW Committee) established, in 1992, that gender-based violence could be considered as “violence that is directed against a woman because she is a woman or that affects women disproportionately” (Article 6) and that it “is a form of discrimination that seriously inhibits women’s ability to enjoy rights and freedoms on a basis of equality with men” (Article 1).³

“The UN General Assembly stated that “*violence against women*” refers to 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.”⁴

Accordingly, violence against women encompasses but is not 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.

In spite of fact that in many families, domestic violence, including sexual violence in marriage, is still treated as a private matter in some countries. Insufficient awareness of the consequences of domestic violence, how to prevent it and the rights of victims still exists. Although improving, the legal and legislative measures, especially in the criminal justice area, to eliminate different forms of violence against women and children, including domestic violence and child pornography, are weak in many countries.

On the first of August 2014, the Council of Europe’s Convention on preventing and combating violence against women and domestic violence came into effect. The treaty, commonly known as the “Istanbul Convention”, covers violence against women, in all its manifestations, and supports policy measures to

¹ (Cook & Cusack, 2010, p. 1) apud Marianne Hester, Sarah-Jane Lilley, Preventing violence against women: article 12 of the Istanbul Convention, Council of Europe, September 2014, p. 8.

² (Cook & Cusack, 2010, p. 1) apud Marianne Hester, Sarah-Jane Lilley, Preventing violence against women: article 12 of the Istanbul Convention, Council of Europe, September 2014, p. 14.

³ UN, CEDAW Committee (1992), General Recommendation No. 19 on Violence against women, adopted at the 11th session, 1992, A/47/38, 29 January 1992.

⁴ UN General Assembly, Declaration on the Elimination of Violence against Women, A/RES/48/104, 20 December 1993, art. 1.

help victims and supporting organizations that seek to eliminate violence against women. It states, clearly, that no form of violence against women is acceptable, and that law enforcement agencies need to react to domestic and other kinds of gender-based violence. The Convention also stresses the necessity for coordinated action between policy makers, government agencies and civil society, and emphasizes the need to promote the principle of gender equality and legislate against gender-based discrimination. It is underline the will to combat and prevent violence linked to harmful practices, such as female genital mutilation, forced or early marriage or forced sexual relationships, and so-called “honour crimes” committed against women, young people and children.

The Convention gives a definition to domestic violence “(b) “*domestic violence*” shall mean all acts of physical, sexual, psychological or economic violence that occur within the family or domestic unit or between former or current spouses or partners, whether or not the perpetrator shares or has shared the same residence with the victim.”¹

An important challenge to the realization of women’s fundamental rights is intimate partner violence which, unfortunately, is experienced by women from all over the world. In many women’s issues, such as intimate partner violence is put on the private agenda, treated like a private issue and so it seems that does not involve human rights violation.² The different types of violence often coexist, meaning that a woman may be subjected to multiple forms of abuse by her partner. Globally, almost one third of all women who have been in a relationship have experienced physical and/or sexual violence by their intimate partner. In some regions, nearly 40% of women have experienced intimate partner violence. Globally, 38% of all murders of women are committed by intimate partners. Intimate partner violence denies or impacts upon the enjoyment of the victim’s fundamental rights to life, liberty, and security of the person, the right to be free from torture and ill-treatment, the right to equality in marriage and family relations, and to an adequate standard of living as well as to the highest attainable standards of physical and mental health. Where tolerated by the state, intimate partner violence denies the victim the right to equal protection of the law and perpetuates a culture of impunity. Unfortunately, some studies indicate that a vicious cycle exists whereby children exposed to intimate partner violence against their mother or female career are more likely to perpetrate or experience intimate partner violence in later life.³

Thus, basic victims of domestic violence are children who are deprived of their childhood, the right to play, education and recreation and as the New York Convention on the Rights of the Child stipulates, “The child should grow up in a family environment, in an atmosphere of happiness, love and understanding.”⁴

3. Provisions of the Istanbul Convention on Prevention Domestic Violence

Unfortunately, prevention strategies remain fragmented and reactive and there is a lack of programmes on these issues. It is also noted that, in some countries, problems have arisen from the use of new

¹ Council of Europe, Convention on preventing and combating violence against women and domestic violence, CETS No. 210, 2011, p. 8.

² In-depth study on all forms of violence against women, Report of the Secretary-General’, UN doc. A/61/122/Add.1, 6 July 2006, §112 apud The Situation of Women’s Rights 20 Years after the Vienna World Conference on Human Rights, Geneva Academy of International Humanitarian Law and Human Rights, June 2014., Academy in-brief No. 4, 2014, p. 33.

³ WHO, Understandings and addressing violence against women, Intimate partner violence, Geneva, 2012.

⁴ Apud Tamara Dorina Ciofu, “Domestic Violence and its Consequences on the Psychological Development of Children. Aspects from the Istanbul Convention in Guarranting a Happy Childhood” in Exeritarea dreptului la nediscriminare și egalitate de șanse în societatea contemporană. Lucrările celei de-a VIII-a Conferințe a Nediscriminării și Egalității de Șanse/Exercising the right to non-discrimination and equal opportunities in contemporary society. The Works of the Ninth Conference on Non-discrimination and Equal Opportunities, NEDES, 2014, Bucharest: Pronuniversitaria, p. 313.

information and communication technologies for trafficking in women and children and for purposes of all forms of economic and sexual exploitation. As FRA has noted in the past, the current lack of comprehensive data hinders the development of targeted policy to combat gender-based violence. The Convention's stipulation that countries need to collect detailed data on all aspects of violence against women on a regular basis is therefore also to be welcomed.

The Council of Europe, in Convention on preventing and combating violence against women and domestic violence, from the four core pillars of the comprehensive approach to violence against women underlies the area of prevention. The gender inequality is a cause and consequence of violence against women and is the reason why the Convention provides for an entire prevention chapter that envisages measures to stop violence against women from happening by achieving greater gender equality.

The Istanbul Convention expounds this long-term vision and, as an overarching principle for all prevention measures, it requires states parties to promote changes in the social and cultural patterns of behavior of women and men in order to eradicate prejudices, customs and all practices based on negative gender stereotypes.¹

Article 12, called "General obligations", in paragraphs 1 and 5, focused on the matter of raise awareness. "(1) Parties shall take the necessary measures to promote changes in the social and cultural patterns of behavior of women and men with a view to eradicating prejudices, customs, traditions and all other practices which are based on the idea of the inferiority of women or on stereotyped roles for women and men.

(5)- Parties shall ensure that culture, custom, religion, tradition or so called "Honour" shall not be considered as justification for any acts of violence covered by the scope of this Convention."

As it is known, the European Union has a closed cooperation with the Council of Europe in the field of human rights. Many studies and researches are made by the European Fundamental Rights Agency (FRA) and an interesting and useful research on violence against women and domestic violence was conducted by this agency and published in 2014. The biggest ever such comparative study, FRA's report was based on a survey of 42,000 women in all 28 EU Member States, and revealed the extent of abuse suffered by women from childhood through to old age, at home and at work, in public and online. Also, it showed that the fear of becoming a victim of gender-based violence has a negative impact on many women, leading them to restrict their movements and behavior. The survey found that 33% of women in the EU have experienced physical or sexual violence since the age of 15, which corresponds to some 62 million people. Of those who suffered domestic violence, 67% had not reported the most serious incident to the police or any other organization, demonstrating that much still needs to be done to increase victims' trust by measures such as training police to react appropriately and sensitively to victims' needs. The survey asked women about their experiences of physical, sexual and psychological violence, including incidents of intimate partner violence ("domestic violence"), and also asked about stalking, sexual harassment, and the role played by new technologies in women's experiences of abuse. These questions were necessary to take into account the specificities of intimate partner violence: the fact that it may involve violence by the same perpetrator over a long period of time; that it can play a part in the decision to end the relationship; and that, for some women, violence continues after they have separated from a violent partner.² As indicated in FRA survey, in half (49 %) of the cases where women

¹ Marianne Hester, Sarah-Jane Lilley, Preventing violence against women: article 12 of the Istanbul Convention, Council of Europe, September 2014.

² Violence Against Women: an EU- wide survey (www.fra.org, fra-2014-vaw-survey-main-results-apr14_en), p. 42.W.

have separated from their violent previous partner, violence was the main reason for separation. In a further 19 % of the cases, violence contributed to the decision to end the relationship¹.

4. Conclusions

There are many economic, social, cultural and geographical factors that affect how a woman experiences a violence. These factors include class, religion, age, language, sexual orientation, location, race and ethnicity. Women's human rights are denied through religious and cultural practices in a number of ways and on an alarming scale.

The Istanbul Convention asks states parties to develop "integrated policies", which are "State-wide effective, comprehensive and coordinated policies encompassing all relevant measures to prevent and combat all forms of violence". It is important to ensure that prevention of violence against women and domestic violence is indeed an integral part of the national policy in the field, whether that is laid out in a national action plan, a national strategy or several interrelated policy documents. This could include: policies and programmes; implementing laws and policies that respond to and prevent violence; addressing impunity and ensuring women's access to justice.

The Istanbul Convention is currently the most comprehensive international legally binding instrument on violence against women and domestic violence. This is a key aspect of this convention's visionary nature. It is an "all-rounder". The response is multi-disciplinary with long-term preventive actions as well as measures to ensure the prosecution of perpetrators and protection of survivors.² It explicitly defines violence against women as a human rights violation. It recognizes unequal power relations between men and women as the root cause of violence against women, and it advocates a gender-sensitive perspective in tackling it.

Also, we have to underline one of the FRA survey conclusion that "The state must treat intimate partner violence as a public matter rather than a private one".³

The zero tolerance policy was the guiding "mantra" that led and must lead the states in their strategies on preventing and combating violence against women. In order to prevent intimate partner violence, states must adopt an anti-tolerance policy and enact criminal legislation prohibiting intimate partner violence in all its forms and establish adequate sanctions for it in domestic law.

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¹ Violence Against Women: an EU- wide survey (www.fra.org.fra-2014-vaw-survey-main-results-apr14_en), p. 45.

² Speech by UN Women Executive Director Phumzile Mlambo-Ngcuka at the Inter-Parliamentary Union Assembly in Geneva on 14 October, 2014 - See more at: <http://www.unwomen.org/en/news/stories/2014/10/ed-geneva-ipu-assembly-speech#sthash.2cAUgOMo.dpuf>.

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