

*Elimination and Prevention of All Forms of Violence Against Women: Empowering Women
Beyond the Violence*

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Organizers: Active Intervention for Mothers (A.I.M.)

Summary of Remarks and Recommendation

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As an international lawyer previously involved in international human rights, I have been asked to provide a brief overview of the international legal framework and how it addresses violence against women. This paper is a summary of my remarks. Because the conference focused specifically on issues in the Republic of Mali, more specifically on the research of Dr. Amalle Daou on female circumcision in Mali, I attach to this dossier the study of A.I.M. and Dr. Amalle Daou. That such practices continue to exist, has led me to examine Mali's international commitments. Mindful of the current political situation in Mali and joining with the expression of the entire international community's hope and optimism for Mali's future, Part III of this paper is a recommendation and call to the Malian legal community to adopt a plan for action to implement Mali's international treaty obligations. The current situation in Mali violates multiple international treaty obligations.

Violence against women has been a persistent problem throughout recorded history unfortunately continuing to this day. Current day to day examples of violence against women reported in the newspapers, whether rape, stoning, female circumcision or other legal atrocities committed against women to seek justification on the bases of religion, customary law or warfare. Such violence is all the more shocking given the existence of various international legal and national legal frameworks that ought to and do incorporate such legal standards as would prohibit such violence.

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.

I. International Standards and Gender Violence Legislation

A. Equality Provisions in International Law

The Universal Declaration of Human Rights ("UDHR") adopted in 1948, specifically recognizes the right to equality in its Articles 1, 2 and 7. The UDHR has acquired, over the years, the status of a *jus cogens*, or a norm of international law that is so fundamental that no State may ignore it.

The right to equality is also recognized in the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (article 3).

The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) is the most important international instrument on women's human rights. Adopted in 1979, it establishes the norms and standards on discrimination against women, substantive equality, and State obligation. CEDAW codifies women's rights to non-discrimination on the basis of gender and comprehensively addresses the rights of women in civil, political, social, economic and cultural fields. By bringing together all categories of rights, CEDAW mandates the realization of not only *de facto* equality, but also *de jure* equality for women.

The Convention calls for parties to eliminate all discrimination against women, in such areas as healthcare, education, employment, domestic relations, law and political participation. Countries that have ratified or acceded to CEDAW are legally obligated to implement its provisions domestically, as well as to report on compliance at least every four years.¹ These reports are meant to include areas of progress, as well as any difficulties with implementation.

CEDAW obligates States to undertake measures to respect, protect and fulfill the equal rights of women. States are obligated to ensure that there is no direct or indirect discrimination against women in their laws, and that women are protected against discrimination. States are obligated to improve the *de facto* position of women through concrete and effective policies and programs, and to address prevailing gender inequality and persistent gender stereotypes that are perpetuated in law, societal structures, institutions, and by individual actors.

The Committee on the Elimination of Discrimination against Women was established in 1982 under Article 17 of the Convention in order to review such reports and provide specific recommendations to each country. After receiving country reports from States Parties, the Committee enters into open dialogue with the reporting country and publishes recommendations and conclusions based on its findings.

B. Under International Law violence against women is a violation of human rights and equality

Although CEDAW does not include an explicit reference to violence against women, subsequent developments in international law and in interpreting CEDAW have recognized violence as a violation of human rights. The General Recommendation 19 of the CEDAW Committee of 1992 interpreted the term "discrimination" in Article 1 of the Convention to include gender based violence on the basis that it is "*violence that is disproportionately 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.*"

¹ 186 countries, including Mali, have ratified CEDAW. The holdouts are Iran, Nauru, Palau, Tonga, Somalia, Sudan and the United States.

In General Recommendation 19, the CEDAW Committee makes the following observation:

“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 impairs their ability to participate in family life and public life on a basis of equality.”

According to General Recommendation 19, the rights impaired by domestic violence include:

- a. The right to life,
- b. The right not to be subjected to torture or to cruel, inhuman or degrading treatment,
- c. The right to equal protection according to humanitarian norms in the 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 the highest attainable standard of physical and mental health, and
- g. The right to just and favorable conditions of work.

The UN Declaration on Violence against Women, 1993 (DEVAW) affirms *“that violence against women constitutes a violation of the rights and fundamental freedoms of women and impairs or nullifies their enjoyment of those rights and freedoms”* and describes concerns *“about the long-standing failure to protect and promote those rights and freedoms in the case of violence against women.”*

It further recognizes *“that violence against women is a manifestation of historically unequal power relations between men and women, which have led to domination over and discrimination against women by men and to the prevention of the full advancement of women, and that violence against women is one of the crucial social mechanisms by which women are forced into a subordinate position compared with men.”*

II. Standards of State Obligations to Prevent and Remedy Domestic Violence

The recognition of domestic violence as a human rights violation gives rise to State obligations to address it. First, States are obligated to put in place zero-tolerance policies on domestic violence, thereby ensuring no impunity for perpetrators of violence. Second, States should revoke laws and policies that either perpetuate or condone domestic violence. Furthermore, they should enforce equality standards in all spheres, particularly with regard to equal entitlements within the family to reduce vulnerability to violence. Third, States are obligated to take special measures to prevent and respond to incidents of domestic violence. This should also include measures to increase access to speedy and effective justice as well as

access to support services. Access to support services is crucial in creating an enabling environment that sustains survivors of violence when navigating the justice system.

CEDAW allows the State's obligation to address domestic violence to be imposed based on the actions of both State and non-State actors. The CEDAW Committee in General Recommendation 19 provides an interpretation of Article 2(e) which states that *“discrimination under the Convention is not restricted to action by or on behalf of the Governments (see articles 2 (e), (f) and 5). For example, under Article 2(e) the Convention calls on State 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 any 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”*.

According to General Recommendation 19, the requirements for complying with standards of due diligence in relation to domestic violence include:

- (i) Effective legal measures, including criminal and civil remedies and compensatory provisions to protect women from all kinds of violence, including violence and abuse in the family,
- (ii) Protective measures, including refuge, counseling, rehabilitation action and support services for women who are at risk of violence, and
- (iii) Preventative measures, including public information and education programs, to change attitudes concerning the roles and status of men and women.

For example, in commenting on specific articles under the Convention, Recommendation 19 makes clear that States have an obligation to eliminate discrimination in all forms in addition to specific obligations under Articles 5-16.

Of specific relevance to this program and its focus on the practice of female circumcision in Mali, is Recommendation 19's comments on Articles 2(f), 5 and 10(c) of CEDAW:

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 of 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 their low level of political participation and to their low level of education, skills and work opportunities.

It is clear that the abusive practices outlined therein cannot coexist with Mali's international treaty obligations under CEDAW and other international treaties.

Notwithstanding the embodiment of the above discussed international legal standards and a call for zero tolerance in their abridgment, many States who have ratified CEDAW do not consider the Recommendation 19 as binding. Many States who have ratified the Convention have ratified with reservations to specific articles. For example, the United Arab Emirates reserves with respect to Article 2(f) because it violates the rules of inheritance established by the precepts of the Sharia. If many States have expressed reservations on the basis of Sharia, others, like Niger, rely on custom and cultural patterns to deny their obligations under CEDAW.

“The Government of the Republic of Niger expresses reservations with regard to article 2, paragraphs (d) and (f), concerning the taking of all appropriate measures to abolish all customs and practices which constitute discrimination against women, particularly in respect of succession.

Article 5, paragraph (a)

The Government of the Republic of Niger expresses reservations with regard to the modification of social and cultural patterns of conduct of men and women.

Article 15, paragraph 4

The Government of the Republic of Niger declares that it can be bound by the provisions of this paragraph, particularly those concerning the right of women to choose their residence and domicile, only to the extent that these provisions refer only to unmarried women.”

III. The Republic of Mali and CEDAW

Mali ratified CEDAW in September, 1985 without interposing any reservations. Therefore, neither Sharia nor customary law can be used as a defense to the full implementation in domestic legislation of the principles of CEDAW and the zero tolerance required to check abuses and violations.

A. The Report

Attached hereto as Exhibit B in both French and English is the Report of the Republic of Mali to the Committee.

B. Going Forward

While domestic violence is but one aspect of violence against women, a useful reference is the following:

The UN Special Rapporteur on Violence against Women recommended “A Framework for Model Legislation on Domestic Violence,” 1996 (UN Model Code), which provides valuable guidance on the provisions that should be included in domestic violence legislation. These laws should: 1) comply with international standards sanctioning domestic violence; 2) recognize

domestic violence as gender-specific violence directed against women, occurring within the family and within interpersonal relationships; 3) recognize that domestic violence constitutes a serious crime against the individual and society; 4) create a wide range of flexible and speedy remedies; 5) assure survivors the maximum protection; 6) establish departments, programs, services, protocols and duties to aid survivors; 7) facilitate enforcement of the criminal laws by deterring and punishing violence against women; 8) enumerate and provide by law comprehensive support services; 9) expand the ability of law enforcement officers to assist complainants and to enforce the law effectively in cases of domestic violence and to prevent further abuses; 10) train judges to be aware of the issue; 11) provide for and train counselors to support police, judges and the survivors of domestic violence and to rehabilitate perpetrators of domestic violence; and 12) develop greater understanding within the community of the incidence and causes of domestic violence and encourage community participation in eradicating domestic violence.

Another example is the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence, Mali's legislation must recognize that violence against women is a violation of human rights and a form of discrimination.

Prevention

- Changes attitudes, gender roles and stereotypes.
- Train professionals working with victims
- Teaching materials on equality

Protection

- Support services and legal services available to all

Prosecution

- Ensure that violence against women is criminalized and appropriately punished.
- Ensure that excuses on the grounds of culture, custom, religion or so-called "honour" are unacceptable for any act of violence.

IV. Conclusion

CEDAW takes international jurisprudence beyond the formal equality model contained in UDHR, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, which together constitute the International Bill of Rights. CEDAW contains provisions that are directed towards the realization of substantive equality, obligating States to undertake measures to respect, protect, promote and fulfill the recognition of equality of rights for women.