UNW Background Guide

AMBMUN 4th

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Dear Delegates,

We are very pleased to welcome you to the 4th edition of AMBMUN where you will be representing the United Nations Entity for Gender Equality and the Empowerment of Women. As representatives of one of the most powerful and influential bodies in international diplomacy, you have the responsibility to tackle some of the world's most pressing and complicated issues.

The agenda this year focuses on the pressing issue of how to overcome legal and societal barriers to criminalizing marital sexual violence and how to strengthen international frameworks for protecting survivors. This subject raises hard and often uncomfortable questions for the international community. How much respect do we give to cultural traditions when they put survivor safety at risk? Can national laws ever justify compromises on fundamental human rights?

You will work on issues such as legal reform, criminal accountability, survivor protection and international standards as a member of the United Nations Entity for Gender Equality and the Empowerment of Women. You will have to navigate through these challenges, while respecting your country's national laws, cultural values and human rights commitments.

This guide is only a starting point. We strongly suggest you do a bit of research and come armed with clear, concise arguments to ensure the debate is productive and engaging. We look forward to seeing sophisticated diplomacy, rigorous discussion, and meaningful collaboration throughout the conference.

Best regards,

Mohammad Bani Hani & Taleen Alali

Topic: Addressing Legal and Societal Barriers to the Criminalisation of Marital Sexual Violence and Strengthening International Frameworks for Survivor Protection

The prevalence of intimate sexual violence within marriages is one of the most widespread human rights abuses that is not addressed at the legislative level. The crux of the issue revolves around a number of contradictions that exist between state sovereignty, legal doctrines and traditions and universal human rights.

Although substantial progress has been achieved in terms of recognition of gender-based violence as a problem that affects public health, marital rape is still considered an issue to be addressed privately. Only 77 out of over 195 UN member countries have explicitly criminalized marital rape, leaving millions of women and girls unprotected from rape committed by their husband (UN Women). Moreover, more than 60 per cent of nations do not have rape laws that take into account the necessity for affirmative consent of the party (UN Women). Between 32 and 43 countries have formally codified in their legal systems exemptions for spouses that allow sexual intercourse regardless of the will of their partner (United Nations).

The issue causes serious human and socioeconomic consequences. According to global statistics, 60 per cent of murders of females are committed by their intimate partners and family members and less than 40 per cent of victims of violence report the incident seeking any type of assistance, including the involvement of police (UN Women). Stigma, economic dependence, fear of revenge and additional traumatization during judicial process keep women from reporting the crime.

In order to resolve the issue, the mandate of the UN Women is complex and multifaceted. Despite the fact that international conventions such as the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and the Declaration on the Elimination of Violence Against Women (DEVAW) consider marital rape as a violation of human rights, implementation of such instruments is hampered by national reservations, dual legal system and strong patriarchal traditions (OHCHR).

There are several questions to raise to delegates. How can international mechanisms push countries to change legislation without violation of their sovereignty? Is criminalization of marital sexual violence enough to eliminate it if stigma and discrimination continue to exist? How can states create accessible and trauma-informed systems that provide victims with financial and physical protection?

To summarize, it is necessary to find balance between international mechanisms and enforcement of the domestic legislation. Criminalization without providing support to victims leads to their potential victimization and poverty, and support services without implementation of the criminal punishment perpetuates a culture of impunity. Delegates should thus create a comprehensive cultural framework that eliminates discriminatory legal exemptions and guarantees holistic protection to survivors.

History

Legal justification for non-prosecution of marital rape derives from centuries-old patriarchal jurisprudence principles that considered marriage as a mechanism of transferring a woman's legal personality and sovereignty over her body to her spouse. According to the 18th century common law of England, judge Sir Matthew Hale developed the notion of "marital rape exemption" stating that the husband could not be charged with rape of his wife as she had already irrevocably consented to him within the framework of a matrimonial contract (OHCHR). This principle was successfully exported worldwide during the colonial period across various legal systems of the Americas, Asia, Africa, and the Middle East, along with customary and religious interpretations considering sex with one's wife as an obligation for a married couple.

Domestic violence and sexual abuse between married spouses was seen as a private affair of families that could not be subject to prosecution in criminal courts until the beginning of the 1970s and 1980s. Feminist movements together with jurists started to challenge the public-private separation in human rights law at that time. In 1976, the first reform occurred when South Australia became the first English-speaking country that partially lifted the exemption of marital immunity, while reforms continued throughout the 1980s and 1990s in Western Europe and North America (Council of Europe). It is worth noting that the UK officially eliminated the exemption of marital rape in 1991 with the help of the famous decision by the House of Lords in the case of R v R.

Internationally, the 1993 United Nations Declaration on the Elimination of Violence Against Women (DEVAW) made a significant contribution to the struggle against marital rape through explicit definition of marital rape in Article 2 of the declaration as a form of gender-based violence (OHCHR). Furthermore, the 1995 Beijing Declaration and Platform for Action and later General Recommendations (No. 19 and No. 35) issued by the CEDAW Committee asked all the States Parties to abandon their marital rape exemptions and define the act of sexual assault without free and voluntary consent (OHCHR). In addition, regional treaties – the 1994 Belém do Pará Convention, 2003 Maputo Protocol, and 2011 Istanbul Convention – obliged states to prosecute intimate partner sexual violence (Council of Europe; OHCHR).

However, there are still challenges on implementation of these achievements at the international level. Indeed, many states made formal reservations to Articles of CEDAW claiming that they conflicted with domestic personal status laws and/or religious traditions. Furthermore, in some cases, abolition of the marital exemption caused strong political and cultural resistance claiming that criminalization of such acts would harm family relations or encourage false accusation. As a result, although numerous reforms of penal codes happened in dozens of countries within the last 30 years, millions of people still do not enjoy protection provided by legal prohibition of such actions, and even where the laws are in place, conviction rates are extremely low due to lack of evidence and judicial biases.

Analysis

In today's world, the obstacles to ending marital sexual abuse exist on two levels which intersect – legal loopholes and societal/institutional barriers.

On the legislative side, the majority of penal codes still employ an archaic, force-based definition of sexual assault, as opposed to consent. Even in those countries which have eliminated marital exemption, lighter punishment is typically given for acts committed by spouses in comparison to non-marital rape cases, or the prosecution is made conditional on separation or divorce process taking place between the spouses. Compulsory mediation and conciliation procedures in family courts make victims reconcile with abusers instead of seeking justice (OHCHR).

As far as the societal barriers are concerned, the rigid role structure based on traditional gender roles, poverty and economic dependence, and stigmatization play the key role. Many times, the act of informing authorities about a spouse's abuse results in a survivor becoming ostracized. Given that women are economically vulnerable and lack independent housing or financial independence, the fact of filing a charge against a breadwinner endangers the entire survival of the family (UN Women; Council of Europe).

Both UN Women and the international community at large face a complicated task of strategy formulation in this case. On the one hand, asking only for legislative changes without consideration of local contexts and provision of necessary funding may only lead to the creation of "paper laws" and their subsequent failure to be implemented. On the other hand, the absolute deference to cultural relativism and national sovereignty principles will put into question the very universality of human rights and deprive survivors of state protection.

Thus, delegates will have to find a balance between normative promotion and capacity building. A comprehensive framework should combine legislative strict reforms such as elimination of marital exemption or consent-based law definition with measures that empower survivors, such as special gender-based violence courts, witness protection programs, financial empowerment of women, etc.

Questions to Be Answered in Your Resolution:

- What can UN Women do to encourage Member States to repeal the marital rape exception and replace the current laws with one that recognizes only consent as the basis of legality?

- How can mechanisms be developed to connect legislative change with enforcement at the domestic levels within the police and judicial systems?

- What approaches should be employed in addressing reservations to international instruments such as CEDAW in which the exemption to protecting women from gender-based violence is justified based on cultural and religious reasons?

- What survivor-focused assistance structures must be implemented to provide for protection from retaliation and economic destitution alongside criminalizing marital sexual violence?

- How can Member States abolish mandatory mediation and conciliation process in the family courts in case of sexual or domestic violence?

- What can grassroots organizations, community leaders and education initiatives do to dismantle the stigma of marriage-based consent?

- How can data collection and international monitoring be enhanced to effectively track the prevalence of the crime, reporting statistics, and judicial accountability?

Starter Resources:

Facts and Figures: Ending Violence Against Women — UN Women

Marital Rape & State Party Obligations Under CEDAW — OHCHR

The Istanbul Convention and the CEDAW Framework: A Comparison — Council of Europe

Declaration on the Elimination of Violence Against Women (DEVAW) — UN General Assembly

CEDAW General Recommendation No. 35 on Gender-Based Violence Against Women — OHCHR

World Bank: Women, Business and the Law — Legal Frameworks on Violence Against Women

Country Matrix:

United States of America – United Kingdom of Great Britain and Northern Ireland – Canada – France – Germany – Tunisia – Jordan – Lebanon – Pakistan – Nepal – India – Bangladesh – Somalia – Yemen – Syria – Iraq – Kuwait – Myanmar – Democratic Republic of the Congo – South Sudan – Egypt – Afghanistan – Spain – Ireland – Portugal

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