

# Working Paper

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Abstract: As UN Women has powerfully argued, concrete actions to eliminate the debilitating fear of violence must be a centerpiece of any future global development framework. The main objective of this paper is to review constitutional and legislative developments around gender-based violence, and how a human rights framework can support this critical element of the post 2015 global development agenda. We find that there has been major progress in establishing the right of women to live free of violence in both international and national law, and progress on both fronts has been especially rapid over the past decade or so. Today, national legislation in much of the world is consistent in not only prohibiting and criminalizing violence but also providing mechanisms to support victims and their families in a range of ways. The evolving jurisprudence on due diligence is a promising basis for holding governments accountable for gender-based violence in the context of the post-2015 framework. At the same time we recognize that the implementation of the laws on paper is often weak, and violence too often goes unreported. Moreover, information about the effectiveness of legislation and their implementation is scarce, and better efforts are needed in terms of both regular monitoring and evaluation. The important role of women's groups and civil society is highlighted, both in terms of bringing about reform and monitoring implementation.

## Freedom from Violence and the Law: A Global Perspective

Rangita de Silva de Alwis and Jeni Klugman



HARVARD SCHOOL OF PUBLIC HEALTH | HARVARD UNIVERSITY

# **FREEDOM FROM VIOLENCE AND THE LAW: A GLOBAL PERSPECTIVE<sup>1</sup>**

**Rangita de Silva de Alwis**, Director Global Women’s Leadership Initiative, Woodrow Wilson International Center for Scholars and Visiting Fellow, Harvard Law School, Human Rights Program

**Jeni Klugman**, Fellow, Women and Public Policy Program, Kennedy School, Harvard University

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*Violence against women is a heinous human rights violation, global menace, a public health threat and a moral outrage. No matter where she lives, no matter what her culture, no matter what her society, every woman and girl is entitled to live free of fear. She has the universal human right to be free from all forms of violence so as to fulfil her full potential and dreams for the future. States have a corresponding responsibility to turn that right into reality.*

Ban Ki-Moon, March 2013<sup>2</sup>

## INTRODUCTION

Today, one in three women are subject to violence in their lifetime. And in most of the world, no place is less safe for a woman than her own home. Regional rates of violence inflicted by intimate partners reach as high as 43 percent in South Asia and some national violence studies show that up to 70 percent of women have experienced violence from an intimate partner. What this shows is that more than one in three women globally have been subject to physical and/or sexual violence – and in the vast majority of cases, this is at the hands of their husbands or boyfriends.<sup>3</sup> The total exceeds 700 million women worldwide.

This challenge is now well recognized at the global level. The Open Working Group for the post-2015 Development Goals, comprising all member governments, has called for the inclusion of combating violence against women as a stand-alone transformative goal. UN Women has argued that: “concrete actions to eliminate the debilitating fear and loss through experiences of violence must be a centerpiece of any future framework.”<sup>4</sup>

A recent special series of *The Lancet* on addressing violence against women provides an excellent overview of the current evidence, and includes a Call to Action. It highlights that growing international recognition of these violations creates opportunities for elimination,

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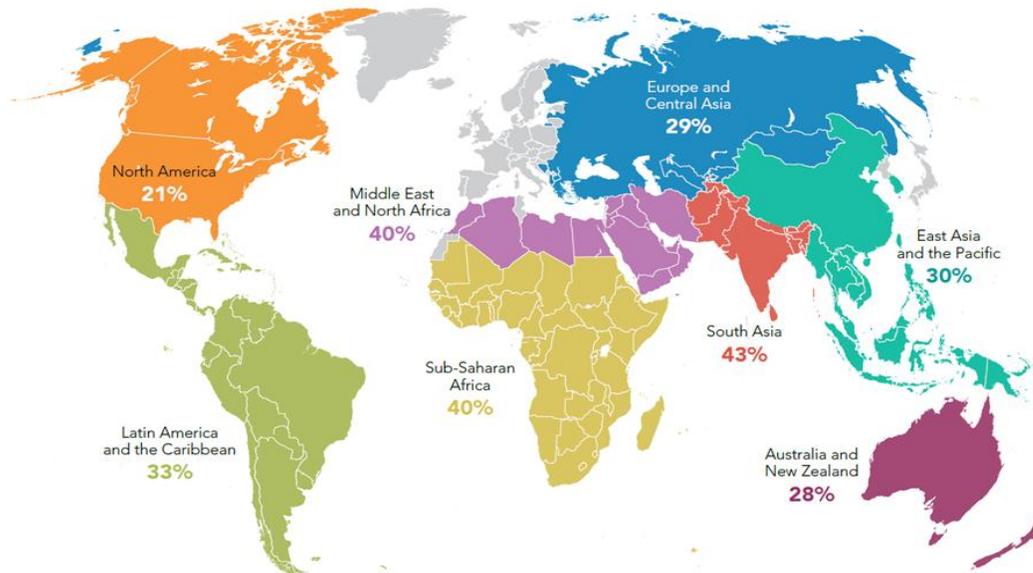
<sup>2</sup> Statement attributable to the Spokesperson for the Secretary-General on the outcome of the Commission on the Status of Women: <http://www.un.org/sg/statements/index.asp?nid=6660>

<sup>3</sup> Klugman, Jeni; Hanmer, Lucia; Twigg, Sarah; Hasan, Tazeen; McCleary-Sills, Jennifer; Santamaria, Julieth. 2014. *Voice and Agency: Empowering Women and Girls for Shared Prosperity*. Washington, DC: World Bank Group. © World Bank. <https://openknowledge.worldbank.org/handle/10986/19036> License: CC BY 3.0 IGO

<sup>4</sup> UN Women, 2013. “A Transformative Stand-Alone Goal on Achieving Gender Equality, Women's Rights and Women's Empowerment: Imperatives and Key Components.” [http://www.unwomen.org/~media/headquarters/attachments/sections/library/publications/2013/10/unwomen\\_post2015\\_positionpaper\\_english\\_final\\_web%20pdf.pdf](http://www.unwomen.org/~media/headquarters/attachments/sections/library/publications/2013/10/unwomen_post2015_positionpaper_english_final_web%20pdf.pdf)

although solutions will not be quick or easy. Governments need to address the political, social, and economic structures that subordinate women, emphasising prevention.<sup>5</sup>

**Figure 1: Regional rates of Intimate Partner Violence around the World**



*Source: Preliminary analysis by WHO (World Health Organization), presented in Klugman et al 2014.*

The main objective of this paper is to review legislative developments in the area of gender-based violence and human rights, and how a human rights framework can support this critical element of the post 2015 global development agenda. We find that there has been major progress in establishing the right of women to live free of violence in both international and national law, and progress on both fronts has been especially rapid over the past decade or so. New laws reflect the cross-fertilization that can occur between transnational lawmaking initiatives. As Indira Jaising has said about the Pakistan Domestic Violence (Prevention and Protection) Act, 2012 which borrows from laws from elsewhere in the South Asian region, “ We often do not realize it but laws acquire a trans-border life on their own, as there is no stopping a good idea.”

Protection against violence now exists on paper, in many if not most countries of the world. Yet violence remains pervasive and enforcement weak. In many countries, legislation against marital violence and rape is relatively recent, or still non-existent. Social norms in

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<sup>5</sup> Claudia García-Moreno, Cathy Zimmerman, Alison Morris-Gehring, Lori Heise, Avni Amin, Naeemah Abrahams, Oswaldo Montoya, Padma Bhate-Deosthali, Nduku Kilonzo, Charlotte Watts, Addressing violence against women: a call to action, *The Lancet*, DOI: [http://dx.doi.org/10.1016/S0140-6736\(14\)61830-4](http://dx.doi.org/10.1016/S0140-6736(14)61830-4)

many countries condone behaviors that are associated with violence. In this context, very few victims seek help, and most crimes still go unsanctioned and unpunished. The right of all women to live free of violence needs to be given life and content on the ground, to make a difference to the reality of women's lives.

At the outset, we join others in recognizing the weaknesses of a criminal justice approach to gender based violence.<sup>6</sup> Although data is scarce, the World Health Organisation (2010) finds that there is little evidence of a deterrent effect of criminal justice responses on the violence against women.<sup>7</sup> Dealing with only the consequences of violence and punishing the perpetrators has obvious weaknesses, not least that the causes of violence can go unaddressed. For this reason we also emphasise the importance of changing norms, education and related efforts – although these are not the main focus of the paper.

Our focus is partly motivated by the potential power of more progressive legal norms in changing social norms around violence. Recent analysis present in Klugman et al (2014) suggests that women who live in countries with domestic violence have seven percent lower odds of experiencing violence compared with women living in countries without such laws.<sup>8</sup> Analysis also shows that each additional year that a country had such legislation in place is associated with reduced prevalence of about 2 percent. These findings underscore the promise of legislative reform as a preventive measure, although laws alone are clearly not enough to eliminate violence.

The paper is structured as follows. First, we examine the international legal framework. We examine the power of litigation in challenging orthodoxy and reshaping the agenda around gender-based violence. Second, we review how these commitments have been reflected in national constitutions and legal frameworks, specifically, legal recognition of gender-based violence as a crime, and access to justice and support for survivors of violence. Thirdly, we turn to legislative elements designed to facilitate reporting, providing access to services and changing norms and attitudes. The important role of women's groups and civil society is highlighted, both in terms of bringing about reform and monitoring implementation. The concluding section summarises key implications for the policy agenda and the post 2015 development framework. In the final analysis we argue that laws are as effective only so far as they can be implemented and rights can be claimed in practice.

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<sup>6</sup> See, for example, True, Jacqui, *The Political Economy of Violence Against Women*, Oxford University Press, 2013.

<sup>7</sup> World Health Organisation, 2010 *Promoting Gender Equality to Prevent Violence Against Women*. Geneva: World Health Organisation.

<sup>8</sup> Based on analysis of the 21 countries which had both Demographic and Health Survey data and information on legislation: Azerbaijan, Burkina Faso, Cameroon, Colombia, Cote d'Ivoire, Ghana, Haiti, Honduras, India, Kenya, Malawi, Mozambique, Nepal, Nigeria, Peru, the Philippines, Tanzania, Uganda, Ukraine, Zambia and Zimbabwe.

## 1: THE INTERNATIONAL LEGAL FRAMEWORK

Our review of the international legal framework begins by examining multilateral conferences and treaties, before turning to regional treaties, then international declarations and resolutions and jurisprudence of the international criminal tribunals. One of the major outcomes of international conventions is that they provide concrete definitions of what constitutes gender-based violence.

Violence against women was defined by the UN Declaration on the Elimination of Violence against Women (DEVAW), adopted by the General Assembly in 1993, as “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.”<sup>9</sup>

The DEVAW emerged out of the foundational international human rights documents reviewed in the next section.<sup>10</sup> The DEVAW sets forth a broad definition of violence against women and for the first time defined dowry related violence and marital rape as violence against women. It calls for States 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.” Lawmaking since that time has tended to adopt this expanded definition and has moved from addressing only physical violence to covering a broader spectrum of violence.

### **Conventions and Treaties**

Treaty law is the supreme source of international law. State accountability and responsibility is at the heart of these treaties. States parties are required to take affirmative action to realize the rights enumerated in the treaties to which they have signed up.<sup>11</sup> This section highlights the key international treaties that are relevant to gender-based violence, beginning with the Geneva Conventions. Jurisprudence is discussed further below.

The Geneva Conventions of 1949 and 1977 do not specifically list sexual violence as a form of the “grave breaches” prohibited by the Conventions.<sup>12</sup> However since 2002, the case law

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<sup>9</sup> “A/RES/48/104. Declaration on the Elimination of Violence against Women.” United Nations General Assembly. 1993.

<sup>10</sup> Namely, the Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESR).

<sup>11</sup> Other important declarations include the Vienna Conference on Human Rights (1993), the Programme of Action of the International Conference on Population and Development (1994), the Beijing Declaration and Platform for Action, adopted at the Fourth World Conference on Women (1995), the Southern African Development Community’s Declaration on Gender and Development (1997) and the Addendum on the Eradication of All Forms of Violence Against Women and Children (1998), recognizing that violence against women can constitute a violation of human rights.

<sup>12</sup> Grave breaches are specified in the four 1949 Geneva Conventions in Articles 50, 51, 130 and 147.

developed by the international tribunals and the Rome Statute of the International Criminal Court has defined sexual offences as such.<sup>13</sup>

The International Covenant on Civil and Political Rights (ICCPR) and the Universal Declaration of Human Rights (UDHR), which entered into force in 1976 and 1948 respectively, contain provisions prohibiting discrimination on the basis of sex. The prohibition against "inhuman or degrading treatment" in the ICCPR has been interpreted to mean prohibitions against violence against women.<sup>14</sup>

The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment defines torture broadly, including "pain or suffering is inflicted ... with the consent or acquiescence of a public official." Professor Rhonda Copelon has argued, "So far, rape—in war, by the state and where the state does not take measures against it—has been acknowledged in international law as an act of torture. Domestic violence—the most private and most common of all forms of gender violence—is on its way."<sup>15</sup>

The Convention on the Rights of the Child (1990) requires that States parties "take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child [up to 18 years]."<sup>16</sup>

The 1979 Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) was a major step forward in establishing key rights for women, and has now been ratified by some 188 States. It obliges States "to take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices, which constitute discrimination against women." However the original CEDAW does not explicitly prohibit violence against women, but rather outlaws "discrimination against women in all its forms."<sup>17</sup>

Subsequent recommendations issued by the CEDAW Committee which oversees States' compliance, have explicitly defined "discrimination" to include violence against women. Specifically, the Committee's General Recommendation No. 19 (1992) provides a broad definition of discrimination that incorporates gender-based violence including physical, mental or sexual harm or suffering, threats of such acts, coercion, and other deprivations of

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<sup>13</sup> "Rome Statute of the International Criminal Court." United Nations. 2002.

<sup>14</sup> "International Covenant on Civil and Political Rights." United Nations Human Rights. 1976.

<sup>15</sup> Copelon, Rhonda. "End Torture, End Domestic Violence." *On the Issues Magazine*. 2009.

<sup>16</sup> Office of the High Commissioner for Human Rights. "Convention on the Rights of the Child." 1990.

<sup>17</sup> "Convention on the Elimination of All Forms of Discrimination Against Women, Article 2." United Nations General Assembly. Report. 1979.

liberty. This recommendation also clarifies 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."<sup>18</sup> States, therefore, are responsible for any lack of action in preventing such gender-based violence acts and discriminatory practices. The Optional Protocol to CEDAW (1999) allows the Committee to consider complaints from individuals or groups within its jurisdiction and provides for an additional inquiry procedure.

The CEDAW Committee has issued 32 decisions since 2004 addressing gender-based violence. For example, in 2005, the Committee found that Hungary had violated its obligations under CEDAW because it did not provide "the internationally expected, coordinated, comprehensive and effective protection and support for the victims of domestic violence."<sup>19</sup>

Finally, among relevant international instruments, the Rome Statute, which set up the International Criminal Court (ICC), entered into force in 2002. This established sexual violence as a crime in international law, and the procedures for investigating and prosecuting sexual violence offenses. It classifies "rape, sexual slavery, enforced prostitution, forced pregnancy, and enforced sterilization" as types of sexual violence and as grave crimes against humanity. It mandates that the law applied by the ICC "be consistent with internationally recognized human rights," which may provide an argument for compelling the Court to apply principles derived from human rights instruments, including relevant non-binding declarations and resolutions.<sup>20</sup>

A consensus is emerging in the international community that the prohibition of sexual violence is a firm principle of customary international law and is perhaps reaching the level of a peremptory norm of *jus cogens* which stands for universal or higher law.<sup>21</sup> As such, customary international law obliges all States – regardless of which, if any, conventions they have signed – to prevent and respond to acts of violence against women.

## **Regional Human Rights Instruments**

Several regional instruments prohibit gender-based violence. There is a major convention in Latin America, a charter in Africa, and a convention for Europe.

The Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women, 1994 (Convention of Belem do Para) provided guiding principles for a

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<sup>18</sup> "Convention on the Elimination of All Forms of Discrimination Against Women, General Recommendation No. 19." UN Women. 1992.

<sup>19</sup> "*Ms. A.T. v. Hungary*." CEDAW Committee. January, 2005.

<sup>20</sup> "Rome Statute of the International Criminal Court." United Nations. 2002.

<sup>21</sup> Mitchell, David S. "The Prohibition of Rape in International Humanitarian Law as a Norm of *Jus Cogens*: Clarifying the Doctrine." *Duke Journal of Comparative & International Law* Vol 15: 219 (2005).

treaty on violence against women.<sup>22</sup> It affirms that women have a right to be free from violence in both the public and private spheres and holds the state accountable to prevent, punish and eradicate violence against women, incorporating a due diligence standard.

The Protocol to the African Charter on Human and Peoples' Rights, on the Rights of Women in Africa, has provisions against gender-based violence within the scope of women's rights to life, integrity and security of the person, and dignity. Article 1 defines violence against women as including "all acts perpetrated against women."<sup>23</sup> The African Charter on the Rights and Welfare of the Child includes protection from sexual abuse under the scope of "torture, inhuman or degrading treatment."<sup>24</sup>

The Committee of Ministers of the Council of Europe adopted a convention on preventing and combating violence against women and domestic violence in 2011.<sup>25</sup> This defines violence against women as a human rights violation and as a form of discrimination. Its definition of violence includes economic harm or suffering. The Convention contains both negative and positive duties on the part of States. States Parties are called upon to exercise due diligence to prevent, investigate, and punish perpetrators. Governments are required to provide access to services including legal and financial assistance and psychological counseling, access to hotlines and to sexual trauma services.

### **Declarations, Resolutions and International Norms**

International declarations and resolutions do not have the binding force of treaties, but can contribute to the development of international legal norms.<sup>26</sup>

The adoption of the Vienna Declaration and Program of Action at the United Nations World Conference on Human Rights in 1993 is regarded as a watershed moment in the women's rights movement.<sup>27</sup> This responded to calls by civil society through the Global Campaign for Women's Human Rights.<sup>28</sup> For the first time it was explicitly accepted that women's rights are human rights, paving the way for the integration of women's rights into human rights norms and practice.

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<sup>22</sup> "Violence in the Americas: A Regional Analysis." Organization of American States. 2001.

<sup>23</sup> "Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa." African Commission on Human and Peoples' Rights. July 11, 2003. Accessed November 6, 2014.

<sup>24</sup> "African Charter of Human and Peoples' Rights." African Commission on Human and Peoples' Rights. Organization for African Unity. 1987.

<sup>25</sup> "Council of Europe – Convention on Preventing and Combating Violence against Women and Domestic Violence (CETS No. 210)." Council of Europe. May 11, 2011. Accessed November 4, 2014.

<sup>26</sup> Falk R.A., On the Quasi Legislative Competence of the General Assembly Vol. 60, No. 4, The American Journal of International Law (AJIL) at 782

<sup>27</sup> "Women2000." UN News Center. April 1, 1998. Accessed November 6, 2014.

<sup>28</sup> Bunch, Charlotte. "The Global Campaign for Women's Human Rights: Where Next After Vienna." St. John's Law Review: Vol. 69L Issue 1, Article 7.

Prior to the Vienna Conference, women's human rights were mostly absent from the international human rights agenda, because the human rights framework maintained a false dichotomy between the public sphere and the private sphere.<sup>29</sup> Because the human rights agenda concerned itself primarily with acts taking place in the public sphere, intimate partner violence was regarded as being outside its framework.

This changed in Vienna, which also led to the creation of the United Nations Special Rapporteur on Violence Against Women in 1994. The Special Rapporteur reports to the United Nations Human Rights Council and is tasked with "seeking and receiving information on violence against women," as well as "recommending measures...to eliminate all forms of violence against women." Radhika Coomaraswamy, the first Rapporteur on Violence against Women has stated that "the international human rights framework could be applied to address discriminatory laws or customs, like (national) exceptions for marital rape or the defense of honor, which exempt perpetrators of domestic violence from sanctions and reflect the consent of the State."<sup>30</sup>

Other important international declarations which have recognized that violence against women does constitute a violation of human rights include the Programme of Action of the International Conference on Population and Development (1994), the Beijing Declaration and Platform for Action, adopted at the Fourth World Conference on Women (1995), the Southern African Development Community's Declaration on Gender and Development (1997), and the Addendum on the Eradication of All Forms of Violence Against Women and Children (1998).

Over the last two decades, the international community has increasingly addressed sexual violence in war. Security Council resolutions and international tribunals have condemned mass sexual violence – including those tragedies that took place in Rwanda (1994), the former Yugoslavia (1993), and in Sierra Leone, East Timor, Japan, Haiti, Myanmar, and Afghanistan.<sup>31</sup> The United Nations' Response to Sexual Violence and Armed Conflict (1998) noted the use of sexual violence as a tool in these conflicts and underlines the increasing

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<sup>29</sup> Bunch, Charlotte, Women's Rights as Human Rights: Toward a Re-envision of Human rights, Human rights Quarterly Vol. 12. No.4.

<sup>30</sup> Coomaraswamy, Radhika. "Further Promotion And Encouragement Of Human Rights And Fundamental Freedoms, Including The Question Of The Programme And Methods Of Work Of The Commission Alternative Approaches And Ways And Means Within The United Nations System For Improving The Effective Enjoyment Of Human Rights And Fundamental Freedoms." United Nations Economic and Social Council. February 5, 1996.

<sup>31</sup> "Security Council Presidential Statement Condemns Sexual Violence in Conflict, Post-conflict Situations, Urges Complete, Immediate Cessation of Such Acts." United Nations Security Council. February 23, 2012.

intolerance for acts of mass sexual violence.<sup>32</sup> Specific UN Security Council Resolutions adopted in recent years include the following:

- Resolution 1820 in 2008 designated widespread or systematic sexual violence as a tactic of war that requires a security and a political response.
- Resolution 1888 in 2009 called for a Special Representative of the Secretary-General on wartime sexual violence, a team of rule-of-law experts on the issue, and female protection advisors in peacekeeping missions.
- Resolution 1960 in 2010 called for field-based monitoring, analysis and reporting arrangements to provide the Security Council with real-time information on trends and perpetrators and the naming of perpetrators of crimes.
- Resolution 2106 of 2013, adds greater operational details to combat impunity for these crimes.

High profile statements include that of the UN Special Representative on Sexual Violence in Conflict, Ms. Margot Wallström, who has said, "It has become more dangerous to be a woman fetching water or collecting firewood than a fighter on the frontline."<sup>33</sup>

Taken together, these international declarations and resolutions signify the increasing unacceptability of gender-based violence, in peacetime and in war.

### **Jurisprudence of International Human Rights Tribunals**

A review of the jurisprudence of international human rights tribunals reveals that expansive definitions of violence have been adopted, alongside clear standards of due diligence. This evolving human rights jurisprudence on violence against women is also relevant to the post 2015 Development Goals.

As noted above, the International Criminal Court is required to investigate and prosecute gender-based crimes and sexual violence.<sup>34</sup> In the aftermath of the atrocities that took place in Yugoslavia and Rwanda, the UN Security Council created two *ad hoc* tribunals to adjudicate war crimes, genocide, and crimes against humanity. In the course of adjudicating these cases, the tribunals have developed an important body of jurisprudence about gender-based violence, which is briefly reviewed here.

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<sup>32</sup> "Sexual Violence and Armed Conflict: The United Nations Response." This was published to promote the goals of the Beijing Declaration and the Platform of Action, 1998. United Nations. April, 2008.

<sup>33</sup> "Rape as a Weapon of War: Then and Now." Diplomat Magazine. June 28, 2012. Accessed November 5, 2014.

<sup>34</sup> SáCouto, Susana. "Investigation and Prosecution of Sexual and Gender-Based Violence by the International Criminal Court: Mandate, Good Policy or Both?" American University, Washington College of Law. 2012.

The 1998 decision, *Prosecutor v. Akayesu*, was a landmark case.<sup>35</sup> The accused was convicted of genocide and crimes against humanity for acts of sexual violence, on the basis of his inaction and omissions in relation to mass rape, forced public nudity and sexual mutilation of Tutsi women perpetrated by Hutu men. The significance of this case was twofold. First, that *Akayesu* was found guilty despite the fact that he had not physically engaged in acts of violence. Second, the ICTR adopted a comprehensive definition of rape, as "a physical invasion of a sexual nature, committed on a person under circumstances which are coercive."<sup>36</sup> The court specifically noted that its definition of rape went beyond the traditional definition of rape in national jurisdictions, including "objects and/or the use of bodily orifices not considered intrinsically sexual."<sup>37</sup>

Recent tribunal jurisprudence has held that *witnessing* acts of violence can constitute torture. Key decisions are as follows:

- In *Prosecutor v. Delalic (2000)*, the International Criminal Tribunal for the former Yugoslavia found that "willfully causing great suffering or serious injury to body or health" constituted a grave breach of the Geneva Conventions.<sup>38</sup> Here a group of individuals at the Celebici prison camp in Bosnia and Herzegovina were found guilty of, among other things, torture for acts or omissions that included rape and other forms of sexual violence.
- In *Prosecutor v. Furundzija (1998)*, the commanding officer who was present during acts of sexual violence and facilitated the commission of the crimes was found guilty of the charges of "violation of the laws and customs of war (torture and outrages upon personal dignity, including rape)." What was significant was that the Court held that the humiliation accompanying sexual violence and forcing somebody to witness the rape of another person amounted to torture.<sup>39</sup>
- In *Prosecutor v. Gacumbitsi (2006)*, the courts considered the nature of consent. The appeal judgment specifically clarified that "it is not necessary...for the Prosecution to introduce evidence concerning the words or conduct of the victim [or] evidence of force" and that the Trial Chamber can "infer non-consent from the background circumstances, such as an ongoing genocide campaign or the detention of the victim."<sup>40</sup> It found that "[A]ny crimes that were natural or foreseeable consequences

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<sup>35</sup> "The Prosecutor versus Jean-Paul Akayesu." International Criminal Tribunal for Rwanda. United Nations. September, 1998.

<sup>36</sup> Ibid.

<sup>37</sup> "The Prosecutor v Jean-Paul Akayesu." International Criminal Tribunal for Rwanda. 1998.

<sup>38</sup> "Prosecutor v Delalic et all." International Tribunal for the Prosecution of Persons. United Nations. February, 2001.

<sup>39</sup> International Tribunal for the Prosecution of Persons. "The Prosecutor v Furundzija." United Nations. December, 1998.

<sup>40</sup> International Criminal Tribunal for Rwanda. "The Prosecutor v. Sylvestre Gacumbitsi ."United Nations. 2006.

of the joint criminal enterprise...can be attributable to participants in the criminal enterprise if committed during the time he participated in the enterprise."

Another important strand of jurisprudence has been the development of the due diligence principle. This holds governments accountable to prevent, investigate and punish acts of violence against women, whether those acts are perpetrated by the State or by private individuals. Thus, a government is responsible not only for the actions of its own agents – like law enforcement personnel, military and civil authorities – but it also has a duty of diligence to protect women from violence and to enforce laws to prevent and punish violence against women. Due diligence is considered a yardstick for assessing the efficacy of government action and the standard by which to hold governments accountable under women's human rights.<sup>41</sup> A government that fails to take such measures can be held to have breached its human rights duties and therefore complicit in human rights abuse.

The UN Special Rapporteurs have provided clarity to the meaning of due diligence.<sup>42</sup> In 2006, the Special Rapporteur on Violence Against Women, its Causes and Consequences affirmed that this standard of due diligence is universal, as well as a rule of customary international law. In 2013, the annual report of the UN Special Rapporteur on Violence Against Women focused on state responsibility for eliminating violence against women in terms of due diligence.<sup>43</sup>

The due diligence standard has perhaps been best elaborated in the context of the European Convention on Human Rights (ECHR). Indeed the recent ECHR cases of *Aydin v. Turkey*, *Bevacqua and S. v. Bulgaria* and *Opuz v. Turkey* together signify a turning point for the ECHR and international law.

- In *Aydin v. Turkey* (1997),<sup>44</sup> the ECHR found that the State did not act with due diligence as it failed to seek out eyewitnesses to the rape and torture of the applicant. The ECHR agreed with the applicant that there was an "absence of an independent and rigorous investigation and prosecution policy."<sup>45</sup>

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<sup>41</sup> In the broadest sense, due diligence refers to the level of care or activity that a duty-bearer is expected to exercise in the fulfillment of their duties...in order to provide a sort of "measuring stick" with which to assess if a State or other actor is meeting the obligations that they have assumed.

<http://www.ohchr.org/EN/Issues/Women/SRWomen/Pages/VAW.aspx>

<sup>42</sup> Special Rapporteur on Violence Against Women, its Causes and Consequences, *The Due Diligence Standard as a Tool for the Elimination of Violence Against Women*, ¶ 29, U.N. Doc. E/CN.4/2006/61 (Jan. 20, 2006) (prepared by Yakin Ertürk).

<sup>43</sup> Report of the Special Rapporteur on violence against women, its causes and consequences, Rashida Manjoo." United Nations General Assembly. Twenty-third session. May 14, 2013.

<[http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session23/A\\_HRC\\_23\\_49\\_English.pdf](http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session23/A_HRC_23_49_English.pdf)>

<sup>44</sup> *Aydin v. Turkey*, No. 23178/94, Eur. Ct. H.R. (1997).

<sup>45</sup> *Id* at 94.

- In *Bevacqua and S. v. Bulgaria (2008)*, the ECHR ruled that States party to the ECHR should ensure that all victims of violence are able to institute proceedings, that criminal proceedings can be initiated by public prosecutors, that prosecutors should regard violence against women as an aggravating or decisive factor in deciding whether or not to prosecute in the public interest, ensure protection orders and interim measures to ensure that measures are taken to protect victims, and ensure that children's rights are protected during proceedings.<sup>46</sup> The Court held that the authorities' failure to impose sanctions on law enforcement amounted to a refusal to provide the immediate assistance that the applicant needed. This decision establishes the above listed measures as minimum requirements for compliance with due diligence obligations.
- In the 2009 decision, *Opuz v. Turkey*, the Court recognized the state's failure to exercise due diligence as gender-based discrimination.<sup>47</sup> This decision provides several minimum standards for protection, investigation, and prosecution. These standards include the existence of a judicial mechanism for obtaining protection measures, such as orders of protection, and the availability of prosecution in the public interest for all crimes of domestic violence.

The reasoning in the *Opuz* case warrants brief elaboration. In *Opuz*, the applicant and her mother endured years of physical abuse and threats from Nahide's husband, whom eventually killed her mother. They had complained to law enforcement authorities on numerous occasions, which had done little in response. In reaching a judgment, the European Court looked to the Turkish Criminal Code and the Family Protection Act 1998. The Court also referenced U.N. Special Rapporteur Erturk's 2006 report on the due diligence standard, and quoted her conclusion that there is a rule of customary international law that "obliges States to prevent and respond to acts of violence against women with due diligence."<sup>48</sup> The Court found that since domestic violence was shown to affect women far more than men and since Turkey had failed to exercise due diligence in providing protection from domestic violence, the state had violated Article 14 of the European Convention. In clarifying its standards for finding discrimination, the Court looked to the 2007 decision of *D.H. and Others v. Czech Republic* for the holding that "[W]here an applicant is able to show, on the basis of undisputed official statistics, the existence of a prima facie indication that a specific rule - although formulated in a neutral manner - in fact affects a clearly higher percentage of women than men, it is for the respondent Government to show that this is the result of objective factors unrelated to any

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<sup>46</sup> "Recommendation Rec(2002)5 of the Committee of Ministers to member states on the protection of women against violence." Council of Europe. 2002.

<sup>47</sup> "Opuz v. Turkey." The European Court of Human Rights. June, 2009.

<sup>48</sup> Yakin Erturk. "Integration of the Human Rights of Women and the Gender Perspective: Violence Against Women and the Due Diligence Standards as a Tool for the Elimination of Violence Against Women." United Nations Commission on Human Rights. January, 2006.

discrimination on the grounds of sex."<sup>49</sup> The European Court concluded that the applicant was able to demonstrate that "domestic violence affected mainly women and that the general and discriminatory judicial passivity in Turkey created a climate that was conducive to domestic violence."<sup>50</sup>

As it stands, the due diligence standard in international law requires that States must provide individual women with the means to obtain some form of enforceable protective measure, like a restraining order. States must also establish the legal framework to enable criminal prosecutions of domestic violence and respond effectively to requests for help from law enforcement.

We now turn to review what States are doing in practice to fulfill these obligations in international law.

## 2: NATIONAL LEGAL FRAMEWORKS

Over 125 countries around the world now have some kind of legal regulations against violence against women, much of which has emerged since 2000. It is useful to review some of the new developments in lawmaking, beginning with the national constitutions before turning to legislative frameworks and provisions.

### **Constitutional Provisions**

As the supreme law of the nation, a constitutional guarantee strengthens the right of women and girls to live lives free of violence. The inclusion of the prevention and prohibition of gender-based violence in the constitution elevates the issue as a national imperative and provides the much needed legitimacy and state accountability to address violence against women as an important human right and national responsibility.

Constitutions not only provide the foundation and legal basis for lawmaking in a country, they can help address the culture of impunity around gender-based violence and build support for women's rights as human rights. Several constitutions have included explicit provisions related to violence. Here we highlight key examples from Sub-Saharan Africa and North Africa:

- South Africa provides in Article 12 of its 1996 constitution that "Everyone has the right to freedom and security of the person, which includes the right to be free from all forms of violence from either public or private sources."

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<sup>49</sup> "Case of D.H. and Others v. The Czech Republic." The European Court of Human Rights. November, 2007.

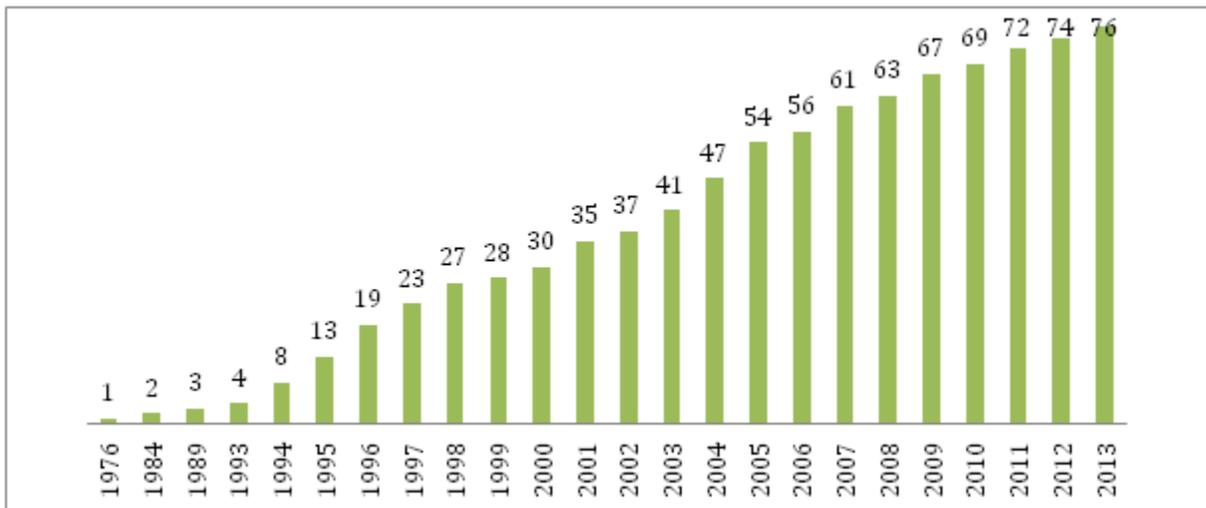
<sup>50</sup> "Opuz v. Turkey." The European Court of Human Rights. June, 2009.

- Ethiopia’s 1995 constitution acknowledges the duty of the State to protect women from the influence of harmful customary practices, stating that all laws, stereotypes, ideas and customs that oppress women or otherwise adversely affect their physical and mental well-being are outlawed.
- In Malawi, a constitutional provision passed in 2010 makes a general commitment to implementing policy on domestic violence.<sup>51</sup>
- The Tunisian Constitution of 2014 in Article 46 states that: “The State shall take the necessary measures to eliminate violence against women.”

### Legislative Approaches

There is increasing momentum around the world in addressing domestic violence, through national legislation as illustrated by the graph below, drawn from the World Bank Group’s Women, Business and the Law.<sup>52</sup> In 1976, only one country had laws in place, and by last year, the number had grown to 76 countries.

**Figure 2: Cumulative number of countries with legislation against domestic violence, 1976-2013**



Source: *Women, Business and the Law 2013*

In this context a range of law reform initiatives have attempted to bring national laws into compliance with the human rights framework. Here we cite several notable examples.

- The South African Act on Domestic Violence 1998 makes special reference to the right to equality and freedom and security of the person; and the international

<sup>51</sup> <http://constitutions.unwomen.org/africa/malawi>

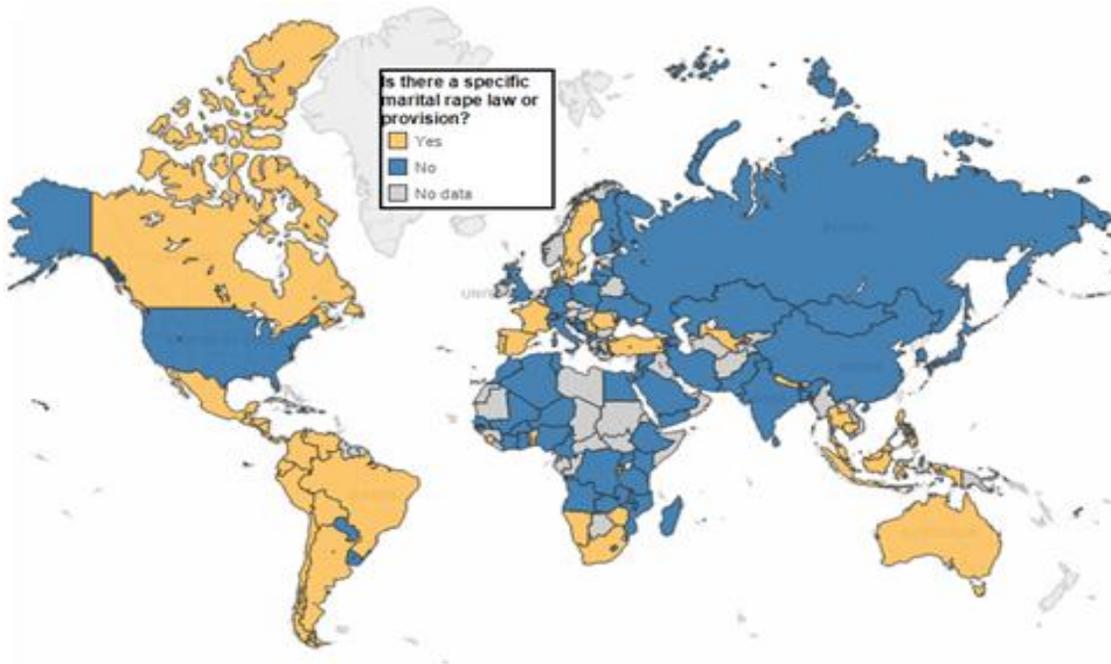
<sup>52</sup> <http://wbl.worldbank.org>

commitments and obligations of the State towards ending violence against women and children.

- The Turkish Penal Code 2004 removed provisions that imposed few or no penalties in cases of violence against unmarried or non-virgin women and now ensures that the legislation protects all women equally.
- Discriminatory traditions against women have been addressed in Article 9 of the Guatemalan Law Against Femicide and Other Forms of Violence Against Women (2008) which affirmed that: “no custom, tradition, culture or religion may be invoked to justify violence against women or to exculpate and perpetrator of violence.”
- The Costa Rican Criminalization of Violence against Women Law of 2007 provides that law enforcement must act swiftly and effectively to respect the human rights of women. If not, law enforcement can be charged with dereliction of duty.

Looking at a global map that indicates which countries have specific laws on the books to address marital rape, which has generally lagged behind the criminalization of violence outside the home, we see that Latin America is the region which has made the most marked progress, with Australia and Canada also standing among the reformers, together with Spain, Portugal, South Africa, among others.

**Figure 3: Countries with legislation criminalizing marital rape**



*Source: World Bank, Women, Business and the Law*

Legal reforms need to be subject to effective enforcement and accountability mechanisms, as well as support for survivors. On the support front, a range of innovative activities are underway, from establishing hotlines and Gender Desks for survivors of sexual and gender-based violence in Rwanda, to Local Security Committees in Haiti that include members of women's organizations and community leaders as well as police, to local peace huts in Liberia. This section highlights various ways in which recent legislation is facilitating access to justice and providing support for survivors, although evidence on implementation and impact is so far lacking.

Claiming and vindicating rights in court is one of the most important ways of enforcing human rights, including the right to live free of violence. However very few victims ever seek help, let alone report the violence to the police and press charges. This is a major challenge. Indeed around the world, the vast majority of women who experience violence never seek help or report the violence to anyone. Recent analysis of survey data for 30 developing countries, presented in Klugman et al (2014), shows that on average, only four out of ten women sought any help, and only 6 percent sought help from authorities, such as police, lawyers, doctors or religious authorities. And more specifically, only 3 percent sought help from the police – ranging from 10 percent in Moldova and Ukraine to fewer than one percent in six countries – Bolivia, Burkina Faso, Haiti, Mozambique, Nigeria and Zimbabwe. The same study finds that many women don't seek help because they see violence as a way of life; but many did not know how and where to report violence.

In this context, assuring individual justice is critically important. At the same time, framing a case as a constitutional and human rights claim helps to create jurisprudence that impacts more than the individual claimant.

A number of constitutional cases have ruled on the duties imposed upon the police. What follows are notable cases in South Africa and India:

- In *S. v. Baloyi (1999)*,<sup>53</sup> the Constitutional Court in South Africa held that the Constitution holds the state accountable to protecting the rights of all persons to be free from domestic violence.
- In *Carmichele v. Minister of Safety and Security (2001)*,<sup>54</sup> the South African High Court held that there was a constitutional duty on the state to protect “the public in general, and women in particular, against the invasion of their fundamental rights by the perpetrator of violent crime.”

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<sup>53</sup> *S v Baloyi and Others* (CCT29/99) [1999] ZACC 19; 2000 (1) BCLR 86 ; 2000 (2) SA 425 (CC) (3 December 1999)

<sup>54</sup> *Carmichele v Minister of Safety and Security* (CCT 48/00) [2001] ZACC 22; 2001 (4) SA 938 (CC); 2001 (10) BCLR 995 (CC) (16 August 2001)

- In *Visakha v. State of Rajasthan (1997)*<sup>55</sup> and *Apparel Export Promotion Council v. A.K. Chopra (1999)*,<sup>56</sup> the Indian Supreme Court held that the national constitution guaranteed the rights of women to a safe working environment free from sexual abuse.

In these cases the courts agreed that the Constitution and international conventions provided authority for the Courts to develop legal principles for employers in the absence of legislation.

A number of countries have introduced provisions which seek to broaden access to justice UN Women notes that in 2012 in 45 countries, laws on domestic violence include guarantees of free legal aid for women.<sup>57</sup> At the same time, the police and judiciary need to become more gender-responsive since they are charged with enforcing and implementing legislation effectively. The Spanish *Organic Act on Integrated Protection Measures against Gender Violence* of 2004, for example, calls for training of judicial officers, prosecutors and members of law enforcement. Examples of legislative provisions to facilitate reporting include:

- Article 7 of Ghana's *Domestic Violence Act (2007)*, which states that police officers must “respond to a request by a person for assistance from domestic violence and shall offer the protection that the circumstances of the case of the person who made the report requires, even when the person reporting is not the victim of the domestic violence” and article 8 goes on to elaborate upon the duties of the officer.
- In South Korea, the highlights of the Special Act for the Prevention of Domestic Violence and Victim Protection Act, 1997 include: mandatory investigation by police; medical facilities to provide treatment for physical and mental injuries; and police are required to take emergency protection measures for victims by restraining a perpetrator from violent behavior or referring victims to domestic violence counseling centers, protective centers, or hospitals. An important feature of the law is that anyone who becomes aware of domestic violence crimes – including teachers, doctors and social workers -- may report to investigating agencies.

In several countries, legislative provisions seek to facilitate protection of the complainant. The Philippines’ *Rape Victim Assistance and Protection Act (1998)* provides for closed-door investigations, prosecution or trial and for non-disclosure to the public of the name and circumstance of the offended party and/or the accused, or any other information tending to establish their identities. Further, under the Philippines’ *Anti-Violence against Women and their Children Act (2004)*, an extensive list of persons are able to apply for a protection order, including the survivor; their family;

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<sup>55</sup> 1997 6 Supreme Court Cases 241

<sup>56</sup> AIR 1999 Supreme Court 625

<sup>57</sup> “Progress of the World’s Women: In Pursuit of Justice.” UN Women. 2012.

social workers; police officers; village officials; and lawyers, counselors and healthcare providers. The Act also imposes a fine against village officials or law enforcers who fail to report an incident of violence. This legislation includes the *Barangay* Protection Order which is a protection order issued by the local government. In a *Barangay* proceeding, the parties may be accompanied by a non-lawyer advocate. Namibia's *Combating of Rape Act* (2000) stipulates that the complainant has the right to attend court personally, or to request that the prosecutor present the relevant information on her behalf if the accused has applied for bail.

Legal provisions in a number of countries now go beyond criminalizing violence against women to provide services that help with rehabilitation and recovery, including housing. Examples of mechanisms to provide for housing and shelters include:

- The Mauritius Act to Provide Protection to the Victims of Domestic Violence 1997 includes an "Occupancy Order" which allows a victim of domestic violence who reasonably believes that the spouse will commit further acts of violence to apply to the Court for an occupation order granting the victim the exclusive right to live in the marital residence, and apply to the Court for a tenancy order so that the tenancy should vest in the victim.
- The United States' *Violence against Women and Department of Justice Reauthorization Act (2005)* introduced provisions and programs to provide exclusive housing rights to survivors of violence.
- In Turkey, the *Local Administration Law* calls for the creation of municipal shelters, in all municipalities with more than 50,000 inhabitants.
- Under Austria's *Violence Protection Act* (1997), all provinces are called upon to establish intervention centers where survivors are proactively offered assistance after reporting to the police. The centres are run by women's NGOs and financed by the Ministry of the Interior and the Ministry of Women on the basis of five-year contacts.

An alternative approach can be seen in India, where the Protection of Women Against Domestic Violence Act (2005) introduced the concept of "right to residence" for women that prevents women from being forced out of their marital homes, by order of a magistrate.

It is also instructive to review the types of services for survivors and their families have been recognized as rights in legislation. Some relate to employment – and enabling women to continue to participate in the workforce. Provision for leave from work have been included in the Honduras Domestic Violence Law of 2006, which requires both private and public sector employers to allow employees who are survivors to attend support groups and perpetrators of violence to attend re-education group, and the Philippine Anti-Violence

against Women and their Children Act allows survivors to take paid leave up to ten days. The Spanish *Organic Act on Integrated Protection Measures against Gender Violence (2004)* provides various social security and employment rights for survivors, including the right to reduce or reorganize working hours.

Examples of provision for financial support for victims can also be seen, as in for example:

- Australia's *Social Security Act* as amended in 2006 addresses associated financial needs – the Act allows domestic violence victims to qualify for a crisis payment from the federal welfare agency where they have left the home because of violence and/or where they remain in the home following the perpetrator's departure.
- Article 17 of the Guatemalan *Law against Femicide and other Forms of Violence against Women (2008)* calls upon the government to provide survivors of violence access to integrated service centers, including by providing financial resources.
- The Ghanaian *Domestic Violence Act (2007)* established a Victims of Domestic Violence Support Fund, which receives government funding as well as voluntary contributions from individuals, organizations and the private sector. It is used for a variety of purposes, including the basic material support of victims; any matter connected with the rescue, rehabilitation and reintegration of victims; and training and capacity building for person connected with the provision of shelter, rehabilitation and reintegration.

In order for norms around violence to change, education and awareness-raising plays a critical role. Community and group interventions involving women and men can shift discriminatory social norms to reduce the risk of violence.<sup>58</sup> Laws and policies in Spain and several Latin American countries are utilizing educational policy as a way to combat violence against women, specifically:

- Spain's 2004 Act focuses on the promotion of gender equality and peaceful conflict resolution at different levels of education, including through the training of educational professionals. Article 6 requires that education authorities ensure that sexist and discriminatory stereotypes are removed from all educational materials. As a result of this provision, many books included in educational curricula have been revised.<sup>59</sup>
- The Mexican *Law on Access of Women to a Life Free of Violence (2007)* requires the development of educational programs at all levels of schooling that promote gender equality and a life free of violence for women.

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<sup>58</sup> Claudia García-Moreno, Cathy Zimmerman, Alison Morris-Gehring, Lori Heise, Avni Amin, Naeemah Abrahams, Oswaldo Montoya, Padma Bhate-Deosthali, Nduku Kilonzo, Charlotte Watts, Addressing violence against women: a call to action, *The Lancet*, DOI: [http://dx.doi.org/10.1016/S0140-6736\(14\)61830-4](http://dx.doi.org/10.1016/S0140-6736(14)61830-4)

<sup>59</sup> "As Women's Anti-Discrimination Committee Begins Review of Country Reports, Spain Boasts Sweeping Legislative Changes, Facing Problems 'Without Embarrassment.'" United Nations. July 22, 2009.

- The Chilean *Law on Intra-Family Violence* (1994) states in article 3(a) that school curricula should include content about intra-family violence, including how to modify behaviors that enhance, encourage or perpetuate such violence.
- Outside of Latin America, the Gender Equality Law of Bosnia and Herzegovina requires all relevant authorities to undertake steps to prevent gender-based violence, particularly in the field of education. This includes, but is not restricted to, education and awareness-raising among state officials.

It should be noted that CEDAW holds States accountable for violence in schools and violence in accessing schools. It is the States' responsibility to ensure that schools are safe spaces for girls. Acid attacks against girls who attend school in Pakistan and Afghanistan are horrific, and violate both the Committee on the Rights of the Child (CRC) and CEDAW.

### **The Role of Civil Society**

Why has so much legislation come about within such a short space of time? While a full answer to this question is beyond the scope of the paper, it is clear that, alongside the frameworks provided by international law, social movements have been in the frontlines of the war against gender-based violence. Government initiatives to reform legislation have often been a response to pressures from social movements.<sup>60</sup> Examples from Puerto Rico, Turkey, Kenya, Puerto Rico, Ghana, India and Brazil are briefly recounted here to illustrate the types of sustained activism and efforts that have led to reform.

- Puerto Rico's *Domestic Violence Prevention and Intervention* (also known as Law 54), 1989, was spurred by public outrage after a famous basketball player was merely subject to probation after bludgeoning his wife to death with a hammer. Law 54 clearly defined abuse and mandated civil and criminal remedies for domestic violence. It also offered comprehensive protection for emotional and psychological harm, and led to the development of essential social services, including shelters, job-training programs, and psychological counseling.<sup>61</sup>
- The above-mentioned revision of the penal code in Turkey of 2006 came about after a bold campaign launched by the women's movement. Over 120 NGOs from around the country came together in these efforts.<sup>62</sup> As a result, the Turkish Penal Code was revised to criminalize marital rape and sexual harassment in the workplace. The law also removed mitigated sentences for honor killings and provisions that allowed rape

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<sup>60</sup> Duvvury, Nata, Aoife Callan, Patricia Carney, and Srinivas Raghavendra. "Intimate Partner Violence: Economic Costs and Implications for Growth and Development." The World Bank. Women's Voice, Agency, & Participation Research Series No. 3. 2013.

<sup>61</sup> Roure, Jodie G.. "Gender Justice in Puerto Rico: Domestic Violence, Legal Reform, and the Use of International Human Rights Principles." Human Rights Quarterly. The Johns Hopkins University Press. 2011.

<sup>62</sup> Jaising, Indira. "Preventing and Responding to Violence Against Women: From Legislation to Effective Enforcement." Inter-Parliamentary Union.

charges to be dropped if the rapist married their victim. Articles discriminating between single and married women in sentencing for the accused were also repealed.<sup>63</sup>

- Extensive media coverage, protests, and concerted lobbying by NGOs led to the *Family Protection Act 2007* in Kenya. Public support stemmed from the 1998 death of Betty Kavata, who was beaten by her policeman husband with a brick after telling him there was no meat for dinner. Her paralysis and brain damage led to her death several months later. After months of petitioning, he was eventually suspended from his job and later arrested and charged with murder.<sup>64</sup> Several years of public outrage and demonstrations eventually led to the passage of legislation that criminalized wife-beating and other forms of domestic violence.<sup>65</sup>
- Ghana's Domestic Violence Bill was passed in 2007 following concerted efforts of the women's movement and rights advocates, including the "16 Days of Activism" and media campaigns, which brought the issue to the national agenda.
- Amendments to the Indian Penal Code following the Verma Committee in 2013 increased the scope of the law to include all types of sexual assault against women and provided for capital punishment in cases where rape leads to death of the victim or leaves her in a "persistent vegetative state."<sup>67</sup> These changes were prompted by mass protests and demonstrations after the tragic gang rape of "Nirbhaya" on a Delhi bus in 2012. Women's groups used the attack to highlight the pervasive violence against women that has been ignored by a culture of silence.
- The Indian 2005 Protection of Women from Domestic Violence Act (PWDVA) calls for the establishment of state appointed Protection Officers who, alongside service providers, medical facilities and the police, can receive complaints. These agencies can provide information to the survivor of her rights and remedies and facilitate her access to support services. It is notable that the Lawyers Collective, a well-respected NGO in India, has been monitoring implementation of the PWDVA, a practice we investigate further below. The novel provisions of the PWDVA were the result of a concerted effort made by Indian NGO's including Lawyers Collective to integrate international human rights norms and comparative best practices into national lawmaking.
- The first Brazilian federal law to combat domestic violence against women, *Maria da Penha* Law grew out of over several decades of struggle led by local women's groups. The law -- passed in 2006 in response to a particularly horrific case -- is a comprehensive framework relating to preventing and combating domestic and familial violence against women in compliance with CEDAW principles. It provides that local,

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<sup>63</sup> *ibid.*

<sup>64</sup> Gough, David. "Beaten Wives Challenge Custom." *The Guardian*. December 30, 1998.

<sup>65</sup> Kimani, Mary. "Taking on Violence against Women in Africa." *Africa Renewal Online*. July 2007.

<sup>66</sup> Anzaki, Mandyen Brenda. "Violence Against Women in Africa: Attitudes and Laws." *The Lawyers Chronicle*.

<sup>67</sup> de Silva de Alwis, Rangita. "Women's Voice and Agency: The Role of Legal Institutions and Women's Movements." *The World Bank*. 2014.

state, and federal governments and the justice sector are responsible for the creation and implementation of mechanisms to combat and prevent domestic and family violence against women. Integrated measures and mechanisms to prevent violence – such include awareness raising programs and educational programs on international conventions on the prevention of violence – are included. The law also recommends the integration of gender equality and human rights in school curriculums so that both young women and young men are educated on issues of sexuality and violence.

Several laws on violence against women mandate monitoring either by implementing *agencies*, by agencies set up to monitor implementation of the law, and/or by civil society.

- The *Philippines Anti-Violence Against Women and their Children Act*, 2004 has set up the 'Inter-Agency Council on Violence Against Women' that includes representatives from different government departments.
- The *Spanish Organic Act on Integrated Protection Measures against Gender Violence*, 2004 mandates a 'Special Government Delegation on VAW' and a 'State Observatory on VAW' to inter alia supervise the implementation of laws and prepare annual reports.
- Brazil's *Maria da Penha* law provides for monitoring by civil society. A consortium of women's NGOs, women's research centers and feminist networks – named the Observatório Lei Maria da Penha – monitors the implementation of the law in the country's 27 states.

Finally, it is important to note various ways to promote community level engagement that are being undertaken. Among the notable examples provided for in national legislation are:

- A distinctive feature of the Taiwanese 1998 Act is the way in which all local governments are authorized to create a domestic violence prevention committee and to maintain a Domestic Violence prevention Center and to establish among other things a 24 hour hotline; psychological support, housing, counseling and so on. The engagement of local communities in combating domestic violence is a thread that runs through this law.
- The Cambodian Law on the Prevention of Domestic Violence and the Protection of of Victims 2005 calls for mediation in cases of minor misdemeanors or petty crimes. The mediation can be conducted by parents, relatives, Buddhist monks, elders, village chiefs, and commune councilors and can be chosen by the householders.

The engagement of men and boys in addressing violence is increasingly recognized as critical.<sup>68</sup> The 2014 *Heforshe* campaign is one of various recent initiatives that reflects this increased prominence. Evidence is accumulating that violence against women diminishes men as much as women and has egregious intergenerational consequences on both men and women.<sup>69</sup>

A number of national governments are actively following up. Engaging men in transforming adverse norms is being addressed in National Plans of Action. For example the Australian National Plan to Reduce Violence against Women and Their Children includes ways to actively engage men to promote gender equality, encourage men to speak out against violence and promote non-violence, involve men in respectful relationships, and support culturally-appropriate male role models. Likewise South Africa's 365 Day National Action Plan to End Gender Violence (2007) called for 'Positive Life Style and Mind-set Changing' workshops, targeting men and women as well as boys' and girls' organizations, and Ecuador's National Plan for the Eradication of Gender-Based Violence Against Children, Adolescents and Women (2008) mandated the creation of communications campaigns such as the "Machismo is Violence" campaigns with the strategic goal of transforming social stereotypes and patterns that "naturalize[d]" violence against women. It will be important to capture and document the impacts of such efforts.

### **3: CONCLUSIONS AND THE WAY AHEAD**

As UN Women has powerfully argued, concrete actions to eliminate the debilitating fear or experience of violence must be a centerpiece of any future global development framework."<sup>70</sup> This paper has reviewed the contributions of the international and national legal frameworks to the realization of this goal.

What is clearly manifest in this paper is that new and emerging international legal norms and national state laws are recognizing women's right to live a life free of violence. National legislation in much of the world is consistent in not only prohibiting and criminalizing violence but also providing mechanisms to support victims and their families in a range of ways. The evolving jurisprudence on due diligence is a sound basis for holding governments accountable for gender-based violence in the context of the post-2015 framework.

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<sup>68</sup> "The Secretary-General's Network of Men Leaders." United Nations. United Nations Secretary-General's Campaign to End Violence Against Women. 2009.

<sup>69</sup> Duvvury, Nata, Aoife Callan, Patricia Carney, and Srinivas Raghavendra. "Intimate Partner Violence: Economic Costs and Implications for Growth and Development." The World Bank. Women's Voice, Agency, & Participation Research Series No. 3. 2013.

<sup>70</sup> "A Transformative Goal in the Region for the Future We Want." UN Women. 2013.

Yet in practice we see that gender-based violence remains pervasive around the world. Implementation of the laws on paper is often weak. Moreover, information about the effectiveness of legislation and their implementation is scarce, and better efforts are needed in terms of both regular monitoring and evaluation. National Action Plans have been developed by a number of states as blue prints and road maps for addressing violence against women, in terms of prevention and protection and support for survivors. These can help to avoid responses to violence against women that are *ad hoc* and fragmented.

The overall picture suggests that, around the world, a variety of measures are being undertaken to broaden access to justice for women, and follow up support. These range from protection orders and financial support to gender- friendly legal services, to gender sensitivity training for judges. However because the reforms are so recent, little is yet known about the implementation and effectiveness of these legislative and policy provisions. Indeed it may well be that many are not yet be fully functioning. Some may lack resources, or full accountability.

This paper has pointed to ways in which this situation may be improved on the ground, beginning with a continuing and growing role for social movements including men and boys. The role of men and boys as agents of change in addressing gender-based violence is a powerful development that has the potential to transform communities.

Another critical element emerging from our review is that social movements often have been key to the promulgation of laws, but social movements have been less active post-legislation. Regular monitoring is critical to enforcement of legislation. Monitoring can be enhanced where civil society has an active and empowered role to play, as we saw in the example of Brazil.

Data is pivotal to measuring a State's response to violence against women and the implementation of laws. Several countries have legislatively mandated data collection including Albania's law on Measures against Violence in Family Relations, which calls upon the Ministry of Labor, Social Affairs and Equal Opportunities to maintain statistical data on domestic violence, Taiwan's 1998 law and Mexico's Law on Access of Women to a Life Free of Violence, 2007 which provides for a creation of a databank on gender based violence.

Lack of budgets for implementation can negate both the letter and spirit of the law. Under-resourcing can impede implementation of laws, with adverse consequences. Inadequate funding of legal services, shelters and protection orders not only discourages reporting, it can put the victim's life in jeopardy.

In sum, much progress has been made on paper, but there is still far to go. We have limited evidence about how laws are being implemented and enforced in practice, in part because of the lack of data and evidence based research on the impact of the laws.

The elimination of violence against women and girls is central to equitable and sustainable development and should be prioritised in the post 2015 agenda. There is a major opportunity for the post 2015 agenda to deepen the commitments to combat violence, to help buttress the ambitious development goals, and to accelerate progress on this important frontier of human rights and development.