



BACKGROUND PAPER

GOVERNANCE *and* THE LAW

Gender based violence and the law

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Background paper for World Development Report 2017
Gender based violence and the law

Jeni Klugman¹

1. Introduction

The phenomenon of gender-based violence is pervasive around the world, experienced by some one in three women in their lifetimes. The elimination of such violence has been increasingly recognized as a priority for the international community.

The Sustainable Development Goals include a specific target to “eliminate all forms of violence against all women and girls in the public and private spheres.”² A recent special series of *The Lancet* on addressing violence against women provides an excellent overview of the current evidence, and highlights that while growing international recognition creates opportunities for renewed government commitment, solutions will not be quick or easy.³

Legislation that criminalises violence against women codifies the rights of women to live free of violence. Laws can play an important symbolic role, by indicating that such behavior is socially unacceptable. The associated sanctions may serve a deterrence function. Either or both levers may work in practice to reduce the incidence of violence. It is of course difficult to observe which is more effective, though we do have indirect evidence on both fronts. Legislation can also be responsive to victims, by providing for protection and access to support services.

This paper investigates the potential and shortcomings of legislative action – and how international and national laws can interact with norms in ways that can be conducive to the reduction of the risk of violence. We argue that there has been major progress in establishing the right of women to live free of violence in both international and national law, especially over the past decade or so, with civil society movements at the local and global levels playing a pivotal role. At the same time, there is some way to go to address the underlying norms and behaviors associated with violence.

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² <http://www.un.org/sustainabledevelopment/gender-equality/>

³ See GARCÍA-MORENO ET AL. ADDRESSING VIOLENCE AGAINST WOMEN: A CALL TO ACTION (*The Lancet* ed., 2014), available at [http://dx.doi.org/10.1016/S0140-6736\(14\)61830-4](http://dx.doi.org/10.1016/S0140-6736(14)61830-4) (emphasizing the importance of the elimination of violence against women and girls through prevention).

The investigation sheds some light on broader debates about the value of international human rights law. Some regard international agreements and conventions as toothless, others point to evidence that these have helped to mobilize women's groups. One channel of effects could be the following. International laws and norms set out standards of behaviour that are regarded as appropriate by a critical mass of nation-states, and such norms affect domestic policy making along a variety of causal pathways, including standards for domestic legislation, creating standards for global civil society to both advocate and monitor, and mobilizing domestic civil society around these new shared expectations of individual and state behavior. Evidence of this chain of effects is presented below.

The effects can of course run both ways. Collective action can affect the nature and evolution of international norms. For example, 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.⁴ The Declaration itself responded to calls by civil society through the Global Campaign for Women's Human Rights, which had been mobilizing and advocating for many years. This finally led to the explicit acceptance of women's rights as human rights.⁵

Our focus is partly motivated by the potential power of more progressive legal norms in changing social norms around violence. As expressed by Sunstein two decades ago:

[A]utonomy cannot easily exist without *collective assistance*; people are able to produce the norms [...] *only with governmental involvement*. Something *must be done collectively* if the situation is to be changed: Sunstein (1996:962)⁶

Laws are clearly one form of government involvement in affecting norms. Recent micro-analysis presented in Klugman et al. (2014) suggests that women who live in countries with domestic violence laws have seven percent lower odds of experiencing violence compared with women living in countries without such laws.⁷ While causality was not established, the relation is statistically significant. The same study found that each additional year that a country had such legislation in place is associated with reduced prevalence of domestic violence by about two percent. At

⁴ See United Nations, *Sexual Violence and Armed Conflict: United Nations Response*, April 1, 13 (1998) (promoting the goals of the Beijing Declaration and the Platform for Action).

⁵ See Charlotte Bunch, *The Global Campaign for Women's Human Rights: Where Next After Vienna*, 69 ST. JOHN'S L. REV. 171, 172 (1995) (noting the Declaration's attempt to promote women's human rights through the Global Campaign).

⁶ Sunstein, C.S 1996, 'Social Norms and Social Roles' *Columbia Law Review*, vol. 96, no. 4, pp. 903-968.

⁷ Klugman, *supra* note 3, at 86 (reporting on an analysis of twenty-one 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).

the same time, there is clearly a large range of rates of violence within both sets of countries, and of course the causality may run in the direction of countries with lower acceptability of violence being more likely to enact prohibitions against violence. These findings underscore the potential promise of legislative reform as a preventive measure, although laws alone are clearly not enough to eliminate violence.

At the same time it is well recognized that laws alone will not eliminate gender based violence is clearly inadequate.⁸ Some degree of legal protection now exists on paper in most countries of the world, yet violence remains pervasive and enforcement weak. Dealing with only the consequences of violence has obvious weaknesses, not least that the causes of violence can go unaddressed. This points to the importance of changing the norms that cause or at least sanction or tolerate violence, and how understanding laws and legal reforms can serve to change norms.

Laws are among the formal domains that can be challenged through advocacy and campaigns to bring about reform. It is more difficult to change *informal* social norms that are internalized by individuals. These informal dimensions include the traditions, beliefs, values, attitudes, norms, and practices that are deeply embedded in culture, and which operate at systemic and community, as well as at the individual levels. Culture is far slower to change than formal policy or law, and law and policy do not automatically create changes in culture.⁹

Our investigation suggests that while international law is clearly no panacea, by providing a standard setting framework, the framework of international law and norms have evolved in ways that have bolstered the claims of women's groups. International human rights law may thus have indirect and direct impacts on strengthening domestic violence law, with collective action playing an important mediating role.

The paper is structured as follows. We open by outlining the significance of gender-based violence, globally and regional and country patterns. This is followed by an examination of the international legal framework. Our review highlights the important role of civil society, and especially women's groups, both in terms of bringing about reform and monitoring implementation.

The focus of this paper is on intimate partner violence directed at women – that is psychological and emotional, as well as physical and sexual violence, inflicted by a

⁸ See Jacqui True, *The Political Economy of Violence Against Women*, 32 AUSTRALIAN FEMINIST LAW JOURNAL 39, (2013) (outlining the “key elements of a feminist political economy method for analyzing the causes and consequences of violence against women”).

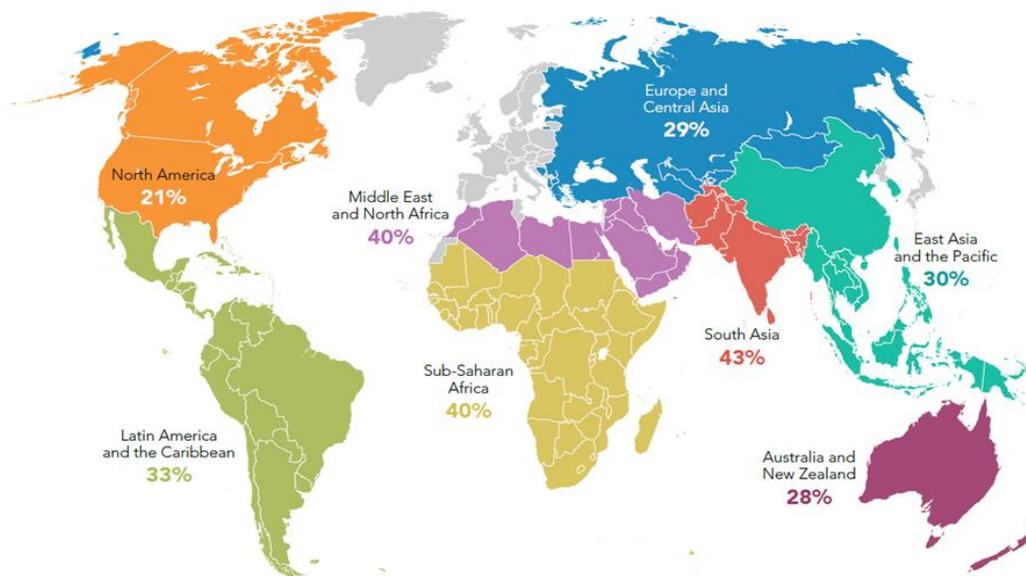
⁹ Srilatha Batliwala (2013) *Changing their World: Concepts and practices of women's movements* 2nd Edition http://www.awid.org/sites/default/files/atoms/files/changing_their_world_2ed_full_eng.pdf

spouse, live-in partner or boyfriend.¹⁰ Intimate partner violence comprises the bulk of gender-based violence in all countries around the world, but would exclude, for example, such infamous cases as the Delhi bus rape of 2012 or the Stanford rape of 2015.

2. Significance and empirical patterns of gender based violence

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.¹¹ Regional rates of violence inflicted by intimate partners reach as high as forty-three percent in South Asia and some national violence studies show that up to seventy percent of women have experienced violence from an intimate partner. The total exceeds 700 million women worldwide.

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.

Regional averages can mask considerable varies across countries, as shown in Figure 2. In East Asia, for example, we see that Timor Leste is an outlier where rates of intimate partner violence that are much higher than the regional average, and the same is true for Bolivia and Tajikistan, for example, in their respective regions. The

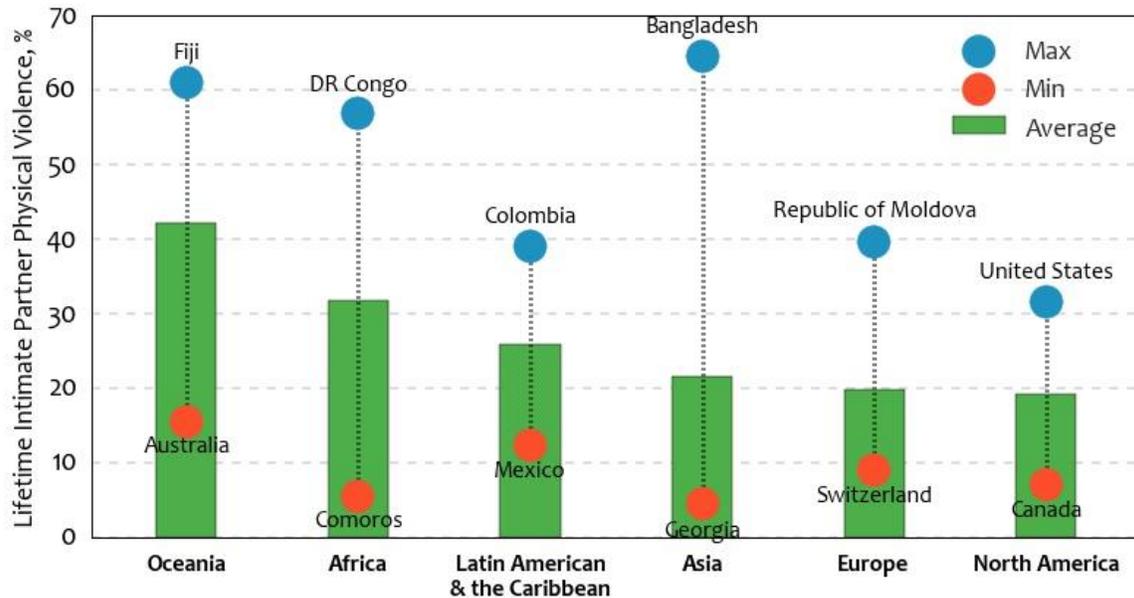
¹⁰ <http://www.who.int/mediacentre/factsheets/fs239/en/>

¹¹ See, e.g., JENI KLUGMAN ET AL.. VOICE AND AGENCY: EMPOWERING WOMEN AND GIRLS FOR SHARED PROSPERITY 3 (The World Bank ed., 2014) (reporting on the global constraints females face today, including an epidemic of violence).

Democratic Republic of Congo has the highest reported rates of intimate partner violence in Africa.

At the same time we should note that while data has been improving over the past decade, measurement problems remain, and caution needed in interpretation and cross-country comparability.

**Figure 2: Variation in regional and national averages:
Lifetime Rates of Intimate Partner Physical Violence, 1998 to 2014**



Source: United Nations, 2015. The World's Women 2015: Trends and Statistics. New York: United Nations, Department of Economic and Social Affairs, Statistics Division. Sales No. E.15.XVII.8, Statistical Annex.

The lifetime estimates of violence is a stock figure, and not sensitive to recent changes or deterioration in the risk of violence. Current rates of prevalence can be estimated from population surveys, using the question that asks about experience of violence in the preceding year. This indicator has been included in the monitoring of the Sustainable Development Goals, alongside the lifetime experience of violence.

Past year rates of physical intimate partner violence average 10 percent globally, with a range from highs of 27 percent in Cameroon, Sierra Leone and Uganda, to lows of around 1 percent in Singapore and Switzerland.

This paper does not investigate the underlying causal factors which influence patterns of violence across countries (see Heise and Kotserdam (2015) for a recent review), but does underline the importance of social norms – and especially of beliefs that men have the right to control their wives’ behavior. To illustrate the importance of male and female attitudes, including toward violence, ICRW found in India that there was a correlation between rigid views of masculinity (ie, those who reinforced

traditional norms of attitude and behaviour, including men who exercise excessive control in their intimate relationships) and the risk of violence.¹² Men with rigid views of masculinity were nearly 1.35 times more likely to perpetrate intimate partner violence than men with equitable views of relationships, and women with rigid views of masculinity were also nearly 1.35 times more likely to be the victims of violence than women who held equitable views on masculinity. Across six Indian states, Uttar Pradesh had the highest shares of men and women expressing rigid views of masculinity (54 and 32 percent respectively) and the highest rates of men (49 percent) reporting they had perpetrated violence against their partners in the past 12 months

3. Evolution of relevant laws at the international and national levels

This section begins with the corpus of international law relevant to gender-based violence ranges from multilateral conferences and conventions, to regional treaties, international declarations and resolutions and jurisprudence of the international criminal tribunals. We look at evidence of how legal and normative developments at the international and regional spheres have affected law-making at the country level, where we observe a tidal wave of countries introducing domestic violence legislation over the past three decades.

a. International law¹³

International conventions and declarations are important, not least because they have provided specific definitions of what constitutes gender-based violence, which have served to set standards not only globally, but in national legislation, as we shall see below. A key question is whether ratification of international treaties such as CEDAW leads to compliance on the part of states party to the convention. What conditions account for compliance, or not, and do international treaties create domestic pressure?

We start by reviewing the relevant treaty law at the international and regional levels, and then highlight a series of influential international declarations, before looking at the role of collective action.

Conventions and Treaties

¹² Nanda Priya, Gautam Abhishek, Verma Ravi, Khanna Aarushi, Khan Nizamuddin, Brahme Dhanashri, Boyle Shobhana and Kumar Sanjay (2014). “Study on Masculinity, Intimate Partner Violence and Son Preference in India”. New Delhi, International Center for Research on Women.

¹³ This section draws on da Silva and Klugman, Penn Journal of International Law.

Treaty law is the supreme source of international law, and state accountability and responsibility are at the heart of treaties. States party are required to take actions to realize the rights enumerated in the treaties to which they have signed up. This section highlights the key international treaties related to gender based violence, before turning to the associated jurisprudence.

The International Covenant on Civil and Political Rights, which entered into force in 1976, prohibits discrimination on the basis of sex. It has been argued that the prohibition against "inhuman or degrading treatment" in the ICCPR should be interpreted as a prohibition of violence against women.¹⁴

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 to date been ratified by 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." The original CEDAW did not explicitly prohibit violence against women, but rather outlawed "discrimination against women in all its forms."¹⁵

Subsequent recommendations issued by the CEDAW Committee, which oversees States' compliance with the Convention, have explicitly defined "discrimination" to include violence against women. Specifically, the Committee's General Recommendation No. 19 (1992) broadly defines discrimination to incorporate gender-based violence including physical, mental or sexual harm or suffering, threats of such acts, coercion, and other deprivations of 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.*"¹⁶ This implies that States are responsible for *inaction* in preventing acts of gender-based violence acts and discriminatory practices.

Periodic reports on CEDAW are presented by national governments to an oversight committee at UN headquarters in New York. Committee members can pose questions to governments, and feedback sent to governments is posted online. The four-year reporting cycle allows governments to report on measures implemented to comply with their obligations under the convention. As of 2015, the CEDAW Committee had issued 32 decisions since 2004 addressing gender-based violence. In 2005, for example, the Committee found that Hungary had violated its obligations under CEDAW because it did not provide "the internationally expected, coordinated,

¹⁴ Shazia Qureshi, *Reconceptualizing Domestic Violence as 'Domestic Torture,'* 20 JOURNAL OF POLITICAL STUDIES ISSUE 1 (2013).

¹⁵ U.N. G.A., *Convention on the Elimination of All Forms of Discrimination Against Women*, art. 2, U.N. Doc. A/RES/34/180 (Dec. 18, 1979).

¹⁶ U.N. Committee on the Elimination of Discrimination Against Women, *Convention on the Elimination of All Forms of Discrimination Against Women*, General Recommendation No. 19, (1992).

comprehensive and effective protection and support for the victims of domestic violence."¹⁷

The CEDAW reporting process provides an opportunity for women's organisations and others to raise concerns, via written shadow reports, and informal and formal meetings, to highlight any gaps between ratification and compliance. Table 1 illustrates the frequency of shadow reporting, which significantly outnumbers official reporting in a number of cases. Shadow reporting is a way for civil society to exert pressure on governments, through exposure and appeal to the international standards articulated in the Convention. There are also a number of examples of influence at the national level, including Turkey's domestic violence act that draws directly on CEDAW.

Table 1: CEDAW – official reporting and shadow reporting, selected countries

Country	Report	Shadow Report/s
India	4–5 (submitted in 2012, concluding observations in 2014)	24
Indonesia	6–7 (submitted in 2010, concluding observations in 2012)	5
China	7–8 (submitted in 2012, reply to list of issues in 2014)	48 (34 since August 2014)
Afghanistan	1–2	7
Argentina	6	17
Australia	6–7	8 [7 + 1 report from National Human Rights Commission]
Congo	6–7	3
United Kingdom	7	32 [27 + 5 reports from National Human Rights Institutions]

Notes: ^a http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Countries.aspx (accessed in January 2016).

Source: True 2016

There are several caveats, however, which have been argued to limit the effectiveness of CEDAW *vis a vis* gender based violence, and more generally. First, CEDAW's General Recommendations are not legally binding. Second, it is notable that ratifying members have made over one hundred reservations to CEDAW, compared to only four reservations to the Convention on the Elimination of All Forms of Racial Discrimination, for example. Moreover, the CEDAW contains no procedure to determine the validity of a reservation. These shortcomings have motivated the call for a new international convention on violence, as noted below.

¹⁷ Views of U.N. Committee on the Elimination of Discrimination Against Women (Ms. A.T. v. Hungary), Jan. 26, 2005.

Regional Human Rights Instruments

Several regional instruments prohibit gender-based violence. Given the relatively larger involvement of individual states in the development of regional treaties, such conventions may carry important weight at the national level. Regional monitoring and judicial bodies can also play an important role, as we shall see below. Directly relevant to gender-based violence are a major convention in Latin America, a charter in Africa, and a convention for Europe, each of which deserves highlighting.

The Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women, 1994 (“Convention of Belem do Para”) provides guiding principles for a treaty on violence against women.¹⁸ 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. This was the first Convention directed solely at eliminating violence against women, and the regional court has decided important cases on the subject, as discussed below.

The Protocol to the African Charter on Human and Peoples' Rights, on the Rights of Women in Africa, also known as the Maputo Protocol, prohibits gender-based violence as part of women's rights to life, integrity and security of the person, and dignity. Article One defines violence against women as including “all acts perpetrated against women.”¹⁹ The Maputo Protocol addresses violence against women in many of its provisions, and establishes legal obligations. Of the 53 member countries in the African Union, 36 countries have signed and ratified the protocol, and another 15 had signed but not ratified, while three states – Botswana, Egypt and Tunisia – have not signed.²⁰ Unlike Latin America, however, the African Charter Court on Human and People’s Rights has never issued a judgment on the merits in a case involving violence against women. Weaknesses include the follow-up institutional arrangements, in terms of the reporting mechanisms and the absence of a specific committee to monitor implementation.

The Committee of Ministers of the Council of Europe adopted a regional convention on preventing and combating violence against women and domestic violence in 2011, also known as the Istanbul Convention.²¹ Violence against women is stated to be a human rights violation and a form of discrimination. The Convention contains both negative and positive duties on the part of States. State parties are called upon to exercise due diligence to prevent, investigate, and punish perpetrators, and required

¹⁸ VIVIENNE CHIN & YVON DANDURAND, *VIOLENCE IN THE AMERICAS: A REGIONAL ANALYSIS* (2001).

¹⁹ African Commission on Human and Peoples' Rights, Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, art. 1, July 11, 2003.

²⁰ <http://www.achpr.org/instruments/women-protocol/>

²¹ See Council of Europe, Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence, May 11, 2011, *available at* <http://www.conventions.coe.int/Treaty/EN/Treaties/Html/210>.

to provide access to services—including legal and financial assistance, psychological counseling, hotlines, and sexual trauma services. This Convention sets and calls for the implementation of legally binding standards to prevent violence against women protect its victims and punish the perpetrators. According to the Council of Europe, there have been ten ratifications to date, including eight Member States.²²

Declarations, Resolutions, and International Norms

The 1948 Universal Declaration of Human Rights forms the most basic international foundation for combating violence against women. It lays out the rights and principles of equality, security, liberty, integrity and dignity of all people, including women.

International declarations and resolutions do not have the binding force of treaties, but can contribute to the development of international legal norms and jurisprudence.²³ Since the early 1990s, there have been several milestones on this front related to violence against women.

For the first time, at the United Nations World Conference on Human Rights in Vienna in 1993, women’s rights were explicitly accepted as human rights, paving the way for the integration of women’s rights into human rights norms and practice. Prior to this, women’s human rights were mostly absent from the international human rights agenda, because the human rights framework maintained a dichotomy between the public and private spheres.²⁴ Because the human rights agenda had conventionally concerned itself primarily with acts taking place in the public sphere, intimate partner violence was regarded as being beyond its scope. This changed in Vienna.

That same year, another important landmark was the UN Declaration on the Elimination of Violence against Women (“DEVAW”), adopted by the General Assembly, which defines violence 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.”²⁵ It calls on 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.” Article 4 of the Declaration requires member states to condemn violence against women and not invoke custom, tradition or religion to avoid their obligations to eliminate such violence.²⁶

²² <http://www.coe.int/en/web/conventions/full-list/>

²³ See Richard A. Falk, *On the Quasi-Legislative Competence of the General Assembly*, 60 AM. J. INT’L L 782 (1966).

²⁴ See Charlotte Bunch, *Women’s Rights as Human Rights: Toward a Re-envision of Human rights*, 12 HUM. RTS. Q. 486, 491 (1990).

²⁵ G.A. Res 48/104, art. 1, U.N. Doc. A/RES/48/104 (Dec. 20, 1993).

²⁶ United Nations, *Handbook on the Legislation for Violence Against Women*, New York: Department

DEVAW is also important because, for the first time, marital rape was defined as violence against women. Whilst declarations are not signed and approved by individual states, the influence of DEVAW has been marked. In particular, as we shall see below, domestic lawmaking since that time tended to adopt DEVAW's expanded definition, and has thereby moved from addressing only physical abuse to covering a broader spectrum of violence, as well as marital rape.

The United Nations Special Rapporteur on Violence Against Women was established in 1994. This office 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.” In 1996, Radhika Coomaraswamy, the first such Rapporteur 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.”²⁷

Several other major international declarations have recognized violence against women as a violation of human rights. These 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 its 1998 Addendum on the Eradication of All Forms of Violence Against Women and Children (1998).²⁸

The Beijing Platform for Action, for example, calls on governments to enact and enforce penal, civil, labor and administrative sanctions to punish and redress the wrongs done to victims. It also calls on governments to adopt, implement and review legislation to ensure its effectiveness in eliminating violence against women, emphasizing the prevention of violence and the prosecution of offenders. However the Beijing Platform is not legally binding. Most recently, the UN General Assembly Resolution Transforming Our World: the 2030 Agenda for Sustainable Development, states that: “All forms of discrimination and violence against women and girls will be eliminated.” (paragraph 20).²⁹

of Economic and Social Affairs: Division for the Advancement of Women, 2010.

²⁷ Special Rapporteur on Violence Against Women, Its Causes and Consequences, *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 Commission on Human Rights, E/CN.4/RES/1982/42 (Feb. 5, 1996) (by Radhika Coomaraswamy).

²⁸ <http://www.achpr.org/instruments/eradication-violence-woman-sadc-addendum/>

²⁹ <https://sustainabledevelopment.un.org/post2015/transformingourworld>

An important related development over the past two decades is that the international community has increasingly addressed sexual violence in war. Security Council resolutions and international tribunals have condemned mass sexual violence—including the tragedies that took place in Rwanda (1994), the former Yugoslavia (1993), and in Sierra Leone, East Timor, Japan, Haiti, Myanmar, and Afghanistan³⁰ – and passed several specific UN Security Council Resolutions.³¹ Security Council Resolutions on Peace, Security, and Women 1325, 1820, 1888, and 1889 address women’s role in peace-building, and sexual violence against women in conflict.³²

Jurisprudence of International Human Rights Tribunals

A review of the international jurisprudence reveals that expansive definitions of violence have been adopted by human rights tribunals, alongside clear standards of due diligence.

In the aftermath of the atrocities that occurred 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 deciding these cases, the tribunals have developed an important body of jurisprudence on gender-based violence, which is reviewed in da Silva and Klugman (2015). In the landmark 1998 decision, *Prosecutor v. Akayesu*, the accused was convicted of genocide and crimes against humanity for acts of sexual violence due to his inaction and omissions in relation to the mass rape, forced public nudity, and sexual mutilation of Tutsi women perpetrated by Hutu men.³³ In this case, *witnessing* acts of violence was held to constitute torture. In *Prosecutor v. Delalic*, 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.

At the Rome Conference which established the International Criminal Court (ICC), States agreed upon explicit provisions in the Statute which make this the first instrument in international law to include an expansive list of sexual and gender-based crimes as war crimes relating to both international and non-international

³⁰ See U.N. Security Council, 6722nd meeting, S/PRST/2012/3 (Feb. 23, 2012), condemning sexual violence in conflict and post-conflict situations.

³¹ Including Resolution 1820 which 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 UNSG Special Representative on wartime sexual violence, a team of rule-of-law experts, and female protection advisors in peacekeeping missions; Resolution 1960 in 2010 called for field-based monitoring, analysis and reporting arrangements to inform the Security Council and name perpetrators of crimes.

³² See Global Study on the implementation of Security Council resolution 1325 (2000) - <http://wps.unwomen.org/~media/files/un%20women/wps/highlights/unw-global-study-1325-2015.pdf>

³³ *Prosecutor v. Akayesu*, Case No. ICTR-96-4-T, Judgment (Sep. 2, 1998), <http://www.unict.org/sites/unict.org/files/case-documents/ictr-96-4/trial-judgements/en/980902.pdf>

armed conflict.³⁴ The ICC is required to investigate and prosecute gender-based crimes and sexual violence.³⁵ However as noted in a recent policy paper of the Office of the Special Prosecutor of the Court, the effective investigation and prosecution of sexual and gender-based crimes faces challenges and obstacles. According to this policy, the prosecutor must offer explicit justification for failure to prosecute such crimes when convincing evidence points to them. However according to an August 2016 article in *Foreign Policy*, the new policy has yet to translate into a single new case.³⁶ Challenges include the time and costs involved in investigating claims of sexual violence, compared to the destruction of cultural monuments, for example, which may be more straightforward.

Another important strand of jurisprudence has been the development of the due diligence principle, which 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 officials, and civil authorities—but also has a duty to protect women from violence and to enforce laws to prevent and punish violence against women. A government that fails to take such measures can be held to have breached its due diligence duties and therefore complicit in human rights abuse. Due diligence has been used as a yardstick for assessing the efficacy of government action and the standard to which governments will be held accountable for women’s human rights.³⁷

The UN Special Rapporteurs have provided clarity as to the meaning and scope of due diligence in the context of gender-based violence. In 2006, Rapporteur Ertuk affirmed that the standard of due diligence is universal, as well as a rule of customary international law.³⁸ The 2013 annual report of the UN Special Rapporteur reviewed state responsibility for eliminating violence against women in terms of due diligence.³⁹

³⁴ <https://www.icc-cpi.int/iccdocs/otp/OTP-Policy-Paper-on-Sexual-and-Gender-Based-Crimes--June-2014.pdf>

³⁵ See Susana SáCouto, Director of War Crimes Research Office, Remarks at American University Washington School of Law Conference: Addressing Sexual and Gender-Based Violence in Conflict and Post-Conflict Settings (Feb. 1, 2012)

(<http://www.genderjurisprudence.org/index.php/commentaries/78-investigation-and-prosecution-of-sexual-and-gender-based-violence-by-the-international-criminal-court-mandate-good-policy-or-both>).

³⁶ <http://foreignpolicy.com/2016/08/22/icc-to-war-criminals-destroying-shrines-is-worse-than-rape-timbuktu-mali-al-mahdi/>

³⁷ Special Rapporteur on Violence Against Women Call for Submissions: Country visit to the Republic of South Africa, <http://www.ohchr.org/EN/Issues/Women/SRWomen/Pages/VAW.aspx> (last visited Sep. 1, 2015) demonstrates the criteria used to assess a country’s due diligence.

³⁸ Special Rapporteur on Violence Against Women Yakin Ertürk, *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).

³⁹ Special Rapporteur on Violence Against Women Rashida Manjoo, *Report for twenty-third session of the Human Rights Council*, ¶ 11, U.N. Doc. A/HRC/23/49 (May 14, 2013).

An American case illustrates how the due diligence principle can operate in practice. In 1999, Jessica Lenahan-Gonzales's estranged husband took her three girls in violation of a permanent restraining order. Despite multiple requests, the local police failed to enforce the restraining order, and the three girls were murdered by the estranged husband. A legal case against the police force reached the Supreme Court and, in a 7-to-2 decision, the court ruled that the local authorities could not be sued for failing to enforce a restraining order. In 2011, the case reached the Inter-American Commission on Human Rights, which found that the United States failed both to protect Lenahan and her daughters from domestic violence and to provide equal protection before the law. Further, said the Inter-American Commission, "all States have a legal obligation to protect women from domestic violence," and this is "a problem widely recognized by the international community as a serious human rights violation and an extreme form of discrimination."

The due diligence standard has been elaborated in the context of the European Convention on Human Rights. In *Aydin v. Turkey*, the European Court of Human Rights found that the State did not act with due diligence when it failed to seek out eyewitnesses to the rape and torture of the applicant, and that there was an "absence of an independent and rigorous investigation and prosecution policy."⁴⁰ In *Bevacqua and S. v. Bulgaria*, the European Court ruled that:⁴¹

- States party to the Convention should ensure that all victims of violence are able to institute proceedings, that criminal proceedings can be initiated by public prosecutors, and that prosecutors should regard violence against women as an aggravating or decisive factor in deciding whether to prosecute in the public interest.
- State parties should use protection orders and interim measures to protect victims, and should ensure that children's rights are protected during proceedings.
- The authorities' failure to impose sanctions on law enforcement amounted to a refusal to provide the immediate assistance the applicant needed.

This decision thus specified requirements for compliance with due diligence obligations.

⁴⁰ *Aydin v. Turkey*, No. 57/1996/676/866, Eur. Ct. H.R. Judgment, ¶ 109 (Sep. 25, 1997), available at <http://hudoc.echr.coe.int/eng>.

⁴¹ *Bevacqua v. Bulgaria*, No. 71127/01, Eur. Ct. H.R. Judgment (Jun. 12, 2008), available at <http://hudoc.echr.coe.int/eng#>; see also Council of Europe, *Recommendation Rec(2002)5 of the Committee of Ministers to member states on the protection of women against violence* (Apr. 30, 2002), <https://wcd.coe.int/ViewDoc.jsp?id=280915&Site=CM&BackColorInternet=C3C3C3&BackColorIntranet=EDB021&BackColorLogged=F5D383#Top>.

In the 2009 decision, *Opuz v. Turkey*, the European Court held the state's failure to exercise due diligence to be gender discrimination.⁴² This decision provides minimum standards for protection, investigation, and prosecution, including a judicial mechanism for obtaining protective measures and prosecution in the public interest for all crimes of domestic violence. The facts and reasoning warrant 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. The applicant and her mother had complained to law enforcement authorities on numerous occasions, to no avail. In reaching a judgment, the European Court looked to the Turkish Criminal Code, the Family Protection Act 1998, and referenced U.N. Special Rapporteur Erturk's 2006 report on the due diligence standard. The European Court quoted Erturk's 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." The Court found that because 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 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 discrimination on the grounds of sex.⁴³

The European Court concluded that the applicant had demonstrated 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."

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, such as 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. An example where the due diligence principle has been translated into domestic legislation can be found in the Costa Rican Criminalization of Violence against Women Law (2007). Article V provides that public officials should act swiftly and effectively while respecting procedure and the human rights of women affected.

⁴² *Opuz v. Turkey*, No. 33401/02, Eur. Ct. H.R. Judgment (Jun. 9, 2009), available at <http://hudoc.echr.coe.int/eng#>

⁴³ Case of *D.H. and Others v. Czech Republic*, No. 57325/00, Eur. Ct. H.R. Judgment, ¶ 180 (Nov. 13, 2007), available at <http://hudoc.echr.coe.int/eng#> analyses discrimination of Romani children in the education system.

The concept of due diligence has been an important motivation and benchmark for activists seeking to support effective implementation of national legislation, and provides a basis against which domestic legislative provisions can be assessed. The Due Diligence Project, for example, has developed a resource guide on all the elements that support effective implementation of laws against violence.⁴⁴ This includes guidance on the laws themselves, and what is needed beyond the legislation in order to render the laws effective and implementable.

While there is a strong case for arguing that the principle of due diligence is by now well established in international law, this is not a universally held view. Notably, the opinion expressed by the current Special Rapporteur, Rashida Manjoo, in her 2013 report is that “there is no legally binding instrument under international law, specifically on violence against women, to effectively monitor State responsibility to act with due diligence in their efforts to respond to, prevent and eliminate all forms of violence against women.”

This view has been associated with a movement of some civil society organisations and academics to lobby for the development of a new treaty specifically directed at the prohibition of violence. For example, the Harvard Kennedy School’s Carr Center initiative on Violence Against Women examines the legal and implementation gaps in the global framework on violence against women. Their approach is twofold: first, convening an expert technical working group – human rights attorneys, practitioners, advocates, survivors and communications specialists – from more than 50 countries around the world, and second, working with law schools on collaborative research.

This paper does not seek to resolve the controversy about whether a new international convention against gender-based violence is needed. It is certainly true however, that while international legal norms have been influential, there remain many gaps and lacunae at the national level as revealed in the analysis that follows.

The Impact of International Human Rights and Collective Action on National Lawmaking

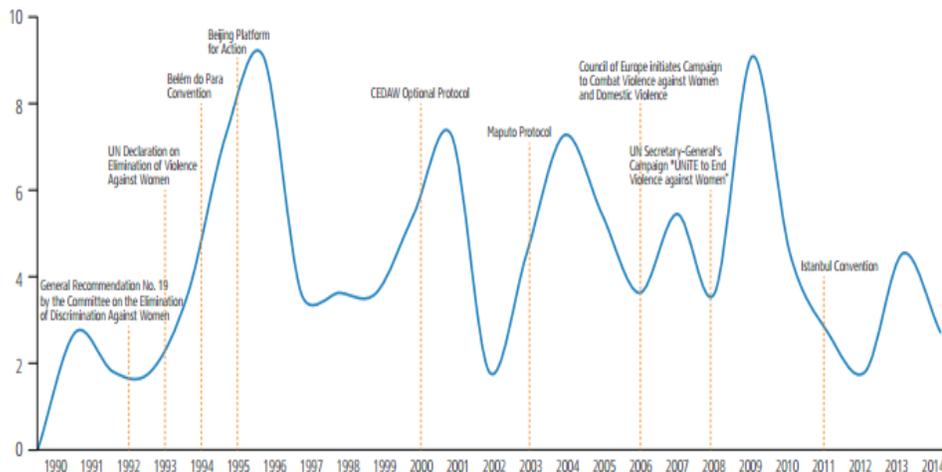
A central question is whether and how being party to an international human rights instrument affects national legislation, policies and practice. What role do other factors play, in particular collective action? And when international law is transformed into national law, do legal protections correlate to better outcomes on the ground? We turn now to investigate these important questions.

Analysis by the World Bank has traced the correlation between international commitments and the passage of comprehensive legislation or legal reforms to

⁴⁴ <http://www.duediligenceproject.org/resources>

encompass gender-based violence.⁴⁵ The association of legislative action with major international milestones is shown in Figure 3. There are notable upticks after the 1993 United Nations Declaration on the Elimination of Violence Against Women and the 1994 Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women. Among the countries which passed laws on violence against women at that time were Bolivia, Colombia, Costa Rica, El Salvador, Honduras, Jamaica, the Republic of Korea, Malaysia and Peru. Before 1993 only the United Kingdom and the United States had such legislation, and it focused on family violence.

Figure 3: Key International Events and the Passage of Domestic Violence Legislation



Source: World Bank Group, *Women, Business and the Law 2016: Getting to Equal*. Washington, DC 2015

Htun and Weldon (2012) provide a valuable cross-country overview of the various elements that affect national government responses to gender-based violence. They ask why some governments have more comprehensive policy approaches than others, and why some governments have been quick to adopt policies to address violence, whereas others are slow. The research examines six types of government responses to violence against women – services to victims, legal reform, specific policies for vulnerable groups of women, training of professionals, prevention and administrative reform – using a data set covering four decades and 70 countries. Exploring which factors are associated with government action, they find significant results for the presence and diffusion of international norms, the existence of

⁴⁵ World Bank Group, *Women, Business and the Law 2016: Getting to Equal*. Washington, DC 2015, <http://www.wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2013/09/23/00015834920130923083314/Rendered/PDF/WPS6616.pdf>.

effective policy machineries,⁴⁶ and the presence of strong, autonomous feminist movements i.e. groups that adopt an independent agenda and exist outside of formal political parties or trade unions. In contrast, the presence of women in national legislatures was not significant, while the levels of national income and of democratic development were associated with only very small, positive effects.

Richards and Haglund (2015) examine whether and how international law can affect the strength of national legal protections against domestic violence. Their data and analysis show that as the time since a country has ratified the CEDAW increases (by about eight years), countries are more (about 23 percent) likely to adopt full legal protections against domestic violence. At the same time, countries that placed a full reservation on Article Two of CEDAW, “embody[ing] the principle of the equality of men and women in their national constitutions or other appropriate legislation,” were found to have weaker domestic violence and marital rape laws. Finally, the authors argue that strong laws on domestic violence have broader ripple effects. They conclude that “Countries with greater domestic legal protections against gender violence have less gender-based inequality, greater levels of human development...”⁴⁷ However, it is of course possible, and equally plausible, that the causation runs in the direction of having less gender inequality and higher levels of human development toward greater protections against violence.

Collective action typically refers to the act of mobilizing people around common or shared concerns. This has often played a pivotal role in efforts to combat gender gaps. The UN Secretary General’s High Level Panel on Women’s Economic Empowerment underlined the role of collective action as a driver of gender equality in the world of work, for example.⁴⁸ As Evans and Nambiar (2014) usefully review, collective action can be routine or sporadic; it can take place through an organization or a government structure or entirely informally; it can be localized or transnational; it can focus on the articulation of rights or the delivery of services; it can be “induced” from outside or evolve organically.⁴⁹ We can observe all of these different

⁴⁶ The term gender machineries usually refers to formal government structures assigned to promote gender equality and/or improve the status and rights of women. These take a wide variety of forms, from formal ministries to temporary councils and committees, with varying degrees of effectiveness. See Dorothy McBride and Amy Mazur (2011), *Gender Machineries Worldwide*. <http://siteresources.worldbank.org/INTWDR2012/Resources/7778105-1299699968583/7786210-1322671773271/McBride-Mazur-Background-Paper-Final.pdf>

⁴⁷ *Violence Against Women and the Law*, Routledge. <https://www.washingtonpost.com/blogs/monkey-cage/wp/2015/02/11/how-laws-around-the-world-do-and-do-not-protect-women-from-violence/>

⁴⁸ <http://www.womenseconomicempowerment.org/reports/>

⁴⁹ Mansuri, Ghazala; Rao, Vijayendra. 2013. *Localizing Development : Does Participation Work?*. Policy Research Report; Washington, DC: World Bank.

types of action in the context of violence against women.

Collective action for and by women to combat violence has a long history. Modern day campaigns include movements directed at specific challenges – like sexual violence in the Democratic Republic of Congo, or against Boko Haram in Nigeria – and broader efforts like sixteen days of action every October.

Simmons (2009) book finds that social mobilization around women’s issues increases the longer a country has been party to CEDAW.⁵⁰ Such mobilization may help explain the above-mentioned finding that CEDAW ratification is associated with strengthening domestic gender-violence laws over time, as noted by the World Bank (2015), Richards and Haglund (2015) and others.

Case studies provide further insights into how civil society and collective action have worked to bring about national legislative reforms, utilizing international norms and standards to bring about change.

Recent comparative analysis about women’s mobilisation on violence has emerged from a research project titled ‘When and Why Do States Respond to Women’s Claims? Understanding Gender-egalitarian Policy Change in Asia’.⁵¹ Successful mobilisation on violence against women was explored in the context of the passage of key laws in China (Domestic Violence Law, 2015) and in Indonesia (Law on Domestic Violence, no. 23/ 2004), as well as the amendment of the sections on sexual assault in the Indian Criminal Law (specifically, to the Criminal Law [Amendment] Acts of 1983 and 2013). It underlines the complexity and specificity of each of the country context. The authors show how women’s movements used a variety of strategies and alliances to engage in negotiation and bargaining around their claims. In Indonesia, the women’s network built a very wide-ranging alliance by opening up to human rights organisations, political parties, and religious leaders across the country (Eddyono 2005). The New Men’s Movement, a pro-feminist men’s organisation, also joined the network, and champions within political parties and religious organisations helped to advocate and channel claims.

Htun and Weldon (2012) conclude that: “Women’s autonomous organizing in civil society affects political change... Autonomous movements articulate the social perspectives of marginalized groups, transform social practice, and change public opinion. They drive sweeping policy change as voters, civic leaders and activists, by pressuring policy makers to respond to their demands and as policy makers themselves become sympathetic to the movement’s goals. These effects of

⁵⁰ Mobilizing for Human Rights: International Law in Domestic Politics, Cambridge University Press

⁵¹ Paola Cagna & Nitya Rao (2016) Feminist mobilisation for policy change on violence against women: insights from Asia, *Gender & Development*, 24:2, 277-290, DOI: 10.1080/13552074.2016.1194035

autonomous organizing are more important in our analysis than women’s descriptive representation inside the legislature or the impact of political parties” (: 564)

The Philippines is one such case. Legislation adopted in 1997 marked the first time that acts of violence against women were recognized by the state as a crime, and has been seen as a result of extensive lobbying by women’s advocate groups, women’s human rights lawyers and female legislator. Further campaigning led to the 2004 adoption of the Anti-Violence Against Women and Their Children Act that mandates compliance with obligations under CEDAW and its Optional Protocol. It covers all forms of violence (physical, sexual, psychological and economic) and women can file for criminal and civil actions.

There are also examples of international networks of NGOs to support action at the country level. The Advocates for Human Rights (The Advocates) is a NGO based in Minnesota, United States that analyzes and comments on domestic violence laws at the request of governments and civil society.⁵² For example the Advocates were asked to review the draft domestic violence law of Armenia in 2008, and drew attention to the fact that Article 2 includes language that should be deleted, namely: “Specific behavior of a victim of domestic violence is willful behavior of the probable victim of domestic violence, which promotes, creates conditions for committing that violence.” The Advocates noted that such language does not promote victim safety and offender accountability, nor does it communicate a message of zero tolerance for violence.

This brings us to important questions around the shape of national legislation. National laws differ significant in scope and coverage as well as in provisions to sanctions and enforcement.

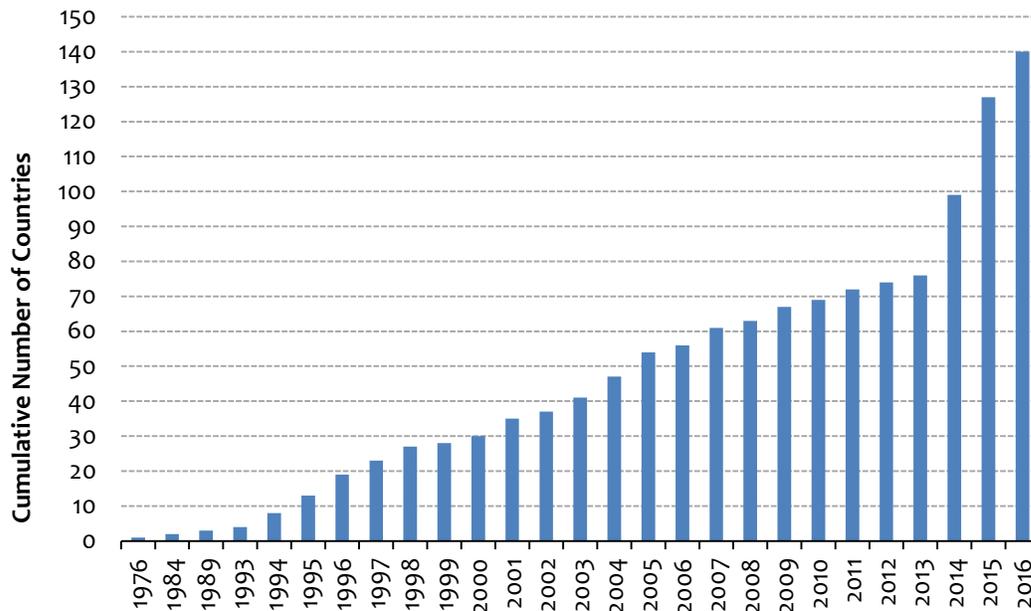
b. National legislation

Over the past three decades there has been what might be described as a tidal wave of countries introducing domestic violence legislation, as indicated by the steepness of the gradient in the bar graph below. This began in the mid 1970s, when only one country in the world had legislation in place.

Today, as shown in Figure 3, 127 countries have legislation against domestic violence, compared to almost none 25 years ago.

⁵² http://www.theadvocatesforhumanrights.org/stop_violence_against_women

Figure 3: Cumulative number of countries with legislation against domestic violence, 1976-2016



Source: Women Business and the Law, 2016: Getting to Equality. (Washington, DC: World Bank, 2015) and Women and Business and the Law database 2016 (updated in 2016).

The regional patterns show that coverage is most limited in the Middle East and North Africa, where only a minority — about one in four — countries has any laws in place. Sub-Saharan Africa is also lagging behind, in that just less than half of the countries have prohibitions against physical violence in place.

Which countries do not have legislation prohibiting domestic violence? The most recently available data suggests that around 49 countries do not have domestic violence legislation in place, as shown on the map.⁵³ The map draws on World Bank

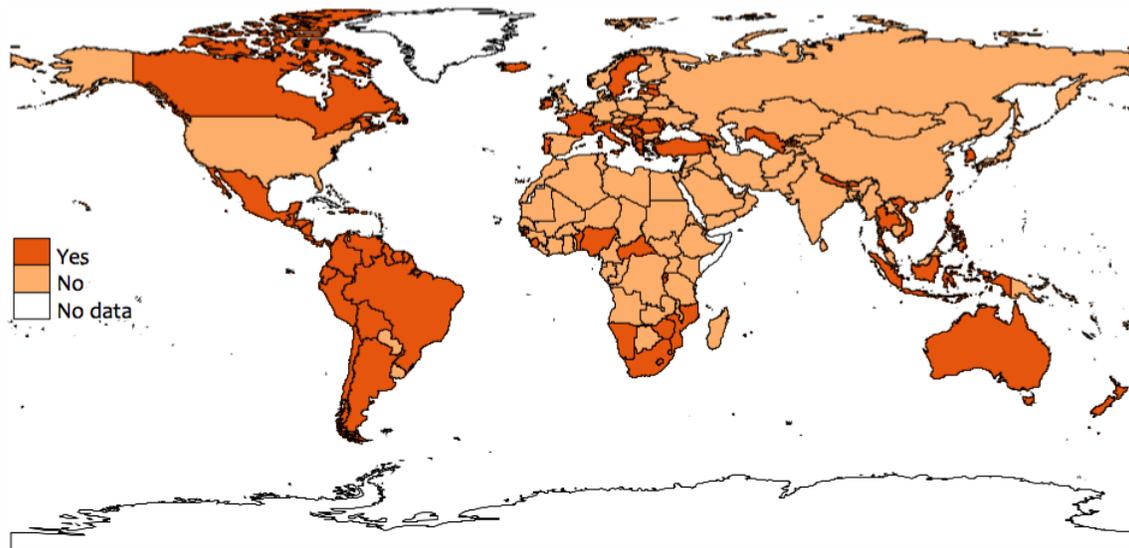
⁵³ <http://wbl.worldbank.org/data/exploretopics/protecting-women-from-violence>. The answer is "Yes" if

- there is legislation that explicitly criminalizes the act of marital rape by providing that rape or sexual assault provisions apply "irrespective of the nature of the relationship" between the perpetrator and complainant or by stating that "no marriage or other relationship shall constitute a defense to a charge of rape or sexual assault under the legislation," or
- there is legislation that explicitly criminalizes the act of rape between (i) persons in marital relationships; (ii) relatives, when the law explicitly considers spouses relatives (but not for relatives in general); or (iii) persons in situations of abuse or dependency of family position (but not of dependency in general), when the law clearly includes spouses within the definition of family; or
- when legislation that explicitly criminalizes the act of rape states that the spouse is a potential offender or is not exempt from charges, or
- marital relationships are an aggravating factor for the crimes of rape and sexual assault that includes elements of rape, or if the law sets out conditions in which the penalty for marital rape or rape by the husband is mitigated so that the criminalization of marital rape can be inferred.

data that examines the laws country-by-country. It is noted that the United States is classified as lacking the requisite laws because, based on the laws for New York, which is the main business city in the Women, Business and the Law study. The state New York has removed the marital exemption but has not introduced specific legislation criminalizing marital rape. The largest gaps are observed in the Sub-Saharan African and Middle East and North Africa. By way of contrast, Latin America shows the most extensive national coverage.

Figure 6: In 2015, 49 countries do not have legislation on domestic violence, 2015

Is there domestic violence legislation?



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

It is important to underline the diversity of ways in which national legislation address domestic violence. India appears among the countries that do have laws against domestic violence -- however there is still no legal prohibition of marital rape in India.

The answer is "No" if

- there are no criminal sanctions for the offense (i.e., the law only "prohibits the act, provides for the application of protection orders, or "allows a judge to order a husband not to rape his wife"), or
- the provision on marital rape applies only if the spouses are separated or in the process of getting separated, or
- the provision covers only relationships of dependency in general, or financial or official dependence, or
- the provision on rape applies only in certain circumstances, such as sickness, or
- the provision applies only to family members, and spouses are not clearly included in the definition of family.

After the 2012 Delhi gang rape, the Justice Verma Committee⁵⁴ recommended removing the exception clause in Section 375 of the Penal Code that decriminalizes marital rape, and the CEDAW Committee has recommended that India change its stance on marital rape.⁵⁵ However this was not addressed when the government amended the Penal Code in 2013.⁵⁶

We turn now to examine patterns of legislative coverage across countries.

What Types of Laws: Topic Coverage

Domestic violence legislation varies in the scope of the topics covered – physical, sexual, emotional and/or economic violence may be addressed. Figure 5 shows the global and regional patterns.

- Physical violence is most frequently addressed, closely followed by emotional violence – by 124 and 122 countries respectively.
- Regional rates of addressing emotional violence in laws against violence range from 97 percent in Latin America to 46 percent in Africa and 16 percent in the Middle East and North Africa.
- Sexual violence is covered by the legislation in 95 countries around the world; with high regional shares in East Asia and the Pacific, Latin America and the Caribbean and Europe and Central Asia.

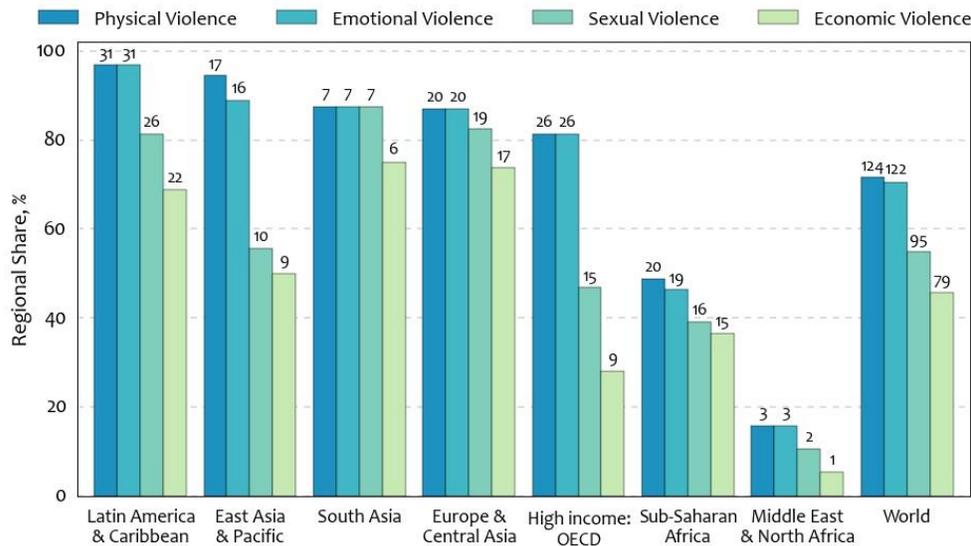
The coverage in OECD countries is relatively limited overall – especially with respect to emotional violence, and fewer than half prohibit sexual domestic violence.

⁵⁴ <http://www.prsindia.org/parliamenttrack/report-summaries/justice-verma-committee-reportsummary-2628/>

⁵⁵ <http://pib.nic.in/newsite/PrintRelease.aspx?relid=119938>

⁵⁶ <http://indiacode.nic.in/acts-in-pdf/132013.pdf>

Figure 5: Topics covered by domestic violence laws, percentage of economies



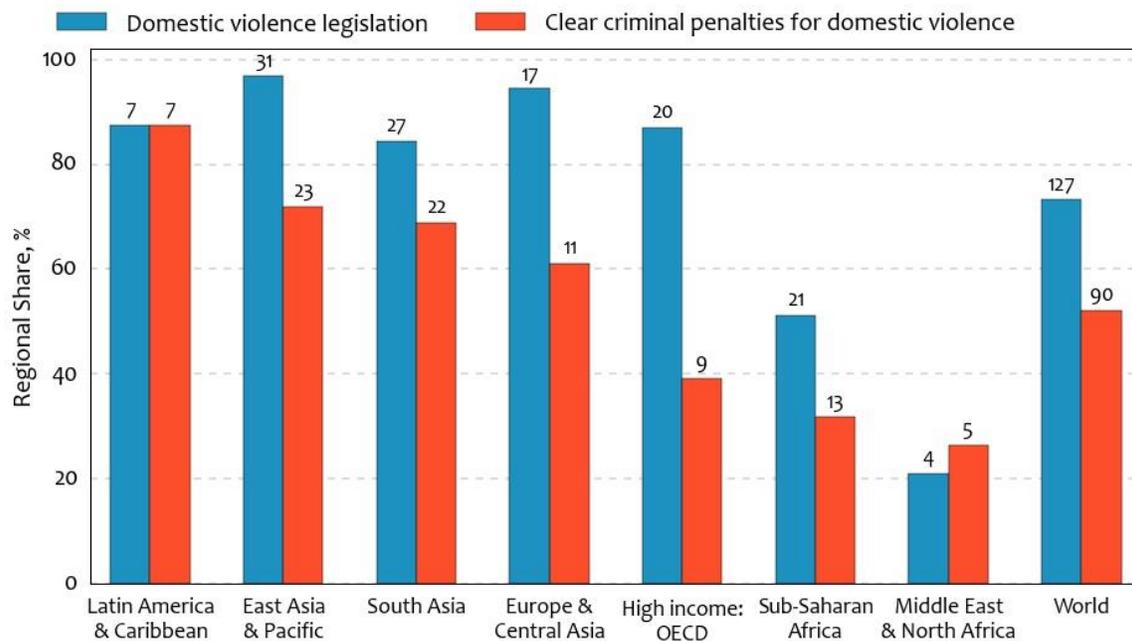
Note: Values above each bar represent number of countries in the region. 173 countries are included.
 Source: Women, Business and the Law 2016: Getting to Equal.

Criminalisation vs conciliation

The sanctions and remedies associated with prohibitions against domestic violence vary across countries. One notable difference is whether the emphasis is on criminal penalties, or reliance more on mediation and conciliation. As shown in Figure 4, while many countries now have at least some legal prohibition against domestic violence -- exceeding 80 percent of countries in all regions except in the Middle East and North Africa and Sub-Saharan Africa -- fewer countries provide for criminal sanctions.

In the region with the highest share of countries with domestic violence legislation is East Asia and the Pacific, only 23 of the 31 countries with legislative prohibitions clearly provide for criminal sanctions. The same pattern can be seen for high-income OECD countries, where only nine of the 20 countries with legislation have criminal sanctions. By way of contrast, all seven Latin American countries with domestic violence legislation provide for criminal penalties.

Figure 4: Share and number of countries with domestic violence legislation, and criminal penalties, 2015



Note: Values above each bar represent number of countries in the region. 173 countries are included.
Source: Women, Business and the Law database, 2016.

There is some ongoing debate about the relative merits and disadvantages of different types of legal sanctions. A number of feminist scholars have voiced their opposition toward criminalising gender-based violence. This can sometimes be traced to broader skepticism about legal approaches – for example, Gangoli (2007) writes that “it is safe to postulate that most feminists have little or no faith in legal solutions to violence”. If the law is itself a patriarchal institution, it may be of little value in transforming women’s subordinate status (Charlesworth, 1994).

Linda Mills, in her book *Insult to Injury* (2003) proposes that the law should only deal “life threatening” cases of intimate partner violence. Others that fall beneath this “standard” should be counseled in “Intimate Abuse Circles” to foster reconciliation. She argues that punitive state interventions are ill-equipped to deal with the intimate and individualised character of domestic violence. She also critiques what she sees as the “victimisation narrative” that uses images of battered women. This is argued to lead to women who have suffered domestic abuse but which is emotional or economic rather than physical in nature, to remain in such relationships because they see their experience as trivial compared to that which is publicised as domestic abuse.

Another practical criticism of criminalisation is that such legal intervention leads to “second battering”, due to delay and the nature of the judicial process. More

generally, views about the role of sentencing in domestic violence crimes differ. Some favour greater reliance on custodial sentences. Others do not consider this a desirable or effective means of protecting the community or of punishing, deterring and rehabilitating offenders.

It is true that holding perpetrators to account does not require incarceration. Interventions to change attitudes and behaviours also play an important role. In Victoria, Australia, for example, the most common intervention for offenders is referral to a men's behavior change programme.⁵⁷ However, as a recent comprehensive official investigation into violence concluded, the extent to which such interventions are successful in changing behavior and keeping victims safe is not known, there are too few programs relative to the number of referrals, and there is no follow-up after completion of a programme.

Conciliation-oriented approaches seeking to preserve the family unit can be problematic because they imply that even in cases of systematic abuse, the couple can or should be reconciled. Conciliation in such cases have been criticised because this proceeds on the assumptions that the parties are equal in terms of power and their ability to negotiate, and that the violent incident is a one-off event. The imbalance in power is somewhat alleviated in the criminal courts by the prosecutor who represents the power of the state on behalf of the victim. It has also been argued that conciliation does not guarantee an end to the violence, or the protection of the victim, and that this approach minimizes the unlawfulness of the conduct of the offender.

A number of Latin American countries have adopted a conciliation-based approach to dealing with intimate partner violence, using mediation and arbitration, although it is also a criminal offence. Argentina, Chile, Mexico, Peru and Bolivia have made conciliation an obligatory first step. Argentina's federal law requires the judge to summon the parties involved for a compulsory mediation, within 48 hours of adopting preventive measures, which reportedly usually results in the couple being directed to educational or therapeutic programmes. It has been argued that the federal family violence law in Mexico includes two contradictory purposes: to both preserve the family as a core social institution, and to protect women against violent partners.⁵⁸ According to Frias (2009), misinterpretation of the procedures in Mexico often promotes reconciliation of the couple. It is notable that the Follow-up Mechanism to the Belém do Pará Convention has recommended that States enact provisions *prohibiting* conciliation, mediation or similar means to resolve cases of

⁵⁷ <http://www.rcfv.com.au>; Volume 1, p 28

⁵⁸ Frías S. (2013) Strategies and help-seeking behavior among Mexican women experiencing partner violence. *Violence Against Women*, 19, 24-49

domestic violence.⁵⁹

4. Do Laws Make a Difference?

The general picture is thus an increasing and now large number of countries having laws against violence in place, including domestic violence, in place. This is good news. Laws are indeed an important policy commitment and create an enabling environment for change. Yet there are several major obstacles to effectiveness – notably lack of awareness, low probability of apprehension and, in some countries, the co-existence of customary and religious laws that are not consistent with the legislative prohibitions. There are marked examples where laws on the books have not significantly affected behavior, from laws prohibiting child marriage in Bangladesh, to sex selective abortion in China and dowry payments in India.

This raises the more general issue of how laws interact with social norms that tolerate violence. Social norms are important in several respects – including their effects on male beliefs and behaviors (whether it is acceptable to beat your wife); female beliefs and behaviors (whether it is okay to be beaten by your husband); as well as on police responsiveness and judicial attitudes, as well as the existence and shape of laws against violence.

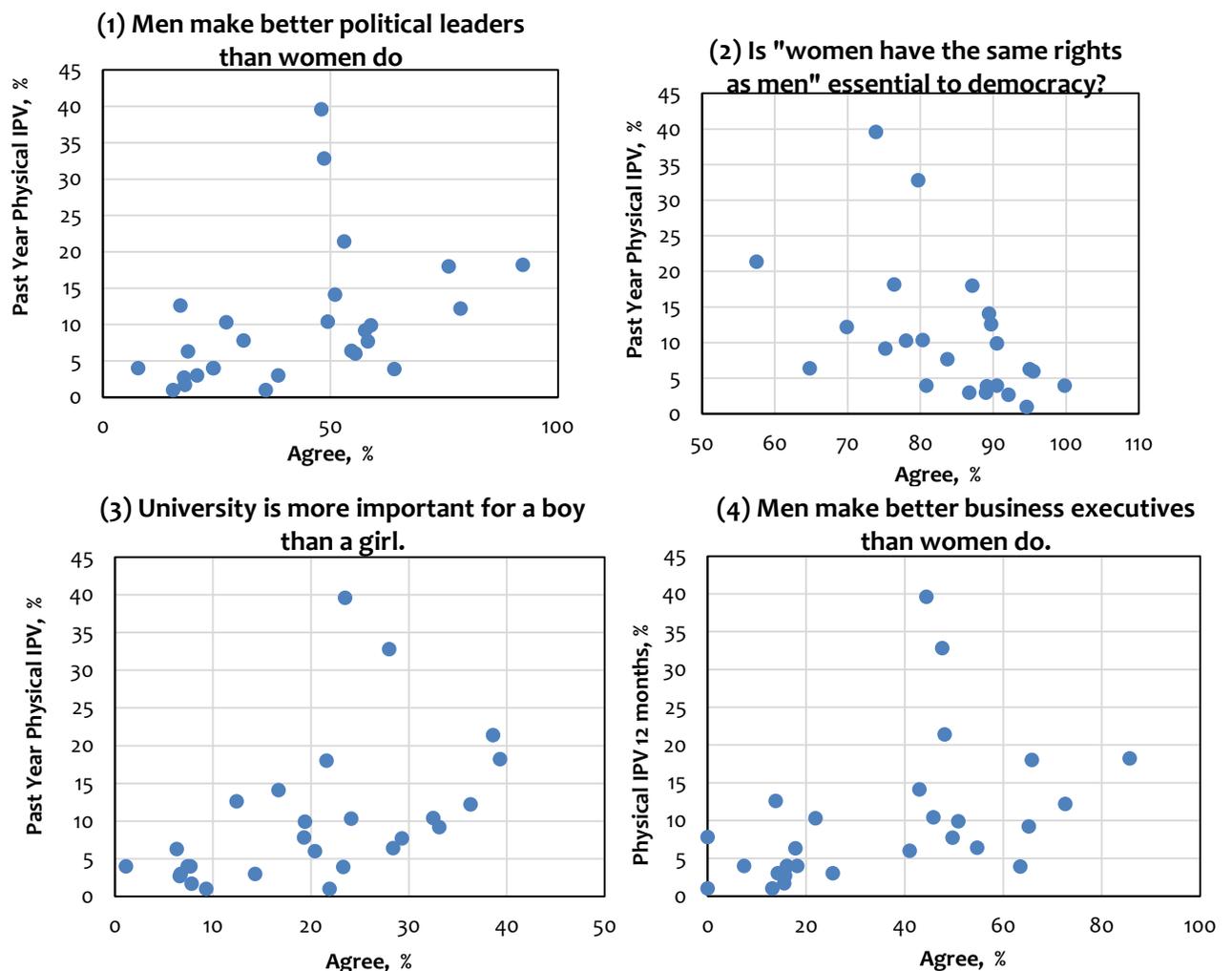
If we simply look across countries with and without domestic violence laws in place, we see that average rates of violence are indeed lower in countries with legislation prohibiting violence – 10.8 vs 16.7 percent. At the same time, there is clearly a large range of rates of violence within both sets of countries, and. And of course the causality may run in the direction of countries with lower acceptability of violence being more likely to enact prohibitions against violence. More careful analysis is needed to try to understand contextual factors and possible transmission mechanisms, as Klugman and Li attempt in a forthcoming paper.

Social norms in many countries condone behaviors that are associated with violence. Recent analysis of micro-data from fifty-five developing countries finds that, on average, over forty-one percent of women themselves condone violence, for various trivial reasons – with rates ranging as high as seventy-one percent in Niger (Hanmer and Klugman 2016). Hanmer and Klugman (2016) found that women’s own attitudes towards violence, their childhood exposure to violence, circumstances of marriage (whether early or polygamous), and education levels of men and women were all significantly associated with the risk of a women in that household experiencing physical domestic violence. Heise and Kotsadam (2015) looking at country-wide factors, and found that ownership rights, as measured by the OECD’s Social Institutions and Governance Index, alongside norms that justify wife beating and male control of female behaviors are the most important factors in explaining levels of physical domestic violence.

⁵⁹ <https://dialogocim.org/2013/08/13/negotiating-oppression-conciliation-in-cases-of-domestic-violence/>

In a forthcoming paper, Klugman and Li investigate how current rates of physical IPV compare with contemporaneous measures of norms. For example, the World Values Surveys ask female and male respondents about their views on political and corporate leadership, rights to participate in a democracy and to pursue a university education. While we have too few matched observations to include in multivariate regression analysis, it is still interesting to look at correlations across countries. Figure 5 reveals a clear pattern whereby norms more supportive of gender equality are associated with lower rates of violence. The correlations coefficients here range around 0.4250 (on political leadership), to 0.46 (corporate leadership), and to 0.4938 (university).

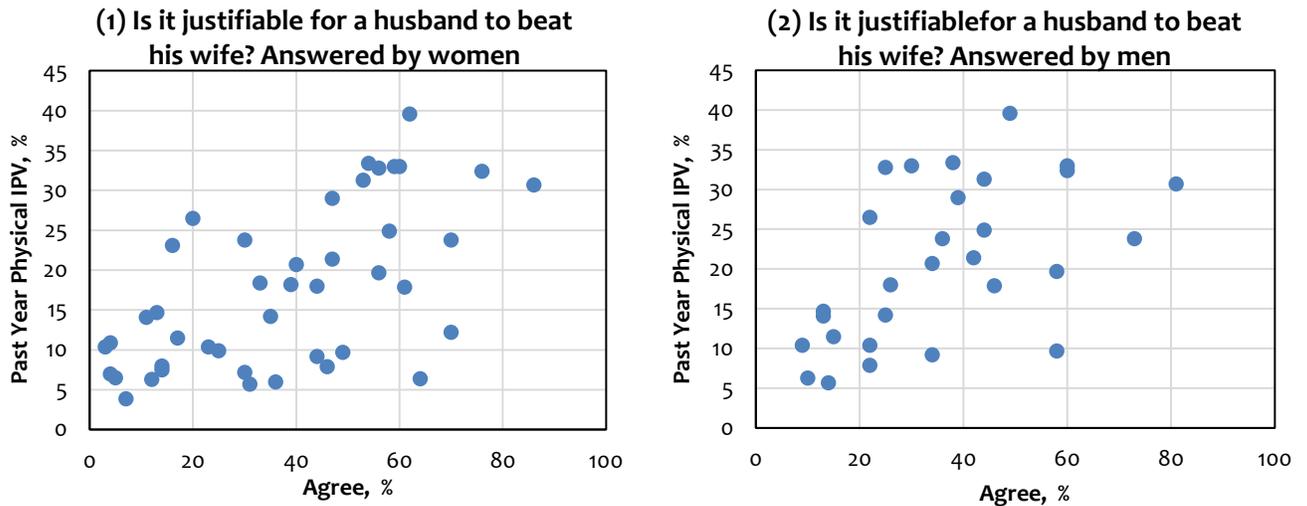
Figure 5. Past Year Physical IPV and Norms about Gender Equality



Source: UN Women (June 2013) and WVS (Wave 5).
 Note: Sample size is 27 countries.

Looking more specifically at attitudes towards violence, questions asked in the Demographic and Health Surveys cast light on associations in developing countries.⁶⁰ Not surprisingly, and confirming earlier studies, Klugman and Li find a positive correlation – the coefficient is 0.6 for women and 0.5 for men.

Figure x. Past Year Physical IPV and Attitudes Towards Violence



Source: UN Women (June 2013) and DHS (various years).

Note: Sample size is 43 countries

A central question that arises in this context is whether national legislation will be effective when the provisions are not consistent with prevailing social norms? There are various reasons why legislation may not be effective. People may be unaware of the law’s existence and avenues of redress. Where social norms tolerate violence, very few victims seek help, and most crimes may still go unsanctioned and unpunished. If victims do not report, the laws may not be enforced. Victims may report but the responsiveness of authorities may be weak. Where the probability of sanctions is low, there may be no deterrent effect on behavior. Social norms may continue to tolerate violence, and not be affected by national legislation. And customary laws may not be consistent with national legislative prohibitions. We can observe some of these obstacles in practice.

Lack of Awareness

The existence of a law is not the same as awareness of the law’s existence. There may be a sizeable gap, especially where the law is recent and/or runs counter to traditional norms. If potential perpetrators are unaware of laws that make violence

⁶⁰ The question is worded as follows: “In your opinion, is a husband justified in hitting or beating his wife in the following situations if she: goes out without telling him; neglects the children; argues with him; refuses to have sex; burns the food.” It is asked of all surveyed women aged 15-49.

against women a punishable crime, then the legal penalties are unable to act as a deterrent.

A 2014 study on masculinity and intimate partner violence in India⁶¹ found that 38 percent of people surveyed were not aware of laws on violence against women. Interestingly, women who were unaware of the law, or regarded the law as inappropriate, were 1.3 to 1.5 times more likely to experience intimate partner violence. Men who were unaware of the law were 1.5 times more likely to perpetrate intimate partner violence.

Reporting and Enforcement

Beyond awareness, the likelihood of apprehension, prosecution and conviction may affect behavior of potential perpetrators, as well as reporting. Whether women report is likely influenced by attitudes and norms around violence, as well as by the ease of reporting, and what happens when women report. India is among the countries where reporting rates are very low. According to a national survey (NFHS-III), fewer than 5 percent of victims sought help from police, social workers, lawyers, doctors and other professionals.⁶²

Non-reporting to the authorities is extensive across many countries. In practice, all around the world, the likelihood of being reported and apprehended is low. This is obvious from a comparison of reporting rates in official crime statistics, with population surveys. Palermo, Bleck and Peterman (2013) conclude that estimates of prevalence based on health systems data or on police reports may underestimate the total prevalence of violence, ranging from 11- to 128-fold, depending on the region and type of reporting.⁶³ Across 11 countries in Europe, reporting rates ranged from a low of 2 per 100,000 to the high of 46 reports annually.⁶⁴

Table 2 compares population based prevalence estimates with reported sexual offence rates. There are several points to note. First, the definition: Total Reported

⁶¹ Nanda Priya, Gautam Abhishek, Verma Ravi, Khanna Aarushi, Khan Nizamuddin, Brahme Dhanashri, Boyle Shobhana and Kumar Sanjay (2014). "Study on Masculinity, Intimate Partner Violence and Son Preference in India". New Delhi, International Center for Research on Women.

⁶² Bhattacharya & Bhattacharya, 2014, p. 246

⁶³ Tia Palermo, Jennifer Bleck, and Amber Peterman (2013), Tip of the Iceberg: Reporting and Gender-Based Violence in Developing Countries, *Am. J. Epidemiol.* (2014) 179 (5): 602-612

⁶⁴ Jo Lovett and Liz Kelly (2009) Different systems, similar outcomes? Tracking attrition in reported rape cases across Europe, <http://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.473.8230&rep=rep1&type=pdf>

"Sexual violence" means rape and sexual assault, including Sexual Offences against Children. The rate is "per 100,000 population", that is total population. The IPV prevalence rate is for women only. The figures and cross-national comparisons should be treated with caution because of the differences that exist between the legal definitions of offences in countries, the different methods of offence counting and recording and differences in the share of criminal offences that are not reported to or detected by law enforcement authorities. While these are not measuring precisely the same thing, the relative numbers and comparisons do provide a good sense of overall orders of magnitude and differences, and in particular, the scale of under-reporting all around the world – ranging from close to around 100-fold in Europe to 3000 in Africa.

Table 2: Regional rates of violence against women – comparing population based surveys with official reporting

Region	Past Year Physical Violence by Intimate Partners (%)			Total Reported Sexual Violence (%)			Country N	Ratio
	Average	Max	Min	Average	Max	Min		
Africa	22.7	32.8	32.8	0.01	0.025	0.000	10	2482
Asia	9.1	23.5	23.5	0.02	0.108	0.001	13	498
Europe	4.4	14.7	14.7	0.04	0.219	0.003	31	114
Latin America and Caribbean	9.3	20.7	20.7	0.04	0.116	0.001	12	263
North America	1.3	1.3	1.3	0.07	0.074	0.074	1	18
Oceania	3.0	3.0	3.0	0.03	0.030	0.030	1	100
World	8.8	32.8	32.8	0.03	0.219	0.000	68	292

Note: Regional averages are unweighted. Most recent year available (data for physical violence by all perpetrators from 2003-2014, reported sexual violence 2005 to 2014).

Source: United Nations, 2015. The World's Women 2015: Trends and Statistics. Statistical Annex (Table 6.1) and United Nations Office On Drugs and Crime (Accessed October 2016).

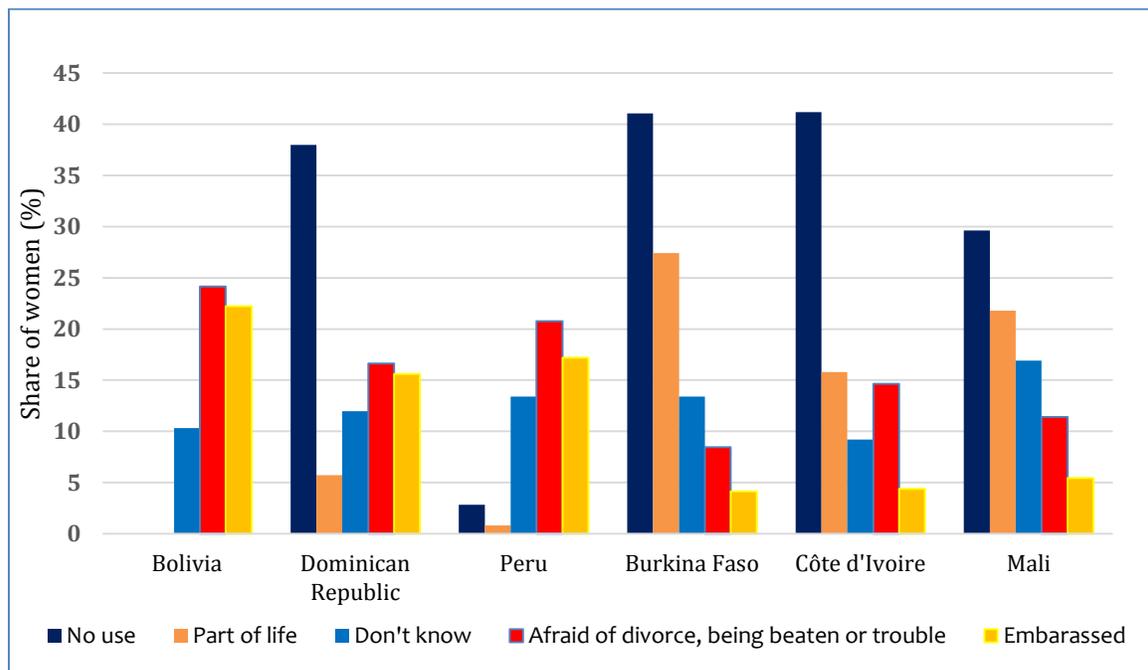
Evidence suggests that the main predictor of disclosure is the severity of violence; this tends to determine whether or not women seek help when they are abused.⁶⁵

The DHS casts some light on reasons for non-reporting in a sample of developing countries. Figure 6, drawing on data collected by the DHS for a few countries, underscores the host of sociocultural and structural barriers that inhibit women's

⁶⁵ Mary Ellsberg xx

ability to report and seek help of any kind. A large proportion of the respondents sees violence as part or life or don't see any use in reporting. A substantial number also say that they do not know how or where to report violence. Many women say they are embarrassed to tell anyone, which underlines the stigma and blame that are often placed on survivors of violence.

Figure 6: Reported reasons for victims not seeking help



Source: Klugman et al 2014; estimates based on DHS using latest available data from 2006-2012

Low reporting rates raise questions about the extent to which states have enabled women to report sexual violence, as is required under the due diligence principle in international law. Country cases cast light on the reasons for non-reporting.

- In Mexico, fewer than one-fourth of victims of intimate partner violence report to the police – among the minority who sought help, they were more likely to have suffered severe violence, tended to be younger and separate or divorced (rather than married or cohabiting).⁶⁶
- In Bangladesh, women reportedly remain reluctant or unable to report violence to officials for a multitude of reasons. Stigma is another important

⁶⁶ Freis, Sonia (2013) Strategies and Help-Seeking Behavior Among Mexican Women Experiencing Partner Violence

barrier. The perceived corruption in the police force and legal institutions also deters reporting.⁶⁷ Many poor women, for example, may not have alternative places to live. Men have the right to unilateral divorce and are entitled to the greatest portion of property, although women are allowed financial compensation, maintenance and child custody up to age seven for boys and menarche for girls. A qualitative study conducted with rural women found that these legal inequalities presented some of the greatest barriers to reporting violence. Most marriages and divorces are negotiated through informal religious ceremonies, which may prevent women from exercising the few rights they have in case of divorce.

There is evidence that siloed approaches to violence can lead to inaccessibility and complexity for people seeking help. A study in Kenya and Zambia concluded that the prosecution and conviction of perpetrators remain a major challenge, because survivors continue face challenges in reporting cases to police stations, accessing legal services and representation in court.⁶⁸

Enforcement or Attrition?

Attrition means that reported cases of violence fail to proceed through the justice system. This has been highlighted as a critical issue in a number of European countries, for example, where detailed studies have been undertaken.⁶⁹ In virtually all countries where major studies have been published, the number of reported rape offences has grown over the last two decades, yet the number of prosecutions has failed to increase proportionately, resulting in a falling conviction rate. In England and Wales, the conviction rate of the mid-1980s (24 percent) dropped to 5 per cent in 2004 and 6 per cent in 2006 (RDS – Office for Criminal Justice Reform, 2008).

Among other things, low and falling conviction rates suggest that states are failing the due diligence responsibilities under international law, outlined in Section 3 above – both in protecting women from violence and providing redress and justice if they are a victim.

⁶⁷ Momtaz S: Human rights violations in Bangladesh: A study of the violations by the law enforcing agencies. *Mediterranean Journal of Social Sciences* 2013, 4(13):101-117.

⁶⁸ http://www.endvawnow.org/uploads/browser/files/popcouncil_one_stops.pdf

⁶⁹ Jo Lovett and Liz Kelly (2009) Different systems, similar outcomes? Tracking attrition in reported rape cases across Europe, <http://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.473.8230&rep=rep1&type=pdf>

Even after women report, prosecution and conviction rates are low. Among the constraints are delays, lack of responsiveness of prosecutors, and lack of funding for support services. There is evidence of interplay between social norms on the one hand, and police and judicial responses on the other. Case studies help to illuminate the constraints in developing as well as developed countries.

The Philippines is known for costly and lengthy litigation processes, and the courts are congested. These problems have been recognized by the authorities in that the Supreme Court Rules allow women who are in imminent danger to file for protection orders without having to pay a fee, and the law prescribes that all women, no matter their status or background, shall be provided with legal assistance. However, to date, there is no national legal aid program for women. NGOs and human rights lawyers often step in and work pro-bono. NGOs such as Saligan, Kaklakasa (Women Against Violence) and the Women's Legal Bureau maintain a network of services dedicated to helping victims of violence.

In Guatemala, a law against violence was enacted in 2008. However while thousands of cases go to court (20,398 cases in 2011), few cases result in a judgment (less than 3% in 2011) and often the sentences are commuted from incarceration to a relatively small fine.⁷⁰ This has been attributed to 'deep-rooted gender biases and stereotypes uniquely prejudice the proper investigation and prosecution of cases involving female victims.' The United Nations High Commissioner for Human Rights has stated that "the cruelty with which some of these crimes [have been] perpetrated [in Guatemala] shows how deeply rooted patterns of discrimination are in society, and also reveals the lack of ins Guatemala and affirmed the state's obligations to ensure that women live free from violence, the law has not reduced the rate of violence against women. Also in Guatemala, there is no right to an interpreter, which is particularly disadvantageous for indigenous women.

India has been subject to fairly extensive scrutiny, and some interesting patterns emerge, as highlighted in Box 1.

Box 1. India, intimate partner violence and the law

The Constitution of India 1950 prohibits discrimination on grounds of sex (Article 15), and while violence against women is not explicitly prohibited, there is a duty on every citizen of India 'to renounce practices derogatory to the dignity of women'. However the Indian Penal Code exempts marital rape (unless the wife is legally separated from her husband or she is under the age of 15 years). In general, the Court has held, "marriage presumes consent."

Following pressure from activists, India passed the Protection of Women from Domestic Violence Act (PWDVA) in 2006. This Act contains a more expansive definition of violence (it includes physical abuse, sexual abuse, verbal and emotional abuse and economic abuse, or the threat thereof). This expanded definition covers married women, de facto partners, sisters, daughters and mothers and ex-partners. One of the strengths of this legislation is that it does (theoretically) apply equally to all religions. However while this Act does consider marital rape a form of domestic violence and grounds for separation, it is not criminalised. Rather, marital rape has a civil character, that provides for

⁷⁰ Karen Musalo and Blaine Bookey, Crimes Without Punishment: An Update on Violence Against Women and Impunity in Guatemala, 10 Hastings Race & Poverty L.J. 265 (2013) http://cgrs.uchastings.edu/sites/default/files/Musalo_Bookey_CrimesWithoutPunishment_2013.pdf

remedies such as protection orders, residence orders, monetary relief and compensation orders. Charges can only be brought under the PWDV Act if a perpetrator breaches a protection order issued by the court.

Investigations of how the PWDVA operates in practice reveal major shortcomings:

- In a study that interviewed 99 complainants in cases that had proceeded under the PWDVA, it was difficult for women to accept sexual assault in marriage as wrong. They found that 'treating a woman's body as an object is so deeply entrenched that even some educated women took it as the norm.

- Another study found that 66 out of 99 women who sought legal remedy under PWDVA sought shelter with their parents because either the court misinterpreted the provisions or it was too difficult for women to stay home during litigation.

- A study into the effect of the PWDVA in West Bengal's Burdwan district attributed continuing high levels of domestic violence and low conviction rates to limited enforcement of the law. This was traced to a number of factors, including a lack of promotion of the law in rural areas, delays in processing cases, shortfalls in adequately trained staff to handle cases, apathetic implementation of judicial orders by police, and the absence of service provision to support victims.

Similar conclusions were drawn in a study on the intersection of gender, class and caste-based factors on the enforcement of laws nationally. A lack of enforcement of the laws was found to be worse for poor, rural, lower caste women who were often unaware of the statutes that could protect them, subject to corrupt police and vulnerable to greater levels of discrimination from authorities based on both gender and class.

In the ICRW 2014 study on masculinity and IPV, the researchers concluded that '[social/familial taboo attached to reporting marital rape restricts women from taking legal action] and that '[t]he lack of a supporting environment and trusted adults and peers to consult on sexual health matters may also increase young women's vulnerability to coercive sexual relations. Perceptions of institutional indifference – at the community, school, and legal and health sector levels – can hinder help seeking'.

Bangladesh has a series of laws prohibiting violence against women. The Suppression of Violence Against Women and Children Act of 2000 and the Prevention of Cruelty Against Women and Children Act of 2000 cover various forms of physical and sexual violence within and outside of relationships, and the Acid Control Act and Acid Crime Prevention Acts was enacted in 2002. To improve reporting and responses, legislation provides for the compensation of victims by perpetrators and remedial measures if law enforcement officers fail to perform their responsibilities. At the same time however, Bangladesh has been criticized for lacking a clear and comprehensive legal definition of intimate partner violence.⁷¹

When legislative prohibitions are enacted alongside religious or customary laws that promote male dominance, the potential of legislative reform is clearly muted. Or customary laws may provide for different sanctions, even including penalties for women and girls survivors.⁷² The interplay of formal and customary laws is especially important in Sub Saharan Africa, South Asia, and the Pacific. For example in Samoa, there is a traditional apology (ifoga) that is considered in sentencing of perpetrators.

⁷¹ Schuler SR, Bates LM, Islam F: Women's rights, domestic violence, and recourse seeking in rural Bangladesh. *Violence Against Women* 2008, 14(3):326-345.

⁷² Michau, et al., 2015

Implementation problems are also evident in high-income countries. As noted above, marked attrition – increased reporting alongside falling rates of prosecution and conviction – is now predominant in Europe across both adversarial and investigative legal systems. Factors characterizing the low conviction rate countries included: failures in investigation to interview victim and/or suspect and high rates of victim withdrawal. Conversely, countries with higher conviction rates had neither of these and were systems where prosecutors took control of the investigation and made most decisions about whether cases proceeded.

In Australia, increased reporting of violence is straining the capacity of police, courts and support services. Analysis of the Australian Bureau of Statistics Personal Safety Survey 2012 found that in one in three instances, the woman contacted police, and in one in eight (about 13 percent) of cases, the victim reported that the male perpetrator was charged. In only one in nine (11 percent) cases, the victim reported that the male perpetrator went to court.⁷³ A recent Royal Commission into Family Violence in the state of Victoria noted that many breaches of intervention orders were not being prosecuted, and that many victims remained responsible for their own safety even after they had sought protection from the justice system.⁷⁴

What works?

When do legislative prohibitions of intimate partner violence actually work? The evidence suggests that several pieces of the puzzle are important, alongside laws – the emerging consensus is that multicomponent, integrated interventions are more effective than single ones in preventing violence against women, such that interventions are supported and reinforced from multiple sources.⁷⁵ For example, media campaigns are more effective when combined with locally targeted community programs.⁷⁶ And, long-standing harmful social norms can take many years to shift – even if there are programs, such as SASA! in Uganda, that have been shown to achieve results within relatively short periods of time (less than three years). It is likely that interventions need to engage over the short, medium and long-term.

⁷³ Peta Cox (2015) Violence against women in Australia: Additional analysis of the Australian Bureau of Statistics' Personal Safety Survey. Sydney : ANROWS, c2015.

⁷⁴ <http://www.rcfv.com.au>; Volume 1, p 10

⁷⁵ Alexander-Scott, M. Bell, E. and Holden, J. (2016) DFID Guidance Note: Shifting Social Norms to Tackle Violence Against Women and Girls (VAWG). London: VAWG Helpdesk
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/507845/Shifting-Social-Norms-tackle-Violence-against-Women-Girls3.pdf

⁷⁶ Fulu et al (2014)

A systematic review of interventions to prevent violence against women highlighted the paucity of rigorous evaluations, but also identified key elements of programs with evidence of success in preventing violence.⁷⁷ These elements were

- Include men AND women
- Engage entire community
- Combine multiple approaches as a part of a single intervention
- Six months or longer
- Address social norms regarding acceptability of violence

Interventions have targeted various specific groups, for example, supporting women and girls to develop and to develop healthier relationships, working with men and boys through say sports clubs, or with teachers and/or religious leaders to transform their attitudes and sense of responsibility regarding VAWG. Cases that have demonstrated success include Promundo's Program H and the Gender Equity Movement in Mumbai.

SASA! began as a program to prevent VAW and HIV in Uganda by supporting community activists in their efforts to reassess the acceptability of violence and gender inequality. The thousands of activities included community conversations, door-to-door discussions, quick chats, training, public events, poster discussions, community meetings, film shows and soap opera groups. SASA! sought to challenge the social acceptance of physical violence in relationships among both women and men; and women cannot refuse sex from her partner. The approach is now reportedly being used in more than 15 countries in various contexts and settings such as: refugee camps and settlements, pastoralist communities, high-density urban communities, and various faith-based institutions and rural communities.

Here we focus on elements that appear to be important in supporting legislative prohibitions against violence. We do not review the evidence on community based and other interventions, which are well summarized by Arango et al (2014) and Alexander-Scott, Bell and Holden (2016). We focus on three broad elements, that are not mutually exclusive: changing norms, collective action, improved responsiveness and better data and monitoring.

Changing norms

The importance of shifting norms around violence cannot be understated. As the CEDAW Committee stated in the context of India:

‘Laws alone or judicial activism cannot bring about enduring changes in an ancient social fabric such as India’s. The socialization process is too deep and

⁷⁷ Arango et al (2014)

too entrenched to be tackled through legislation alone. Very often, enforcement agencies and institutions remain steeped in gender biases. Further, the biases that restrict women's mobility and access to resources are deep rooted in economic and social interests and unequal power relationships. Patriarchal controls redefine and reassert themselves cutting across barriers of caste and community threatening the realization of the dreams of our Constitution of a gender-just society, free from exploitation. It is therefore necessary to change people's mindsets and bring about a societal re-orientation in all sectors and at all levels of oppression and subordination.'

A recent overview of different approaches that aim to shift social norms to prevent violence highlighted that most interventions with evidence of success operate at multiple levels and employ multiple strategies (e.g. small group work and training, community mobilisation, as well as social marketing, for example).⁷⁸

However, "most programmes were not explicitly designed with social norms theory in mind, and have not measured changes in social norms as distinct from changes in individual attitudes and behaviours. Further, interventions tend to be small scale.. and we know very little about whether they brought about sustained change over time. This reflects the nascent state of the evidence base and examples are included here because they have the potential to change norms and as such offer important lessons for further work on social norms."

Collective action and changing norms

The potential and tools of collective action are changing fast. Today, as Evans and Nambiar 2014 point out, such groups can draw on the connective power of social media and online platforms to inspire, initiate and facilitate people's need to highlight and find solutions to shared problems – including gender-based violence – which can mobilise and influence well beyond the site of any specific event, as demonstrated by the response to the gang rape and eventual death of a young female student in Delhi in 2012. New technology creates huge potential for raising awareness, mobilizing action and shared problem solving on a scale that was in the past limited by geography and by local cultural norms.

True (2016) explores how the global context of norm diffusion and advocacy networking is prompting greater recognition of—and action on—violence in Asia, to change norms and advance social and policy change.⁷⁹ The proliferation of transnational feminist networks and women's international NGOs is documented –

⁷⁸ xx DFID Social Direct

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[http://www.unrisd.org/80256B3C005BCCF9/httpNetITFramePDF?ReadForm&parentunid=0AE05C2AE73E998DC1257FD10051838E&parentdoctype=paper&netitpath=80256B3C005BCCF9/\(httpAuxPages\)/0AE05C2AE73E998DC1257FD10051838E/\\$file/True.pdf](http://www.unrisd.org/80256B3C005BCCF9/httpNetITFramePDF?ReadForm&parentunid=0AE05C2AE73E998DC1257FD10051838E&parentdoctype=paper&netitpath=80256B3C005BCCF9/(httpAuxPages)/0AE05C2AE73E998DC1257FD10051838E/$file/True.pdf)

highlighting the role of such regional organisations as the Asia Pacific Women and Law and Development (APWLD), with a network of 180 local organizations across 25 countries in Asia, focused on advocacy and training in legislative drafting.

There are now many examples of global movements. It is useful to highlight some prominent cases. Social media and social networking are the heart of campaigns such as Hollaback, Stop Street Harassment and Collective Action for Safe Spaces.⁸⁰ One Billion Rising used an Internet-based campaign and a connected series of flash mobs across the world to raise awareness around gender-based violence.

The annual White Ribbon Days, which are now the largest effort in the world of men working to end men's violence against women, which are now commemorated in many countries on November 25, which is also the International Day for the Eradication of Violence Against Women.

At the same time, it is important to recognize that the space for civil society may be limited. Nor is the process necessarily linear. In China, for example, the passage of the first-ever national law against domestic violence in 2015, in part due to the work and lobbying of women's groups, as well as the twentieth anniversary of the historic Beijing Conference, was followed by a crackdown and further repression of women's groups.⁸¹

Improving Responsiveness

There is evidence that siloed approaches to violence can undermine the effectiveness of services. This fragmentation can lead to inaccessibility and complexity for people seeking help.

In this light, the above-mentioned Victorian Commission recently recommended the establishment of "Support and Safety Hubs" in every locality. The rationale is that a single, area-based and highly visible intake point will make it easier for victims of family violence to find help quickly, built around one referral for each family, which give services and police the information they need about the risks to, and needs of, various family members.

This type of approach has been introduced in a range of countries, including in Latin America and South Asia. However, evidence on implementation of these so-called

⁸⁰ www.ihollaback.org; www.stopstreetharassment.org; www.collectiveactiondc.org

⁸¹ "Adoption and Repression in Authoritarian Human Rights: The Development of the Anti-Domestic Violence Law in China" (PAPER I REFEREED FOR EAST ASIAN JOURNAL – HAGGARD SAID IT IS STILL IN PROCESS>>

one-stop shops is limited. We do know that when comprehensive one-stop shops are adequately resourced, staffed and managed, reporting and demand for services increases. For example, following the introduction of comprehensive post-rape care services, the reporting of rape was ten times higher in the following three months at a district hospital in Kenya.⁸² One-stop Centres in South Africa facilitate multi-sectoral collaboration between police, courts, health and social services to provide quality, sensitive treatment for rape survivors.

The importance of data and monitoring

Data is pivotal to monitoring performance in 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.

A recent DFID note⁸³ outlines example indicators and questions that could be used to measure a social norm around the acceptability of violence, which can be incorporated into an monitoring and evaluation framework. Depending on the approach to evaluation, such indicators could be used to assess programme impact of say economic empowerment or education programs on social norms, for example.

CONCLUSIONS AND THE WAY AHEAD

There is a new global consensus about the unacceptability of violence against women, as reflected in the new Sustainable Development Goals. Our review showed that new and emerging international legal norms and national state laws—including the most recent Chinese draft domestic violence 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 in providing mechanisms to support victims and their families in a range of ways.

As a signatory to CEDAW, States have a duty to protect women from violence and to enforce laws to prevent and punish violence against women. In the 1993 Declaration of the Elimination of Violence Against Women, the definition of 'violence against women' includes marital rape. The evidence suggests that CEDAW and DEVAW are being used as standard setting documents to inform the drafting of domestic

⁸² Taegtmeyer et al., 2006

⁸³ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/507845/Shifting-Social-Norms-tackle-Violence-against-Women-Girls3.pdf

legislation against violence, including the definition of violence and the scope of relationships covered, and the possibilities for protection and support.

In sum, much progress has been made in prohibiting violence against women, but there is still far to go. The commitments made under international law need to be given life and force on the ground through national laws alongside programs working to bring about changes in norms about violence.

REFERENCES

- Abeyratne, R., & Jain, D., 2013, Domestic Violence Legislation in India: Pitfalls of a Human Rights Approach to Gender Equality, *The American University Journal of Gender, Social Policy & the Law*, 21(2), 333-378.
- Becker, G., 1968, Crime and Punishment: An Economic Approach, *Journal of Political Economy*, 76 (2), 169-217
- Bhatia, M. 2012, "Domestic Violence In India: Cases Under The Protection Of Women From Domestic Violence Act, 2005", *South Asia Research*, vol. 32, no. 2, pp. 103-122.
- Constitution of India, as on 1 Dec 2011, Government of India, Ministry of Law and Justice
- Das, S., 2015, The Effect of the Adoption of a Pro-Women Domestic Violence Policy on Dowry Violence: Empirical Evidence from India, *Economic Record*, Vol 91, 78-93
- Djamba, Yanyi K, and Kimuna, Sitawa R (eds) 2015, *Gender-Based Violence: Perspectives from Africa, the Middle East, and India*, Springer International Publishing
- Gadkar-Wilcox S, 2012, Intersectionality and the Under-Enforcement of Domestic Violence Laws in India, *University of Pennsylvania Journal of Law and Social Change*, Vol.15, Issue 3, Article 5
- Gangoli, G., and Rew, M., 2011, Mothers-in-law against daughters-in-law: Domestic violence and legal discourses around mother-in-law violence against daughters-in-law in India, *Women's Studies International Forum* 34, 420-429
- García-Moreno, C. et al, 2006, Prevalence of intimate partner violence: findings from the WHO multi-country study on women's health and domestic violence, *The Lancet*, Volume 368, Issue 9543, 1260 – 1269
- Ghosh, B., and Choudhuri, T., 2011, Legal Protection Against Domestic Violence in India: Scope and Limitations, *Journal of Family Violence* 26:319- 330
- Government of India, 2005, Second and Third periodic reports on the Convention on the Elimination of All Forms of Discrimination Against Women, UN Committee on the Elimination of Discrimination Against Women
- Government of India, 2014, Crime in India 2014, National Crime Record Bureau, New Delhi.
- Gupta B & Gupta M, 2013, Marital Rape: - Current Legal Framework in India and the Need for Change, *Galgotias Journal of Legal Studies* Vol. 1, No. 1 <http://law.galgotiasuniversity.edu.in/pdf/issue2.pdf>
- Heise, Lori L et al, 2015, Cross-national and multilevel correlates of partner violence: an analysis of data from population-based surveys, *The Lancet Global Health*, Volume 3, Issue 6, e332 - e340
- Jayachandran, Seema (2014) "The Roots of Gender Inequality in Developing Countries", NBER Working Paper No. 20380. Issued in August 2014 <http://www.nber.org/papers/w20380>
- Klugman, J; Hanmer, L; Twigg, S; Hasan, T; McCleary-Sills, J; Santamaria, J, 2014, *Voice and Agency: Empowering Women and Girls for Shared Prosperity*. Washington, DC: World Bank Group.
- Mandel, S., 2014, The Impossibility of Marital Rape: Contestations Around Marriage, Sex, Violence and the Law in Contemporary India, *Australian Feminist Studies*, 29:81, 255-272
- Musalo, K, and Blaine B. 2013 "Crimes without punishment: an update on violence against women and impunity in Guatemala." *Hastings Race & Poverty Law Journal* Vol 10. 265-292
- Prabhat, J. et al., 2006, "Low male to female sex ratio of children born in India: national survey of 1.1 million households", *Lancet*, vol. 367 (January 2006), pp. 211-18.

Priya, N, Abhishek G, Ravi V, Aarushi K, Nizamuddin K, Dhanashri B, Shobhana B, and Sanjay K, 2014, "Study on Masculinity, Intimate Partner Violence and Son Preference in India". New Delhi, International Center for Research on Women.

Sally Engle Merry 'Constructing a Global Law: Violence against Women and the Human Rights System,' (2003) 28(4) Law and Social Inquiry 942.

Gaby Ortiz-Barreda, Carmen Vives-Cases, Diana Gil-Gonzales, 'Worldwide Violence Against Women Legislation: An Equity Approach,' (2011) 100 Health Policy 126.

Mary Ellsberg, Diana J Arango, Matthew Morton, Floriza Gennari, Sveinung Kiplesund, Manuel Contreras, Charlotte Watts, 'Prevention of Violence Against Women: What does the Evidence Say,' (2014) 385 The Lancet 1558.

Manjeet Bhatia, 'Domestic Violence In India: Cases Under The Protection Of Women From Domestic Violence Act, 2005,' (2012) 32(2) South Asia Research 104.

Raveet Kaur, Garg Suneela, 'Addressing domestic violence against women: An unfinished agenda,' (2008) 33 Indian Journal of Community Medicine 76.

Diane Mitsch Bush, 'Women's Movements and State Policy Reform Aimed at Domestic Violence against Women: A Comparison of the Consequences of Movement Mobilization in the U.S. and India,' (1992) 6(4) Gender and Society 599.

Palermo, Tia, Jennifer Bleck, Amber Peterman, 'Tip of the Iceberg: Reporting and Gender-Based Violence in Developing Countries,' (2014) 179(5) American Journal of Epidemiology

Marianne Hester "Making it through the Criminal Justice System: Attrition and Domestic Violence" (2006) 5 Social Policy and Society.

Reporting violence to Police: A survey of victims attending domestic violence services, Emma Birdsey and Lucy Snowball, NSW Bureau of Crime Statistics and Research, Issue paper No 1, October 2013.

Emma Hitchings, "A Consequence of Blurring the Boundaries – Less Choice for the Victims of Domestic Violence?" (2006) 5, Social Policy and Society, 5, pp 91-101

Evan Stark, "Reconsidering State Intervention in Domestic Violence Cases" (2006) 5 Social Policy and Society, 5, pp 149-159

Mills, L.G. (2003), *Insult to Injury: Rethinking Our Response to Intimate Abuse*, Princeton, NJ: Princeton University Press.

Fiona Macaulay, "Judicialising and (de) Criminalising Domestic Violence in Latin America" (2006) 5 Social Policy and Society, pp 103-114.

Ghosh, B. & Choudhuri, T., 2011. Legal Protection Against Domestic Violence in India: Scope and Limitations. *Journal of Family Violence*, Volume 26, pp. 319-330.

Mala Htun and S. Laurel Weldon (2012) "The Civic Origins of Progressive Policy Change: Combating Violence against Women in Global Perspective, 1975–2005." *American Political Science Review*, Volume 106, Number 3.

Merry, S. E., 2006. *Human Rights & Gender Violence: Translating International Law into Local Justice*. London: The University of Chicago.

Michau, L. et al., 2015. Prevention of violence against women and girls: lessons. *The Lancet*, Volume 385, pp. 1672-84.

Krishnan, S., 2014. Responding to Rape: Feminism and Young Middle-Class Women in India. In: M. Alston, ed. *Women, Political Struggles and Gender Equality in South Asia*. Hampshire: Pangrave Macmillan, pp. 19-32.

Etienne M, 'Addressing Gender-Based Violence in an International Context' (1995) 18 *Harvard Women's Law Journal* 139

Gadkar-Wilcox S, 'Intersectionality and the Under-Enforcement of Domestic Violence Laws in India' (2011-2012) 15

University of Pennsylvania Journal of Law and Social Change 455 Gopal G, 'Gender And Economic Inequality In India: The Legal Connection' (1993) *Boston College Third World Law*

Journal 63 Jain P, 'Balancing Minority Rights and Gender Justice: The Impact of Protecting Multiculturalism on Women's Rights in India' (2005) 23 *Berkeley Journal of International Law* 201

Klugman J & Twigg S, 'The Role of Laws and Institutions in Expanding Women's Voice, Agency, and Empowerment'

(December 2012) *World Bank Legal Review Volume IV: Innovation and Empowerment for Development* 213

Krugman A, 'Being Female Can Be Fatal: An Examination of India's Ban on Pre-Natal Gender Testing' (1998) 6

Cardozo Journal of International and Comparative Law 215 Sood A M, 'Gender Justice through Public Interest Litigation: Case Studies from India' (2008) 41 *Vanderbilt Journal of Transnational Law* 833