

Developing policy and legal frameworks for ending violence against women: International experiences

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Violence against women continues to hamper the full enjoyment of human rights by women. According to UN Women, a 2013 review revealed that 35 per cent of women worldwide have experienced either physical and/or sexual intimate partner violence, or non-partner sexual violence. Between 40-50 per cent of women in European Union countries experience unwanted sexual advances, physical contact or other forms of sexual harassment at work. In the United States, 11.8 per cent of new HIV infections during the previous year among women who are older than 20 years were attributed to intimate partner violence.

States are obligated under a comprehensive international legal and policy framework to address violence against women, including through the enactment of legislation. The first laws directly addressing domestic violence were passed in the United States of America and the United Kingdom in the 1970s and early 1980s, resulting in changes to criminal codes and the creation of separate laws containing the protection order remedy. Since the 1990s, many States have adopted or revised legislation on violence against women. These legal reforms have varied significantly in terms of the forms of violence they address, the type of action they mandate and the area of law they reform. These laws can be constitutional, civil, criminal or family law. Most legislation to date has addressed one or a few forms of violence. Some States have enacted a single, comprehensive piece of legislation on violence against women, amending various legal codes and making provision for services and other preventative measures, while others have addressed the issue through incremental reforms. Some states have enacted comprehensive laws specific to violence against women that provide multiple types of remedy, such as the 1994 Violence against Women Act in the United States, which authorized federal support for training for police, prosecutors and judges; shelters and rape prevention programmes; and a national telephone hotline. Some States have addressed violence against women in their Constitutions.

While States have made significant progress in the enactment of legislation to address violence against women, numerous gaps and challenges remain. The United Nations Secretary-General's 2006 in-depth study on all forms of violence against women notes that, as at 2006, only about half of United Nations Member States had in place legislative provisions that specifically addressed domestic violence, and fewer than half had legislation on sexual harassment, or on trafficking. According to the latest study by the United Nations Development Programme, 97 countries in the world either have drafted or enacted domestic violence legislation. Even where legislation existed, it was often limited in scope and coverage. For example, definitions of rape may be limited to incidents involving use of force. Or, definitions of domestic violence may be limited to physical violence. Or, sexual violence is treated as a crime against the honour of the family or against decency, rather than a crime against a woman's right to bodily integrity. Or, a rapist may go free if he marries the victim. Or, there may be provisions of immunity in cases of spousal or marital rape. Marital rape is not a prosecutable offence in more than 50 countries. Or, there may exist laws that allow early or forced marriage. Or, some laws allow inadequate penalties for crimes of violence against women, including reduction and/or elimination of sentences for so-called crimes of honour. Domestic violence and harmful traditional practices have often been seen as private matters that are "outside of justice".

In failing to protect the rights and well-being of survivors or punish perpetrators, States displays the existing social biases tolerating violence. The failures of States to implement international standards at the national and local level perpetuate the culture of impunity.

A recent study of the attitudes of women in 26 different countries towards intimate partner violence found that a growing number of women globally reject domestic violence. Nevertheless, many women continue to accept and/or justify violence inflicted upon them by intimate partners. They say that sometimes a husband can get annoyed or angered by things which his wife does. And if he hits or beats his wife as a result, his action is considered justifiable by the wife. Once laws are in place, they convey a strong message that violence against women is not tolerated and that it is the right of every woman to live free of violence. Vigorous arrest and prosecution policies and appropriate sentencing make a statement to

society that violence against women is a serious crime. In addition to the symbolic effect, the preventative effect of such laws is considerable. Therefore, it is no surprise that adoption and enforcement of national laws to address and punish all forms of violence against women and girls is the first goal to be achieved by 2015, as announced by the United Nations Secretary-General's UNiTE to End Violence against Women campaign.

Talking about intimate partner violence, there are reasons why separate legislation is recommended to address this violence. General criminal offences such as assault, battery and grievous bodily harm are not well-suited to address the complexity and specificity of domestic violence. First, they can typically only be invoked if there has already been physical violence. Domestic violence manifests not just as physical violence but also as sexual abuse, property damage, emotional and psychological abuse, intimidation, harassment, stalking, economic deprivation, or threats of any of the above. Second, general criminal offences are typically conceptualized as a single act whereas domestic violence is rarely a single incident. Instead, it commonly forms a pattern of abuse within a continuum of violence and control. Finally, penalties for assault and battery are often insufficient to properly punish and deter offenders for the severity and damaging impact of domestic violence.

A number of attempts have been made globally to develop model laws, strategies and measures to facilitate and encourage action. In 1996, the United Nations Special Rapporteur on violence against women, its causes and consequences, presented a framework for model legislation on domestic violence. The framework urges States to adopt legislation with a range of certain elements. These include the provision of the broadest possible definition of domestic violence; description of complaints mechanisms and the duties of police officers; provision of protection measures such as restraining and protection orders; inclusion of references to both criminal and civil proceedings; and the provision of support services for victims, programmes for perpetrators and training for police and judicial officials.

Various other initiatives by the United Nations and other international organisations as well as States to formulate model laws followed. As recent as 2010, the United Nations Division for the

Advancement of Women, published a Handbook for Legislation on Violence against Women. The latest in this context is the upcoming publication by the United Nations Development Programme (UNDP) which also describes the types of support provided by UNDP for national domestic violence law reform.

Legislation on violence against women has predominantly addressed intimate partner violence. Nevertheless, a number of countries in the recent years have passed legislation that addresses several forms of violence. For example, the Mexican Law on access of Women to a Life Free of Violence of 2007 addresses forms of violence in the family, in the workplace and educational institutions, in the community, in State institutions, and femicide. Regardless of whether a range of forms of violence are addressed in separate legislation or in single piece of legislation, a comprehensive legal framework must be applicable to each form, including measures for the prevention of violence, protection and support of the complainant and survivor, punishment of the perpetrator, and measures to ensure the thorough implementation and evaluation of the law. The more comprehensive gender-based violence laws of Latin America and Afghanistan also place wide ranging duties on the state to undertake measures to prevent all forms of gender based violence such as developing national action plans, undertaking education and media campaigns, collecting data and statistics, and establishing and supporting a range of services for victims.

There are other lessons to be learned from the various attempts to develop model legislation on violence against women. First and foremost, legislation should be based on the acknowledgement that violence against women is a violation of women's human rights and a form of gender-based discrimination. Accordingly, legislation should provide that no custom, tradition or religious consideration may be invoked to justify violence against women. Needless to say, legislation on violence against women should recognize how women and men experience violence differently.

The United Nations General Assembly defines "violence against women" as 'any act of gender-based violence that results in, or is likely to result in, physical, sexual or mental harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life'. The 1993 United Nations Declaration on the

Elimination of Violence against Women states that “violence against women is a manifestation of historically unequal power relations between men and women, which have led to domination over and discrimination against women by men and to the prevention of the full advancement of women, and that violence against women is one of the crucial social mechanisms by which women are forced into a subordinate position compared with men”. It also notes that this violence could be perpetrated by assailants of either gender, family members and even the “State” itself.

Forms and manifestations of violence against women vary depending on the specific social, economic, cultural and political context. These include, but are not limited to, domestic violence; sexual violence, including sexual assault and sexual harassment; harmful practices, including early marriage, forced marriage, female genital mutilation, female infanticide, prenatal sex-selection, virginity testing, HIV/AIDS cleansing, so-called honour crimes, acid attacks, crimes committed in relation to bride-price and dowry, maltreatment of widows, forced pregnancy, and trying women for sorcery/witchcraft; femicide/feminicide; trafficking; and sexual slavery. Legislation on violence against women should also recognize violence perpetrated by specific actors, and in specific contexts. For example there are acts of violence against women in the family, violence against women in the community, violence against women in conflict situations, and violence against women condoned by the State, including violence in police custody and violence committed by security forces.

Legislation on violence against women should be comprehensive and multidisciplinary, criminalizing all forms of violence against women, and addressing prevention of violence, and protection and support of survivors. Duties and accountability of those who are involved in the implementation of the legislation should be spelled out, and the measures to hold them accountable should be transparent.

Legislation on violence against women should also apply equally to all women without discrimination as to race colour, language, religion, political or other opinion, national or social origin, property, marital status, sexual orientation, HIV/AIDS status, migrant or refugee status, age

or disability. It should also recognize the multiple discrimination women experience throughout their life cycle.

It is necessary to clarify the relationship between customary or religious law and the formal justice system, and try to codify the survivor's right to be treated in accordance with human rights and gender equality standards under both processes. While there is some evidence of the benefits of certain informal justice mechanisms, such as "women's courts", which are often more accessible to women survivors of violence than the official court system, certain Alternative Dispute Resolution mechanisms such as mediation must not be used in all cases of violence against women, both before and during legal proceedings. Mediation removes cases from judicial scrutiny, presumes that both parties have equal bargaining power, reflects an assumption that both parties are equally at fault for violence, and reduces offender accountability. For example, the Spanish Organic Act on Integrated Protection Measures against Gender Violence of 2004 forbids mediation of any kind in cases of violence against women.

In order to be fully effective, the adoption of new legislation on violence against women should be accompanied by a review and amendment, where necessary, of all other relevant laws, such as family and divorce law, property law, housing rules and regulations, social security law, and employment law, so as to ensure a consistent legal framework that promotes women's human rights and gender equality, and the elimination of violence against women.

It is vital that legislation on violence against women, before its finalization and adoption, be analyzed to ensure that it does not have unintended negative effects on survivors and their families. Consultation with survivors and those who provide services to them is an essential part of this process. Circulating the draft legislation as widely as possible to the groups that will be affected by the new legislation and the agencies that will be charged with implementing and enforcing the legislation can help identify any potential problems that might be caused by the legislation.

While a historic number of laws and policies against violence are now in place, implementation is still lagging behind. Implementation of laws is enhanced by educating police and judicial

officials, such as the training given to police in the Republic of Korea on the laws on domestic violence, procedures in responding to reports and steps to protect victims. Development and financing of a multi-sectoral response to the implementation of legislation on violence against women, with a range of concrete measures to be implemented, is another factor that will ensure the effective implementation of the legislation. Legislation should also be accompanied by a specific institutional monitoring mechanism.

In addition to the prevention measures that legislation on violence against women addresses, it is tremendously important that a range of actions are implemented for the purpose of prevention in a wider context of promoting gender equality and women's empowerment. After all, the best way to end violence against women is to prevent it from happening in the first place. Education of women and girls is an area of strategic importance in this regard. Studies also suggest that educated women and girls are more likely to reject the notion that domestic violence is acceptable. Women's economic empowerment, leading to their financial autonomy, expands their choices and control. More equal participation of women and men in political decision-making will help establish the equal status of women and men in society, thus contributing to the elimination of discrimination against women. Public awareness raising and social mobilization, with the engagement of the mass media, in challenging the culture of impunity and the harmful gender norms that perpetuate violence against women, is another strategic area that needs attention. Young women and men have a particular role and opportunity in redefining and transforming gender relations to be based on harmony, mutual respect and non-violence. Last but not least, involving men and boys in addressing violence against women is a must. Several networks of men promoting gender equality and taking a firm stance against violence against women are active and gaining visibility globally. Partnering with such groups will enhance the effectiveness of any effort to eliminate violence against women.

In concluding my presentation which highlighted just some key aspects of effective legislation on violence against women, I would like to emphasize the need for improved data collection. It goes without saying that an evidence-based approach ensures that the design of legislation is

well-informed, thus positively impacting on the effectiveness of the legislation. However, in reality, many countries do not undertake systematic data collection on the scope, prevalence and incidence of all forms of violence against women. Nor do they conduct enough research to assess the causes and consequences of such violence. At the same time, a 2005 WHO study based on data from 24,000 women in ten countries noted that 55% to 95% of women who had been physically abused by their partners had never contacted the police, NGOs or shelters for help. It is evident that there is so much we do not know. Lastly, information on good practices and lessons learned need to be collected, documented and evaluated, for the purpose of continuous improvement in the work we do to eliminate violence against women.

Thank you.