

Women's Voice and Agency Research Series 2014 No.7

GENDER EQUALITY & DEVELOPMENT

WOMEN'S VOICE AND AGENCY: THE ROLE OF LEGAL INSTITUTIONS AND WOMEN'S MOVEMENTS

Rangita de Silva de Alwis

*Director of the Global Women's Leadership Initiative and the Women in Public Service Project at the Woodrow Wilson
International Center for Scholars*

*This paper was commissioned by the World Bank Group to help inform a forthcoming report on
women's voice, agency, and participation. It does not necessarily reflect the views and research of
the World Bank Group.*

Feedback and comments are welcome at: genderandagency@worldbank.org
More details about the report are available at: www.worldbank.org/gender/agency



THE WORLD BANK

Introduction

Global events like the Beijing Women's Conference of 1995 have resulted in the creation of strong international frameworks that set standards for women's rights around the world. Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), the Beijing Platform for Action, and other international norms define the scope of universal rights for women and girls, and have opened new spaces for regional and national legal reform. Bottom-up engagement with these international laws and institutions by local and transnational women's movements has catalyzed widespread changes in lawmaking and transformed standard-setting documents into tools for reform.

The emergence of the international women's rights regime has had a tremendous impact on social movements locally.¹ New categories of analysis emerged from the Beijing Conference of 1995 along with a new vernacular for issues like domestic violence and sexual assault, issues that previously have been silenced. These working vocabularies were hammered out on the anvil of global action platforms. New transnational interactions were developed at the World Conferences that enabled the creation of a common dialogue around lawmaking, and helped build strong local women's rights movements connected to global and regional movements. They did so by composing new mandates and provisions that held the state itself responsible. As women's issues were integrated into the human rights agenda, the women's movement brought the issue of women's voice and agency to the forefront of the global development agenda and pushed to integrate them into national and local policy and practice agendas.

The post-Beijing era saw the ferment of transnational networks and nongovernmental organizations that worked closely with the United Nations to shape and expand global agendas to include new voices from the global South. International jurisprudence founded on CEDAW, the Beijing Platform of Action, the Millennium Development Goals and Security Council resolutions all promoted new theories and practices. It These treaties provided powerful ammunition to local and national women's movements by providing a universally accepted benchmark to help frame national laws and policies, as well as by which to monitor the implementation of national laws.

The international agenda also helped to mobilize governments to take action, providing terrain strong platform for national lawmaking on issues such as domestic violence.² The global domestic violence efforts informed and motivated domestic violence legislation and policies in several countries including Bangladesh, where the CEDAW Committee's Concluding Observations to the Bangladeshi State Party Report called for a national domestic violence law.³ An international platform has broadened the space for the transnational movement of ideas and strategies through the universal language of human rights norms.⁴ The establishment of this common vernacular has enabled local movements to adopt a language

¹ <http://www.un.org/womenwatch/daw/beijing/>

² At the UN World Conference on Human Rights in Vienna in 1993, governments recognized violence against women as a serious human rights threat.

³ Rabat Roundtable on Women leading Change in the Arab and Muslim World, May 2011 presentation made by the Bangladesh National Women Law Association (BNWLA). The paper is with the author.

⁴ Just as the international and grassroots movements informed each other to create progress in the area of domestic violence, international norms enshrined in the Convention on the Elimination of Discrimination against Women (CEDAW) propelled both these movements into action. The norm setting process gained momentum through transnational action and attendance at UN conferences on global issues ranging from the Vienna conference in 1993; the population conference in Cairo in 1994; the sustainable development conference in Copenhagen in 1995, and the population conference in 1994. This standard setting power of the human rights framework including the CEDAW is an effective part of domestic violence lawmaking in Asia. The commitments made by governments at the UN and regional conferences were an important grounding for the feminist initiatives described above and also for local grassroots movements. Women's groups have used their international obligations as leverage to revise both international and national laws and create policies.

that articulates a set of universal women's rights, thus strengthening both transnational as well as national women's movements.⁵

Since the growth of these international and national frameworks, the world has seen transformative legal changes in many areas that deeply affect women, in particular those relating to violence against women, citizenship, family law, and political reform. Process-oriented law and policy making emphasize the importance of broad participation and deliberation for the creation of a legitimate governance system and provides an important rallying point for women to consolidate gains and plug all legal loopholes.

The following paper discusses four important pillars of women's voice and agency (while recognizing that there are others which are beyond the scope of this review): Freedom from the Risk of Violence; Freedom of Movement; Freedom to Make Decisions on Family Formation and the Freedom to Shape Policy. It will examine the ways in which these freedoms impact women's voice and the ways in which women are working to reform law and policy to ensure these four freedoms are accessible to all.

⁵ Examples of national movements that have been strengthened by international laws include the Bangladesh domestic violence lawmaking movement. The movement wrote a shadow report to the CEDAW Committee on the absence of a national domestic violence law. The CEDAW Committee's Concluding Observations to the State party report highlighted the need for a national domestic violence law. This then bolstered the advocacy for a domestic violence law by the women's movement in Bangladesh resulting eventually in the passing of the law in 2010. The Indonesian women's movement invited Radhika Coomaraswamy, the then Special Rapporteur for Violence against Women to visit the country and speak to the need for a domestic violence law as a way to address heightened violence against women in Indonesia.

Pillar I: Freedom from the Risk of Violence

To date, 125 countries have outlawed domestic violence and 139 constitutions call for equal protection under the law. As a result of both top-down and bottom-up efforts, stronger local and national movements grew and gained momentum in connection to the emerging global movement protecting women from violence. The explosion of activism by global women's rights activists, conferences and conventions helped to place domestic violence on the political agenda as a global epidemic. The international agenda and the galvanizing of women's movements have helped place gender-based violence on political agendas throughout the world. Although de jure laws on gender-based violence have been developed, violence and the threat of violence remains a major barrier to women's voice and agency globally.

Reforms that Address the Impact of Violence on Women's Voice and Agency

One of the most recent law reform initiatives on violence against women was catalyzed by the heinous attack of a young student, "Nirbhaya," on a bus in Delhi in December 2012. Galvanized by mass protests, a committee was set up and headed by former Chief Justice J.S. Verma to review anti-rape provisions and make recommendations for state action (the Verma Committee). The Verma Committee submitted its recommendations to the government on January 23rd and one month later the government released an ordinance for amending the *Indian Penal Code* and other laws, including the *Code of Criminal Procedure* and the Evidence Act.

The ordinance has broadened the scope of the law to include all types of sexual assault against women. Despite some positive steps, activists and academics have challenged some of the major provisions of the ordinance. These include the lack of gender specificity that would allow a man who was charged with rape to file a counter-complaint against the woman who accused him. The ordinance also leaves marital rape outside the law. The ordinance also does not address amendments in respect to the culpability of the State. The law does not adequately review the Armed Forces (Special Powers) Act and the call to bring Army personnel under the jurisdiction of criminal law, holding that there would be no sanction required if armed forces personnel were accused of a crime against a woman. In other areas the government went beyond the Verma Committee's recommendation by providing for capital punishment in cases where rape leads to death of the victim or leaves her in a "persistent vegetative state."⁶

India's women's groups are utilizing the attack in 2012 to highlight the customary violence against women that has been ignored by a culture of impunity and silence. Both women's groups and male alliances came together to protest the way in which women's agency was sacrificed at the altar of family modesty and honor. Although a woman in India is subject to sexual assault every 24 seconds, there was only one rape conviction in Delhi in 2011,⁷ and in the wake of the attack, the defense counsel went on record to say that women should take steps not to appear in public at night.

Violence against women, especially sexual violence, has often been addressed under a framework of morality, public decency and honor. As a crime against the family or society, rather than a violation of an individual's bodily integrity. Positive progress has been made in addressing this issue. For example, the

⁶ Justice J.S. Verma, Justice Leila Seth, Gopal Subramaniam, *Report to the Committee on Amendments to Criminal Law* (January 23, 2013) <http://www.scribd.com/doc/121798698/Justice-Verma-Committee-report>

⁷ Fareed Zakaria, Global Public Square, "The Role of Women in the World," (September 4, 2011).

reform of the *Turkish Penal Code* in 2004⁸ reframed sexual violations and eliminated all references to “morality,” “chastity,” and “honor.”

Expanding the Definition of Violence against Women

Historically, rape and sexual assault were not criminal offenses when committed within the context of intimate relationships. While the concept of rape within intimate relationships remains highly problematic in many countries, an increasing number of countries are removing exemptions for rape and sexual assault within an intimate relationship from their penal codes or enacting specific provisions to criminalize it. Lesotho, Namibia, Nepal, South Africa, and Swaziland have all criminalized marital rape. In 2002, the Supreme Court of Nepal, in the case of Forum for Women, *Law and Development (FWLD) v. His Majesty's Government/Nepal (HMG/N)*⁹ found the marital rape exemption to be unconstitutional and contrary to the International Covenant on Civil and Political Rights (ICCPR) and CEDAW.

One of the impacts of domestic violence lawmaking has been an expanded notion of a family. In 1996, the United Nations Special Rapporteur on Violence against women, its causes and consequences, developed a framework for model legislation on domestic violence, which urged states to draft legislation that contained the broadest possible definition of both acts of domestic violence and relationships within which domestic violence occurs.

In the past, laws on domestic violence have often applied only to persons in intimate relationships and, in particular, to married couples. Over time, there has been an expansion of legislation to include other complainants and survivors of domestic violence.¹⁰ For example, all children, whether they are victims of the abuse or children of relatives and house helpers, can be protected under this analysis. Further, newly expanded laws often include intimate partners who are not married, those who are in cohabitating relationships, and people who are not members of the same household, including domestic workers.

In New Zealand, the law includes intimate partners and children who are indirectly affected by domestic violence, such as children who are witnesses to domestic violence.¹¹ The Indonesian Law Regarding the Elimination of Violence in the Household of 2004 includes “individuals working to assist the household and living in the household.”¹² Providing much needed legal protection for domestic workers.

The Cambodian Domestic Violence Law takes into account the historical realities of a post-genocidal and post-conflict society in its expansion of the definition of family to cover all children who are dependents of either party,¹³ including children of a nuclear family, extended family, or children borne of polygamous unions.¹⁴ This law has become a feature of a post-conflict community where families are stitched together and may have no blood relationship to each other.

⁸ Turkish Penal Code, Women for Women's Human Rights (last visited July 19, 2013), <http://www.wvhr.org/category/turkish-penal-code>

⁹ Forum for Women, *Law and Development (FWLD) vs. His Majesty's Government/Nepal (HMG/N)*. (Supreme Court 2002).

¹⁰ UN Office of the High Comm'r on Human Rights [OHCHR], *15 Years of the United Nations Special Rapporteur on Violence Against Women, Its Causes and Consequences*, (1996),

<http://www2.ohchr.org/english/issues/women/rapporteur/docs/15YearReviewofVAWMandate.pdf>.

¹¹ New Zealand *Domestic Violence Act No. 86* 1995.

¹² Indonesia Law No. 23 (2004), *Law Regarding Elimination of Violence Against Household*.

¹³ Cambodia *Law on the Prevention of Domestic Violence and the Protection of Victims*, Art. 2 cover parties to a marriage, dependent children and “all persons living under the roof of the house and who are dependent of the household.”

¹⁴ Immigration and Refugee Board of Canada, *Cambodia: Domestic violence in Cambodia, in particular, its prevalence and whether there are laws to protect the victims; if so, whether these laws are enforced; protection provided by the government*, 9 December 2003, KHM42221.FE, available at: <http://www.refworld.org/docid/403dd1fdc.html> [accessed 18 April 2013]

Though the definition of a family has changed on paper, the new definitions have yet to be established as societal norms and much remains much to be done for those laws to translate into real progress in changing social and cultural norms around violence. According to the briefing to the UN Committee on the Elimination of Discrimination against Women, Indonesia's domestic violence law is not well known even among judges in the legal system, so victims and witnesses of domestic violence are unlikely to be aware of the legal resources available to them.¹⁵ Even if people are aware of the laws, police and law enforcement officials must also be trained to respond in an appropriate and sensitive manner.

Implementation and Enforcement

Implementation and enforcement of laws on sexual harassment call for state action, as was the case in *Vishaka and others v. State of Rajasthan and others* [1997].¹⁶ The case was prompted when a 50-something social worker, Bhanwari Devi, was gang raped by a group of men for trying to stop the practice of child marriage. Her case inspired several women's groups and NGOs to file a petition in the Indian Supreme Court, demanding justice for Bhanwari Devi and urging action against sexual harassment at the work place.

The Supreme Court defined sexual harassment as any unwelcome gesture, behavior, words, or advances that are sexual in nature. When national laws were silent on this issue, the court created a set of guidelines on sexual harassment based upon CEDAW, known as Vishaka guidelines..

Some Vishaka guidelines laid down by the Supreme Court include:

- It is the onus of the employer to include a rule in the company code of conduct for preventing sexual harassment.
- Organizations must establish complaint committees that are headed by women.
- The employer should initiate disciplinary actions against offenders and safeguard the interests of the victim.
- Female employees shall be made aware of their rights.¹⁷

The guidelines did have some positive impact, with many social groups publicizing and working towards their proper implementation and demanding appropriate Indian laws for women against sexual harassment. However, little has been done by way of implementation or monitoring of the guidelines.

Crisis mapping has proven to be an effective way of handling crisis situations, such as instances of sexual harassment and domestic violence. One of the novel forms of addressing sexual harassment is the online HarassMap, which had its genesis in Kenya's post-election crisis and has found a new incarnation as an innovative tool in Egypt to empower women who experience verbal harassment, groping, and stalking. The new map application aims to prevent sexual harassment using a simple SMS-based system to enable victims and witnesses to anonymously report sexual harassment incidents as soon as they happen. To report to HarassMap, a user dials 6069, types what happened to them, and reports the location of the instance. The incoming report is then placed on a Google map of Egypt, creating a web-based documentation of the extent of the problem. When sexual harassment hotspots are identified, HarassMap volunteers visit these areas as part of a community outreach program aimed at raising awareness and

¹⁵ Amnesty USA, *Indonesia: Briefing to the UN Committee on the Elimination of Discrimination against Women: Women and girl domestic workers*, <http://www.amnestyusa.org/research/reports/indonesia-briefing-to-the-un-committee-on-the-elimination-of-discrimination-against-women-women-and?page=4>.

¹⁶ *Vishaka and others v. State of Rajasthan and others*, AIR 1997 Supreme Court 3011.

¹⁷ *Id.*

ending tolerance toward domestic violence. Furthermore, the application works to respond to the problem, connecting victims with a list of services and a police response unit to handle the report.

In order to prevent ambiguity and arbitrary interpretation by judges, another trend in domestic violence lawmaking is including explicit definitions of what is meant by violence against women. The Philippines anti-violence law covers physical and bodily harm, including sexual violence, rape, sexual harassment, acts of lasciviousness, treating of women as sex objects, making demeaning remarks, forcing the watching of obscene publications, coercing sexual activity, and prostituting women and children.¹⁸ Psychological harms and economic harms are also outlined extensively.¹⁹ Despite these improvements, the implementations of many national laws remains confined to traditional standards of domestic violence and lack a more nuanced understanding of the nature of domestic violence.

In practice, definitions of domestic violence that include psychological and economic violence can be problematic. These types of violence are often difficult to prove to a judiciary that has little gender sensitivity training. In these cases, the support of psychologists, counselors, and advocates must be marshaled, and the law must provide for these resources.

Addressing Negative Cultural Practices through Law making

Many forms of violence against women are rooted in discriminatory social norms or, customary, and traditional practices. The new Indian definition of domestic violence attempts to dismantle negative cultural practices through law by broadening the categories of violence beyond physical violence. The new definition includes a litany of considerations that expand the definition of domestic violence including mental, psychological, sexual, verbal, emotional, and economic abuse (including dowry-related violence) occurring in the family, as well as injuries, and endangerment to the health, safety, life, limb, or well-being.²⁰ Verbal and emotional abuse under the law specifically includes "...insults or ridicule especially with regard to not having a child or a male child."²¹ The law also extends the definition of violence to include causing violence to dependents or other relatives.

Addressing a Culture of Misogyny through Education

It is imperative that men and boys forge partnerships with women to fight violence against women. All around the world male-led campaigns on anti-violence are taking shape. In New Zealand, former gang members are engaged in public service announcements denouncing violence against women.²² In Vietnam, the gender equality law calls for greater engagement by the Vietnamese Fatherland Front in preventing and combating violence against women. China's Domestic Violence Network has compiled a curriculum to help middle schools raise awareness about the ways in which violence against women creates a negative impact for both men and women.

¹⁸ *Id.*, sec. 3 (B(c))

¹⁹ *Id.*, sec. 3: Violence against women and their children refers to any act or a series of acts committed by any person against a woman who is his wife, former wife, or against a woman with whom the person has or had a sexual or dating relationship, or with whom he has a common child, or against her child whether legitimate or illegitimate, within or without the family abode, which result in or is likely to result in physical, sexual, psychological harm or suffering, or economic abuse including threats of such acts, battery, assault, coercion, harassment or arbitrary deprivation of liberty.

Other sections that outline form of both economic and psychological abuse include: Section 3 (C); Section 5 (h); Section 31 (a); Section 3 (D); Section 13.

²⁰ Sec. 3(b), The Protection of Women From Domestic Violence Act, 2005, Ministry of Law and Justice.

²¹ *Id.*

²² Jo Belworthy, *Our ride against violence*, AucklandNOW, November 20, 2012, <http://www.stuff.co.nz/auckland/local-news/northland/dargaville-districts/7942756/Our-ride-against-violence>.

The need for greater gender-sensitive education has also been mainstreamed into the *Maria de Penha* Law in Brazil. At the age of 38, da Penha became a paraplegic as a result of abuse by her husband, including shots he fired at her, attempts to electrocute her, and several other assaults.²³ In 1998, the Center for Justice and International Law and the Latin American and Caribbean Committee for the Defense of Women's Rights filed suit before the Inter-American Court of Human Rights (IACHR), claiming that the Brazilian state's impunity in the case was unjust.²⁴ This case marks the first time that the court held the State responsible for a failure to taking effective steps to prevent such violence.²⁵ The Inter-American Commission on Human Rights asked that a victim of domestic violence receive symbolic and actual compensation for the violence that she suffered and for the failure by the State to provide rapid and effective remedies.²⁶

The case of Maria da Penha led to the adoption of the Maria da Penha Law of 2006,²⁷ which defined domestic violence as a human rights violation,²⁸ and incorporated the gender-specific reasons why women face violence.²⁹ The law also calls for awareness-raising programs and for there to be education on international conventions on the prevention of violence in school curriculums.³⁰ The law also provides for ongoing training for police officers on gender, race and ethnicity.³¹ The effects of such mandates are yet to be seen and will require additional economic resources and institutional capacity building to support their effective implementation.

Repealing Exoneration or Mitigation of Sentences in So-Called Honor Crimes

Laws exonerating honor crimes exist in parts of the Middle East and North Africa. In Egypt, Article 17 of the *Penal Code* allows for mitigated sentences in "certain circumstances," a provision often applied by judges in honor crimes cases.³² Furthermore, the *Jordanian Penal Code* Article 340(i) provides a total, rather than partial, exoneration if a male kills a female relative after catching her in the act of committing adultery.³³ The Jordanian law applies not just to a man's wife, but to all female relatives.

²³ Maria de Penha Maia Fernandes, Case 12.051, Inter-Am. C.H.R., Report No. 45/01 OEA/Ser.L/V/II.111 Doc. 20 (2001). Report Accessed from: <http://www.cidh.org/women/brazil12.051.htm>. Attacks against Maria da Penha by her husband include shots fired at her while asleep, several attempts to electrocute her, and many assaults suffered throughout her marriage, leaving her paraplegic by thirty-eight. Despite mounting evidence against him and even a verdict of guilty by local courts, her husband continued to enjoy his freedom just fifteen years after, made possible through multiple successive procedural appeals. The IACHR found the Brazilian state guilty of negligence and failure to take action against domestic violence.

²⁴*Id.* I. Summary (1)

²⁵ Report on the Situation of Human Rights in Brazil, 1997, Chapter VIII. (HRH Report, Page 367):

The petitioners state that this situation has also been recognized by the United Nations and have submitted newspaper articles with their petition. They note that 70 percent of the cases of violence against women occur in their homes (Human Rights Watch. Report of Brazil, 1991, page 351), and that a police officer in Rio de Janeiro stated that of the more than 2,000 cases of rape or beatings reported at his police station, he did not know of any that resulted in the punishment of the perpetrator.

²⁶ Maria da Penha v. Brazil, Case 12.051, Inter-Am. C.H.R., Report No. 54/01, OEA/Ser.L/V/II.111 Doc. 20 rev. at 704 (2000). Report accessed from: <http://www1.umn.edu/humanrts/cases/54-01.html>.

²⁷ Law No. 11.340 of 7 August 2006 (*Lei No 11.340, de 7 de Agosto de 2006*).

²⁸ *Id.* Article 6: Domestic and family violence against women constitutes one of the forms of human rights violation.

²⁹ *Id.* Chapter II: Forms of Domestic Violence and Family Violence Against Women.

Article 7 (i-iv), and Title I Preliminary Provisions Article 2: All women, regardless of class, race, ethnicity, sexual orientation, income, culture, educational level, age and religion, enjoy the basic rights inherent to the human person, and are ensured the opportunities and facilities to live without violence, preserve their physical and mental health and their moral, intellectual and social improvement.

³⁰ *Id.* Article 8, Section VIII: promotion of educational programs that disseminate ethical values of unrestricted respect to the dignity of the human person with a gender and race or ethnicity perspective.

³¹ *Id.* Article 8, Section VII: permanent training of the Civil and Military Police, Municipal Guard, Fire Brigade and of the professionals belonging to the agencies and areas listed in item, on gender and race or ethnicity issues.

³² Penal Code (Egypt).

³³ Penal Code, art. 340(i) (Jordan.)

In 2011, Lebanon repealed Article 562 of the *Criminal Code* that mitigated sentences for honor crimes,³⁴ although a domestic violence law is yet to be enacted. The *Lebanese Penal Code* also continues to discriminate against women in other matters such as distinguishing between women and men when imposing penalties for adultery.³⁵ For example, a married woman who has an extramarital affair can be imprisoned from three months to two years, whereas the punishment for the same crime for a man is one month to one year. A married man can only be tried for adultery if he engages in extramarital sex in the conjugal home, or if he has a “stable” extramarital relationship (articles 487, 488, and 489). Other countries in the region, including Bahrain, Jordan, Kuwait, Saudi Arabia, Syria, the United Arab Emirates, and the Republic of Yemen have similar laws criminalizing adultery. Article 534 of the *Lebanese Penal Code* also criminalizes “unnatural sexual intercourse” with up to one year in prison, a provision that has been used to charge adult gays and lesbians.³⁶ The definition of rape also explicitly excludes marital rape and, if a rapist marries his victim following the crime, the law exonerates him.³⁷ Similar legal provisions exist in Bahrain, Iraq, Libya, Tunisia, and the West Bank and Gaza.

Transnational Sharing of Information: Outlawing Acid Attacks

Acid attacks have been a common form of violence in many parts of East and South Asia—commonly used as a form of revenge for when women refuse a man’s sexual advances or proposals of marriage and demands for dowry. In a number of countries these attacks are now being criminalized.

Bangladesh, one of the first countries to outlaw acid attacks, was moved to action thanks to the mobilization of a nongovernmental organization (NGO), the Acid Survivors Foundation. In 2002, Bangladesh passed two milestone laws to combat acid violence: the Acid Control Act and the Acid Crime Control Act.³⁸ NGOs have also played a role in the promulgation of the laws by advocating for them through lawmaking and by building awareness.³⁹

The goal of Bangladesh’s Act is to monitor the import, production, transportation, storage, sale, and use of acid.⁴⁰ The Acid Control Act also contains provisions to provide treatment, rehabilitation, and legal assistance to acid burning victims. The act created The Acid Crime Control Council, an organization chaired by Bangladesh’s Minister for Home Affairs that works in conjunction with other social service organizations to prevent acid violence.

Following Bangladesh’s example, local governments in Pakistan have also passed legislation to reduce acid violence. In August 2003, the Punjab provincial assembly passed a resolution making an acid attack the equivalent of attempted murder and proposed a licensing system on the production, import, transportation, storage, and sale of any type of acid.⁴¹ The bill also proposed mandatory prosecution by

³⁴ Criminal Code art. 562 (Leb.).

³⁵ Penal Code (Leb.).

³⁶ *Id.*, art. 534

³⁷ *Id.*, art. 522.

³⁸ The purpose of the Acid Crime Control Act is to prosecute acid crimes and to monitor the import, production, transportation, storage, sale, and use of acid. Under the Acid Crimes Control Act, a perpetrator can receive a number of punishments, including (1) capital punishment, (2) imprisonment (sentences can range from a life term to as little as three years), and (3) substantial financial penalties that are proportionate to the injury sustained by the victim. Another important provision of the Acid Crime Control Act is its establishment of the Acid Crime Control Tribunal. The Acid Crime Control Tribunal can investigate police officers that have prevented an acid attack from occurring or did not investigate a crime correctly.

³⁹ Expert Group Meeting [EGM], Good Practices in Legislation to Address Harmful Practices Against Women, Expert Paper: Legal Approaches, Reforms, Different Areas of Laws, Assessment of the Effectiveness of Particular Legal Framework/Provisions, Lesson Learned, Good Practices & highlighted promising practices in Bangladesh, UN Doc. EGM/GPLHP/2009/EP.16. (May 11, 2009) (prepared by Salma Ali).

⁴⁰ Bangladesh Act No. 23 (2002), *Acid Control Act*.

⁴¹ *Action urged on Pakistan Acid Attacks*, BBC News, August 7, 2003, http://news.bbc.co.uk/2/hi/south_asia/3129887.stm.

the government for the perpetrators of acid crimes. In response to the Pakistan Supreme Court case of *Nahila Farhat* (Nahila Farhat was a victim of an acid attack in 2003 by a man she had rejected for marriage),⁴² the Pakistan Parliament passed the Acid Control Act and Acid Crime Prevention Bill on May 10, 2011. While the Bangladeshi law was used as a guide in drafting the laws, some of the cardinal provisions of the Bangladesh law were not included – such as provisions controlling the sale of acid, which is essential to control acid attacks. It remains unclear whether the bill will result in tangible change for Pakistan’s women, or if challenges to its implementation will impede the bill’s potential.

Challenges

Weak implementation

Lack of state accountability remains one of the critical challenges to the implementation of domestic violence laws. Defining freedom from domestic violence as a human right could mark a paradigm shift in legal accountability. Although the CEDAW does not directly address violence against women, General Recommendation 19 calls for state accountability for violence against women.⁴³ It also calls for proper enforcement and implementation of regional laws. Moreover, regional conventions address violence against women and hold States accountable for inaction.

In the case of *A.T. v. Hungary*, the Committee on the Elimination of Discrimination against Women found that the lack of specific legislation to combat domestic violence and sexual harassment constituted a violation of human rights and fundamental freedoms. In Austria’s cases of *Sahide Goekce (deceased) v. Austria*⁴⁴ and *Fatma Yildirim (deceased) v. Austria*,⁴⁵ the Committee recommends that the state party provide sanctions for those who fail to prevent and respond to violence against women. In Mexico’s inquiry, under article 8 of the Optional Protocol, into the abduction, rape, and murder of women in and around Ciudad Juárez in the State of Chihuahua, the Committee recommended that Mexico “sensitize all state and municipal authorities to the need for violence against women to be regarded as a violation of fundamental rights, in order to conduct a substantial revision of laws from that standpoint.”⁴⁶

The Council of Europe Convention on Action against Trafficking in Human Beings, formed in 2008, obliges state parties to criminalize human trafficking and related offences.⁴⁷ The European Court of Human Rights has also ensured the monitoring and enforcement of their laws through various decisions, including one reached in *M.C. v. Bulgaria*.⁴⁸ Similarly, in Central and South America, the *Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women*, also known as the *Convention of Belém do Pará*, is the only convention directed solely at eliminating violence by requiring that state parties prevent, investigate, and impose penalties for violence against women.

⁴² Asia Human Rights Commission, *Pakistan: Acid attacks continue to be a serious concern* (January 29, 2010).

⁴³ UN Committee on the Elimination of Discrimination Against Women (CEDAW), *CEDAW General Recommendations No. 19, adopted at the Eleventh Session, 1992 (contained in Document A/47/38)*, 1992, A/47/38, available at: <http://www.refworld.org/docid/453882a422.html> [accessed 18 April 2013]

⁴⁴United Nations Committee on the Elimination of Discrimination Against Women Jurisdiction (*Sahide Goekce (deceased) v. Austria*), Communication No. 6/2005 (August 6, 2007).

⁴⁵ United Nations Committee on the Elimination of Discrimination Against Women Jurisdiction (*Fatma Yildirim (deceased) v. Austria*), Communication No. 6/2005 (August 6, 2007).

⁴⁶ Mexico’s inquiry under article 8 of the *Optional Protocol*

⁴⁷ Council of Europe, *Council of Europe Convention on Action Against Trafficking in Human Beings*, 16 May 2005, CETS 197, (available at <http://conventions.coe.int/Treaty/EN/Treaties/Html/197.htm>).

⁴⁸ This case overturned Bulgaria’s former law that mandated that it be evident a victim physically resisted the perpetrator to prosecute the perpetrator in a rape case.

Subsequent jurisprudence also emphasizes the importance of appropriately enforcing legislation.⁴⁹ In Africa, the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa addresses violence against women within many of its provisions and establishes obligations related to legal reform.⁵⁰

Data collection is one way in which countries work to ensure successful implementation of laws. The general recommendations of the CEDAW charges state parties to “encourage the compilation of statistics and research on the extent, causes and effects of violence, and on the effectiveness of measures to prevent and deal with violence.”⁵¹ Some countries have responded to the need for further data collection by mandating such activities in legislation. The 2008 Guatemalan Law against Femicide and other Forms of Violence against Women obliges the national statistical office to compile data and develop indicators on violence against women. The Albanian Law on Measures against Violence in Family Relations of 2006 obliges the Ministry of Labour, Social Affairs and Equal Opportunities to maintain statistical data on domestic violence levels. The Mexican Law on Access of Women to a Life Free of Violence of 2007 mandates the creation of a national databank on cases of violence against women, including information on protection orders and the people subject to them.

The Absence of Holistic and Comprehensive Legal Reform

Unless law reform on violence against women is viewed in the context of the entire legal system rather than as an isolated effort, its impact will be limited. Although Pakistan's 2004 amendment to the *Penal Code* criminalizes honor crimes against women and girls, the country lacks a holistic overview of the legal system, including retaining the concepts of *Qisas*⁵² and *Diyat*,⁵³ which has prevented the amendment from producing real change. *Qisas* and *Diyat* are crimes of retaliation under sharia law that are considered “a form of compensation, or blood money,” which is paid to the victim or the victim's family as reparation for an injury or murder.⁵⁴ These concepts usually result in the killing of women in order to salvage a family's honor, which make provisions addressing honor crimes largely ineffective. Further, the amendment was widely interpreted by tribal elders as official sanction of these practices.⁵⁵

Deep-seated traditional mores, such as *Qisas* and *Diyat*, as well as son preference, and the devaluation of female children are inextricably interrelated to violence against women and must therefore be a part of any narrative about related law reform. The UN Secretary General's Report outlines various other harmful traditional practices that constitute violence such as “female genital mutilation/cutting...and maltreatment of widows (including inciting widows to commit suicide).”⁵⁶ Because under the Pakistan Constitution no law can violate Islamic law, these harmful and customary laws are often retained in the

⁴⁹ The case of *Maria da Penha v. Brazil* found the Brazilian Government in breach of its human rights obligations due to significant judicial delay and incompetence in the investigation of domestic violence.

⁵⁰ Under the Protocol, States parties are required to “enact and enforce laws to prohibit all forms of violence against women; to take all necessary legislative and other measures to eliminate harmful practices; and to enact national legislative measures to guarantee that no marriage shall take place without the free and full consent of both parties and [to set the] minimum age of marriage for women [at] 18 years.”

⁵¹ UN Committee on the Elimination of Discrimination Against Women (CEDAW), *CEDAW General Recommendations No. 19, Paragraph 24d, adopted at the Eleventh Session, 1992 (contained in Document A/47/38)*, 1992, A/47/38, available at: <http://www.refworld.org/docid/453882a422.html> [accessed 18 April 2013]

⁵² Amnesty International, *Executions under the Qisas and Diyat Ordinance*, 1 May 1995, ASA/33/13/95, available at: <http://www.refworld.org/docid/3ae6a9a10.html> [accessed 18 April 2013].

⁵³ *Id.*

⁵⁴ Pakistan Penal Code (Act XLV of 1860).

⁵⁵ *Id.*, S. 229.

⁵⁶ UN General Assembly, Report of the Secretary-General: In-depth study on all forms of violence against women, UN Doc. A/61/122/Add.1 (July 6, 2006) (prepared by the Division for the Advancement of Women of the Department of Economic and Social Affairs of the United Nations Secretariat).

legal system. Most legal reform culminates in commissions led by Islamic scholars ensuring legal reforms are reconciled with Islamic principles, which highlights the need for scholarship to examine law and Islamic provisions.

Other significant laws seeking to change or abolish harmful cultural practices include the reform of Pakistan's *Hudood Ordinance of Shariah Law*,⁵⁷ which eliminates the four witnesses' requirement in cases relating to rape.⁵⁸ It also gives discretion to judges over whether to try rape cases in criminal or religious courts, and in introducing DNA evidence. Additionally, it drops the death penalty and flogging for those convicted of having consensual sex outside marriage.⁵⁹ Other discriminatory customs of Islamic law however have yet to be addressed under statutory law, including *vinni*,⁶⁰ which is a centuries-old practice in Pakistan and in parts of Afghanistan of giving women into marriage as compensation in cases of murder and territorial disputes.⁶¹

Domestic violence laws cannot exist in a vacuum. Other laws relating to violence against women, including those tied to traditional norms of gender hierarchies, must be passed.

Developing Multipronged Advocacy Approaches

Establishing protective measures for victims is yet another way to ensure the effectiveness of the law. A novel element of Indian law against domestic violence is the introduction of protection officers, who can make a home shelter available to aggrieved persons and provide a list of service providers; they prepare a safety plan that includes measures to prevent further domestic violence; and they conduct home visits and oversee protection orders.⁶² The law establishing protection officers also states that preference should be given to women. Protection officers are a key feature of Indian domestic violence law and serve as stakeholders in the implementation of the law. The Indian Domestic Incident Report is designed to ensure prompt and effective record keeping on domestic violence. The report catalogs various acts of violence as either physical, sexual, emotional, or economic abuse. These reports help to ensure that protection officers are fulfilling their duties and acting responsibly. The protection officers in Andhra Pradesh have reported that women have approached them for counseling.⁶³ The protection officer first listens to a woman's story to determine if the complaint is trivial, such as "my husband comes home very late" or "my husband does not take me out." In these cases, the protection officer often settles the dispute through counseling and can make a referral to the in-house counselor in the post office. The third monitoring report for Research on Women in 2009, prepared four years after the creation of the law, found that the majority of domestic violence cases are resolved through counseling.⁶⁴

Despite states being responsible for implementing laws, civil society partners are imperative for ensuring effective implementation. Community-based approaches must complement multifaceted advocacy

⁵⁷ Pakistan *Women's Protection Bill* 2006, Criminal Laws Amendment.

⁵⁸ *Supra* note 67.

⁵⁹ *Id.* This law placed a lesser sentence on those who have consensual sex outside of marriage; Sec. 7 (496)b: Fornication: (2) Whoever commits fornication shall be punished with imprisonment for a term which may extend to five years and shall also be liable to fine not exceeding ten thousand rupees.

⁶⁰ UN Women, United Nations Study of the Secretary General: Ending Violence Against Women from Words to Action, (2006).

⁶¹ Women's United Nations Report Network (WUNRN), *Marriage Without Consent: Girl's and Women's Human Rights* at the United Nations Human Rights Council (Mar. 2, 2007), available at www.wunrn.com/powerpoint/forced_marriage.pps.

⁶² Section 8 of the Act sets out that a protection officer must have at least three years of experience in the social sector; be appointed for a minimum tenure of three years and be provided with necessary assistance for the discharge of their functions.

⁶³ *Staying Alive*, Third Monitoring and Evaluation Report 2009 on the Protection of Women by the Lawyers collective in collaboration with The International Center for Research on Women. See also *Staying Alive*, First and Second Monitoring Reports on the Protection of Women from Domestic Violence Act, 2005.

⁶⁴ *Id.*

approaches in combating domestic violence. Several countries have integrated this approach to address family violence. Multidisciplinary task forces have been established in a number of countries, including the Philippines and Hong Kong. These task forces work through the Committee on Child Abuse, the Working Group on Combating Violence, and the Working Group on Elder Abuse.⁶⁵ Through these groups, victims receive support from social workers, counselors, police, and lawyers.

In the Republic of Korea the Special Act for the Punishment of Domestic Violence⁶⁶ and the Prevention of Domestic Violence and Victim Protection Act,⁶⁷ both passed in 1997, extend the multiagency approach to the investigation and victim treatment process, including coordination with police departments, counseling centers, and legal services. Under these laws anyone in the community who becomes aware of domestic violence crimes may report them to investigating agencies. Additionally, the law creates a Domestic Violence Prevention Committee that is charged with the authority “to evaluate the performance of domestic violence control and prevention bylaws,” to create a database of domestic violence offenders, and to support local governments “to promote domestic violence control and prevention programs.”⁶⁸

Vietnam’s Law on Domestic Violence Prevention and Control also adopts a multiagency approach to its procedures by which conflicts and disputes among family members are reconciled.⁶⁹ Article 15 of the law allows grassroots reconciliation teams—composed of the People’s Committees of communes, wards, and townships in cooperation with the Vietnamese Fatherland Front—to conduct reconciliation.⁷⁰ The law explicitly outlines the principles of reconciliation and strictly qualifies that reconciliation should not be an option in cases of serious or persistent violence, yet legal aid officers are sometimes reluctant to interfere. As a result reconciliation is more often conducted by the Women’s Union, the family of the victim, the head of the village, the Vietnamese Fatherland Front, or the Farmers Association.

Despite these progressive provisions, without sufficient implementing measures and a budget to monitor and seek enforcement, these laws have so far failed to demonstrate results. Enforcement of the various laws requires a carefully orchestrated approach among multiple governmental and nongovernmental actors, some of whom are reluctant to strictly implement the laws.

Comprehensive Support and Assistance to Complainants and Survivors

Shelters and Integrated Service Centers

Several countries have mandated that survivors of violence must have access to integrated service centers. As a result of a campaign by women’s organizations, The Malaysian Law of 1994 set up a one-stop crisis center in every state to deal with cases of violence against women and children.⁷¹ Due to the pressure from women’s organizations and the Ministry of Women and Family Development’s review of the Domestic Violence Act of 1994, the Ministry directed all state hospitals to set up One-Stop Crisis Centers

⁶⁵ Vicky Lee, Strategies and measures in tackling domestic violence in selected places. [Research and Library Services Division of the Legislative Council Secretariat], June 16, 2008.

⁶⁶ South Korea Prevention of Domestic Violence and Victim Protection Act Special Act for the Punishment of Domestic Violence (Law No. 15826, 1997) (R.O. Korea).

⁶⁷ South Korea Prevention of Domestic Violence and Victim Protection Act Special Act for the Punishment of Domestic Violence (Law No. 34 1997) (R.O. Korea).

⁶⁸ *Id.*

⁶⁹ Vietnam Law On Domestic Violence Prevention and Control (Law No. 02/2007/QH12).

⁷⁰ *Id.* Art. 13. Reconciliation of conflicts and disputes by the family and clan. Art. 15. Reconciliation of conflicts and disputes by the grassroots reconciling teams.

⁷¹ Malaysian Laws of 1994 (No 521, 1994).

in 1996.⁷² By 1997, these centers were established in 90 percent of state hospitals.⁷³ The Malaysian law was one of the first laws to set up One-Stop Crisis centers at the community level, and these crisis centers have now become a pivotal means through which to coordinate a holistic approach to addressing domestic violence.⁷⁴ Other countries have begun to coordinate such centers. Bangladesh's Prevention of Oppression Against Women and Children 2000 for instance calls for One-Stop Crisis Centers at the Thana level.⁷⁵ Austria's Violence Protection Act of 1997 also calls for intervention centers where complainants and survivors of domestic violence are proactively offered assistance after interventions by the police. Operating under a slightly different model, the intervention centers in Austria are run by women's NGOs and financed by the Ministry of the Interior and the Ministry of Women.

Financial Support for the Survivor

Several countries provide financial support for the survivor. Australia's Social Security Act, as amended in 2006, outlines that survivors of domestic violence may qualify for a "crisis payment" from the federal welfare agency Centrelink when they have left the home because of violence, or when they remain in the home following the departure of the perpetrator and face severe financial hardship. In Ghana, Section 29 of the Ghanaian Domestic Violence Act of 2007 established a Victims of Domestic Violence Support Fund. The Fund receives voluntary contributions from individuals, organizations, and the private sector; money approved by Parliament; and money from any other source approved by the Minister of Finance. The money from the fund is used for a variety of purposes, including the basic material support of victims of domestic violence, rescue and rehabilitation of domestic violence victims, as well as training and capacity building for people aiding victims.

Rights of the Complainant/Survivor during Legal Proceedings

Unless women and children have access to justice services, laws on paper will have little impact. As underscored in Bulgaria's Law on Protection Against Domestic Violence of 2005, the rights of complainants and survivors during legal proceedings are key to domestic violence lawmaking. Bulgaria's law reflects that while a survivor does not need a lawyer to file a protection order, the application is more likely to be successful with legal representation.

Though they precede Bulgaria's law, both Namibia and the Philippines codify rights to the survivor during legal proceedings in their laws. Namibia's Combating of Rape Act (2000) stipulates that the complainant has the right to attend court personally or to request that the prosecutor present the relevant information on her behalf if the accused has applied for bail. Section 5 of the Philippines' Rape Victim Assistance and Protection Act of 1998, extends greater rights to the survivor by providing for a closed-door investigation, prosecution, or trial; and for non-disclosure of the name of the offended party or the accused. The threat of exposure and the cultural stigma attached to victims of domestic violence is one of the greatest impediments to women bringing claims of violence against men, so privacy measures are imperative to encourage victims to speak up.

⁷² United Nations General Assembly WOM/ 1562. Committee on Elimination of Discrimination against Women , 731st & 732nd Meetings (AM & PM).

⁷³ "Organizations Addressing VAW: Malaysia," UNIFEM East and Southeast Asia Region, <http://www.unifem-eseasia.org/projects/evaw/vawngo/vammys.htm>.

⁷⁴ Malaysia Domestic Violence Act (Law No. 521, 1994).

⁷⁵ Bangladesh Prevention of Oppression Against Women and Children (Law No. VIII, 2000), Sec. 24.

Conclusion

The international legal framework has not only helped local organizations to establish domestic violence laws, but it has helped mobilize transnational networks that have shared lawmaking strategies and guidelines across borders. The international frameworks have also provided a barometer to evaluate the efficacy of national laws. This includes reporting under the CEDAW as an important tool of evaluating the strengths and weaknesses of the laws and their implementation, and recommendations that often provide ways to close the gap between the written laws and laws in practice.

Consistent with the notion that local knowledge can inform laws, policies, and institutions, women's movements have played an important role in lawmaking. Despite the successes in drafting laws, laws need to be successfully implemented in order for any meaningful change in the agency of women. Without an adequate budget for the enforcement of laws, women's rights and agency cannot be effectively safeguarded by domestic violence laws across the globe.

Pillar II: Freedom of Movement

Equal Citizenship, Nationality, and Residency

Restrictions on movement impact a person's capacity to work, to access education, and to participate in the political process, among other things. Yet laws that restrict a woman's freedom of movement are sometimes justified by the notion that the confinement of women to the home protects their chastity and modesty. For example, in Afghanistan, the Shia Personal Status Law forbids married Shia women from leaving their homes unless the need to do so is "for legitimate purposes as the local custom allows."⁷⁶ This provision violates women's freedom of movement, which is protected by several international doctrines, including Articles 9 and 12 of the International Covenant on Civil and Political Rights (ICCPR). In its General Comment on the Freedom of Movement, No. 27 (1999) the Human Rights Committee underlined the importance of this right for women, noting that the right to movement is "incompatible" with laws that subject that free movement to "the decision of another person, including a relative." Similarly Articles 9 and 15 of the CEDAW call for equal nationality rights and a woman's right to choose her residence and domicile.⁷⁷

The Human Rights Committee has emphasized that restrictions on women's ability to travel or to acquire identification and travel documents, including requirements concerning the approval of third parties like husbands, violate women's rights to freedom of movement under the ICCPR. Furthermore, the Committee outlines concerns with the activities of private citizens in restricting women's freedom of movement, "The State party must ensure that the rights guaranteed in article 12 are protected not only from public but also from private interference. In the case of women, this obligation to protect is particularly pertinent." Limits on movement subordinate and marginalize women, diminishing their voice and agency.

Despite these guarantees, there are de jure and de facto restrictions in many countries that restrict women's movements. Chief among these restrictions is a woman's unequal right to citizenship, which

⁷⁶ *Shiite Personal Status Law* [Afghanistan], March 2009 (available at <http://www.refworld.org/docid/4a24ed5b2.html>) [accessed 19 July 2013]

⁷⁷ UN General Assembly [UNGA], *Declaration on the Elimination of Discrimination against Women*, Art. 9 and 15, 7 November 1967, A/RES/2263, (available at <http://www.un.org/womenwatch/daw/-cedaw/text/econvention.htm>).

marks one of the greatest barriers to freedom of movement. In some countries, including Jordan and Lebanon, for example, women are unable to pass their nationality onto their children or non-national husbands, nor do they have equal rights to choose their residence.

Recent Reform in the Middle East

Sustained campaigns by women have led to changes in citizenship laws in the Arab region in recent years. It was only in 2004 that Egypt equalized citizenship rights for both men and women. Promulgated by the Egyptian Ministries of Interior and Foreign Affairs in Egypt in 2011, the Decree No. 1231 established the right of Egyptian women married to Palestinians to pass on their Egyptian nationality to their children.⁷⁸ Though the law allows for children to be recognized as Egyptian citizens, the children are still not allowed to be members of the military, police, or other governmental posts in their adult lives.⁷⁹ The promulgation of Decree No. 1231 was a milestone achieved through the tireless mobilization of women's groups. Soon after the revolution in Egypt, women organized demonstrations in Tahrir Square and highlighted the way in which unequal citizenship laws denied access to basic rights such as education, work, and travel. Women also highlighted the costs of legal action, the denial of work opportunities for their children, and the challenges in securing work permits for children of women married to Palestinian men. In the years that followed, Algeria, Bahrain, Libya, Morocco, Tunisia, the United Arab Emirates, the Republic of Yemen, and the West Bank and Gaza revised their citizenship laws. This reform across the region reflects the role that regional movements can play in the promulgation of new laws.

Despite the reformation of laws in various countries throughout the region, change is only just beginning in Lebanon and Jordan. In Lebanon and Jordan, women who marry non-nationals are unable to pass nationality onto their child or spouse, thus barring them from accessing public services such as health care, education, or social security. In contrast men may pass full citizenship rights to their wife and children.⁸⁰ These laws deny women equality with men and undermine their status as equal citizens, and contradict the Lebanese Constitution, which provides that all Lebanese citizens are equal before the law and enjoy the same civil and political rights. Women's groups in Lebanon continue to campaign and to call on women legislators for the revision of the law and its discriminatory provisions. Online campaigning and awareness raising has helped to amplify women's voices. Nima Habashna, a fifty-three-year-old Jordanian woman, for example, has been campaigning for five years for citizenship to be granted to her children. Habashna has six children with a Moroccan man she married in Jordan in 1974 who left them more than six years ago. Without full citizenship rights for her children, Habashna must pay for public healthcare and education, both of which would otherwise be free for Jordanian children. The Jordanian government has come under pressure from women like Habashna and the international women's movement to allow Jordanian women to pass on their nationality to foreign husbands and their children.

Free Movement in Public Places

In many countries, women face legal limitations if they want to work outside the home without male permission, move freely in public without a male companion, or access certain modes of transportation.

In Saudi Arabia, women can now check into hotels alone, which was previously forbidden; however, Saudi Arabia still has a number of legal restrictions on women's movement, including prohibitions on

⁷⁸ Decree No. 1231 of May 2, 2011 on the ability of Egyptian women married to Palestinian men to transmit their nationality to their children.

⁷⁹ Frances Hasso, *Consuming Desires: Family Crisis and the State in the Middle East* (Stanford University Press, 2010).

⁸⁰ Decree No. 15 on Lebanese Nationality of 19 January 1925, (Leb.).

women traveling on airplanes and being outside the home without a guardian's permission.⁸¹ Women are effectively barred from many public spaces such as parks and libraries by severely limiting the hours they are allowed access to those areas. Additionally, there are also numerous laws that prevent women from entering certain types of businesses. For example, in July 2013, the Committee for the Promotion of Virtue and the Prevention of Vice barred women from stores that sell musical instruments.⁸² Furthermore, Saudi women may not drive cars in most circumstances, a prohibition that has come under fire in recent years from women's organizations in Saudi Arabia and globally. Because women are also discouraged from using public transportation—in some cases, bus and train police segregate male and female passengers, and in others, women are banned from riding entirely—the driving ban curtails women's freedom of movement.⁸³ Women who are arrested for driving in Saudi Arabia may be fined and jailed, although the law is not consistently enforced. The issue has still not been resolved, but the Saudi government has recently announced certain concessions to the demands of women's movements, including lifting a ban on women riding bicycles and buggies, although the law still requires these activities to be carried out in the presence of a male guardian.⁸⁴

Legal limitations on women's mobility prevent women from participating in the public sphere or having a significant degree of autonomy from the men in their life. Certain countries have made progress in reforming or removing prohibitions on free public movement for women. Over the last five years, Bahrain and Qatar both rescinded laws that forced women to obtain permission from their husbands or guardians if they wished to travel alone. However, even when de jure laws allow women to move freely in public they still feel discouraged from accessing these rights. In Yemen, 62 percent of women report being "somewhat" or "completely" restricted in their ability to leave their houses without permission, and 42 percent cannot move about in public areas without fear or feeling pressure not to do so.⁸⁵ Male alliances and awareness-raising programs are needed to ensure that women can take advantage of their mobility rights and claim a vibrant public life.

Freedom of Domicile

CEDAW's Article 15, Section 4 declares that "States Parties shall accord to men and women the same rights with regard to the law relating to the movement of persons and the freedom to choose their residence and domicile."⁸⁶ Thirteen different states have expressed reservations to Article 15, with most states citing Islamic law as the basis for their reservations.⁸⁷

For example, Morocco maintains that a married woman may not choose a different domicile than that which she shares with her husband, and if her husband chooses to change residences she must go with him. Additionally, according to the Jordanian reservations, "the State religion views a woman as belonging to her husband, and as unable, whether married or single, to make an independent choice of

⁸¹ Restrictions on Women in Saudi Arabia, The Telegraph (May 23, 2011)

⁸² Saudi Arabia Bans Women from Music Shops, Tehran Times (July 3, 2013), <http://www.tehrantimes.com/middleeast/108987-saudi-arabia-bans-women-from-music-shops>.

⁸³ Eleanor Abdella Doumato, "Saudi Arabia" in *Women's Rights in the Middle East and North Africa: Progress Amid Resistance*, ed. Sanja Kelly and Julia Breslin, 2010.

⁸⁴ Baby Steps Towards Women's Rights in Saudi Arabia, The Daily Beast (May 11, 2013), <http://www.thedailybeast.com/witw/articles/2013/05/11/baby-steps-towards-women-s-rights-in-saudi-arabia.html>.

⁸⁵ International Foundation for Electoral Systems and Institute for Women's Policy Research, *Focus on Yemen Topic Brief: Freedom of Movement & Freedom from Harassment & Violence*, (2010).

⁸⁶ UN General Assembly [UNGA], *Declaration on the Elimination of Discrimination against Women*, 7 November 1967, A/RES/2263, (available at <http://www.un.org/womenwatch/daw/-cedaw/text/econvention.htm>).

⁸⁷ UN Children Fund [UNICEF], *Reservations to CEDAW: An Analysis for UNICEF* (2009) Prepared by Marsha Freeman, available at: http://www.unicef.org/gender/files/Reservations_to_CEDAW-an_Analysis_for_UNICEF.pdf.

dwelling.”⁸⁸ Tunisia’s initial reservation was almost identical to Morocco’s. It cited the *Tunisian Personal Status Code*, which named the husband as the head of the family and therefore justified all restrictions on a married woman’s right to choose her residence. However, in 1993 the *Tunisian Personal Status Code* was revised, causing the reservation to be partially withdrawn. The reservation currently states that although husband and wife must have a “common conjugal domicile,” either spouse may in addition have their own distinct temporary domicile.⁸⁹

Turkey’s position on Article 15 has also changed over the years. In 1985 Turkey entered a reservation on Section 4 of Article 15, which prompted a major response from local feminist organizations working with the UN to raise awareness about women’s human rights. Subsequently, at the Fourth World Women’s Conference in 1995 in Beijing, Turkey committed itself to withdrawing its reservations to all CEDAW articles. Furthermore, in 2001 the Turkish *Civil Code* was amended to reflect marriage equality for men and women.⁹⁰

Restrictions on women’s right to choose where they live and legally reside are antithetical to gender equality. Freedom of domicile intersects with issues of domestic violence, mobility, and general autonomy from male partners and family members. Turkey’s withdrawal and Tunisia’s partial withdrawal of Article 15 are positive signs in the implementation of CEDAW, but numerous countries still retain laws that prevent women from choosing where they live and when they change dwellings.

Restrictions in Voice and Agency in Employment & Retirement

In *Suzuki v. Sumitomo Cement Co. (the Sumitomo Cement Company Case)* of 1966, one of Japan’s first anti-discrimination cases, the Tokyo District Court ruled against the mandatory dismissal of a woman upon her marriage.⁹¹ Previously, the Sumitomo Cement Company mandated women to sign an agreement to voluntarily retire upon her marriage or upon reaching the age of 35, which caused 88 women to voluntarily retire. The employer justified the practice on the grounds that marriage decreases women workers’ productivity and that the policy conformed to Japanese traditions. The Tokyo District Court rejected this argument after finding a lack of evidence showing the actual decline of women’s productivity after marriage. The court applied Article 90 of the *Civil Code*, which nullifies any act contrary to public policy or good morals, and ordered the company to pay the plaintiff her back wages and to reinstate her in her former position.⁹² Though the case has no precedential power, it is significant because the plaintiff confronted a gender role stereotype that had remained unchallenged for decades. In the last two decades female plaintiffs have prevailed in more than 20 major cases involving retirement policies. In numerous cases, judges have cited the case involving the Sumitomo Cement Company as influencing their opinions.

In 1986, Japan adopted a new *Equal Employment Opportunity Law (EEO)* to meet the CEDAW obligations.⁹³ However, the language was weak and only “encouraged” employers to not discriminate against women in hiring and promotion. The *EEO* also allowed employers to claim they are treating women “equally” if they are employed in equal numbers with men, even though women were often

⁸⁸ *Id.*

⁸⁹ Ekaterina Yahyaoui Krivenko, “Women, Islam and International Law,” p. 127.

⁹⁰ *Supra* note 105.

⁹¹ 17 ROUSHU 1407 (Tokyo D. Ct. Dec. 20, 1966).

⁹² MINPŌ [MINPŌ] [Civ. C.] art. 90, para. 1, no. 1 (Japan).

⁹³ Enforcement Regulations for the Law Respecting the Improvement of the Welfare of Women Workers, Including the Guarantee of Equal Opportunity and Treatment between Men and Women in Employment [Equal Opportunity Law, (EEO)] [Ministry of Labor Ordinance No. 2 of 27 January 1986 as amended by Ministry of Labour Ordinance No. 33 of 1 November 1988] (Japan).

assigned to a career track with little opportunity for advancement regardless of qualifications and performance. In 1994, several Japanese women sued the Sumitomo conglomerate, asserting that the company's policy of assigning men and women to separate employment tracks discriminated against women and was in violation of the CEDAW. Concurrently, the CEDAW review of Japan in 1994 was one of the first in which NGOs participated and the Committee received 12 reports from the NGOs that highlighted the shortcomings of Japan's *EEOL*.

In 1997, the *EEOL* was amended to eliminate the terminology of "encouragement," instead requiring nondiscriminatory treatment in recruiting and promotion.⁹⁴ The remedy was only slightly improved by removing the defendants' privilege to refuse mediation. Additionally, a new Osaka-based women's group, the Working Women's International Network (WWIN), quickly mobilized to support the plaintiffs in the Sumitomo cases by publicizing the case, attending court hearings, and forming a human chain around the Osaka Court House during a symposium in September 1999. Additionally, they went to Geneva in 2001 to submit a shadow report to the Committee on Economic, Social and Cultural Rights for its review of Japan and to talk to the International Labour Organization (ILO) about the case. If they did not prevail in the courts, they planned to take the case to the Committee under the Optional Protocol.

In 2000, the court issued an opinion, comparing the women's labor status to that of blue-collar men in the company and denying the wage disparity claim.⁹⁵ While acknowledging that the two-track system was discriminatory, the court held that change couldn't be guaranteed. This decision led the plaintiffs to appeal. In 2003, approximately 70 NGO representatives from Japan attended the CEDAW review session; specifically, WWIN submitted a shadow report and spoke directly with the Committee members about the case involving the Sumitomo Cement Company. In its Concluding Observations, the Committee noted that despite the amendment of the *EEOL*, the two-track employment system remained a source of discrimination and contributed to the wage gap. This recommendation prompted the judge in the *Sumitomo Case* to recommend a settlement that vindicated the plaintiffs' discrimination claims, awarded back pay, and promoted the plaintiff to management. This case illustrates a multipronged advocacy approach that combines organizing, advocacy, litigation, international mobilizing, and demonstrations to reform laws and put into motion wide ranging social change on behalf of women.

Unequal retirement policies also disadvantage women and limit women's agency and voice. Because of unequal retirement policies, women in China, for example, are unable to participate equally in insurance schema and thus have lower pensions than men. Although the minimum living standard insurance benefits are given to unemployed persons in cities and towns, women are not always the beneficiaries of such insurance policies. For this reason, judicial lawmaking, legislative changes in the realm of employment rights, and legal services for women are critical to the recognition and vindication of women's rights. The Bureau of Oil Administration of Da Qin is a formative case in establishing the solution.⁹⁶ The bureau regarded certain women employees as "household workers," since the women worked in the same work unit as their husbands. When women were 50 years of age they were asked to retire and were paid one-third of what other retirees were paid. The Center for Women's Law Studies and Legal Services of Peking University worked with the relevant departments to address this egregious violation of equal rights in employment.

Unequal retirement laws can negatively affect women's mobility in the work force. In Uzbekistan, Article 7 on the Provision of Pensions to Citizens [1993] states that the right to the retirement pension shall be

⁹⁴ Kampo gai. (Act Amending Several Acts to Guarantee Equal Opportunity and Treatment Between Men and Women in Employment). 1997, Vol ½, No. 121, pp. 30-33.

⁹⁵ 2000 Japanese Court Decision (on Sumitomo)

⁹⁶ Bureau of Oil Administration of Da Qin case from China

obtained by: men—at the age of 60 with a record of service not less than 25 years; and women—at the age of 55 with record of service not less than 20 years.⁹⁷ Similarly, in Turkey, women are required to retire at 58 and men at 60.⁹⁸ Requiring unequal retirement ages creates the assumption that women are weaker than men and results in a disparate pension between men and women. Despite the restrictive laws of the aforementioned countries, several countries serve as remarkable case studies of successfully reformed employment laws.

Dismantling Overprotection and Paternalism in the Law

Workplace laws that prohibit women from a range of economic activity constrain women's agency and voice. While a focus on accommodating the reproductive roles and caregiving functions of both women and men in the workplace can benefit all workers, a women-only focus can stereotype women and reinforce traditional gender roles that ultimately subordinate them. During a period of economic transition, the added responsibility of employers to provide special treatment to women may translate into a disincentive to hire women. Gender stereotypes often result in laws and policies that subordinate women and restrict their access to equal employment opportunities, but which are under the guise of protections. It is therefore important to design protective measures that reflect a more dynamic conceptualization of women's roles, and to extend protective legislation to both men and women.

For example, in many areas of the law paternalistic provisions restrict women's work according to their biological functions. Laws that regulate women workers' night shifts and rest periods still exist in many countries, as do restrictions on the types of jobs available to women - for example which prevent women from performing certain physically arduous jobs. Under these laws, the work world, especially the blue-collar work world, is segregated by gender. The philosophy underpinning these laws views women as biologically unsuitable for the same work opportunities as men. The law thus provides powerful disincentives for women's movement into nontraditional occupations.

Restricting Women's Mobility in the Workforce

In Moldova, labor law prevents women from holding specific jobs such as boilermaker, bricklayer, locksmith, riveter, welder, or lifting weights, etc. *The Tajikistan Labour Code* places restrictions on women's access to overtime or travel-related work.⁹⁹ *The Turkish Labour Law* prohibits women's access to employment in coal mines, underground quarries, embanking, digging, and excavation of soil.¹⁰⁰ Although it is important for the law to regulate hazardous employment environments, these protections should not provide blanket prohibitions against women from seeking employment in these work categories. Instead, regulatory and protective provisions should be extended to both women and men employees so that women would not be disadvantaged in employment.

In the Czech Republic, laws preventing women from performing work deemed harmful to them, such as mineral extraction and mining, remain, despite the abrogation of rules prohibiting women from performing night work. In Poland, the *Labor Code* prevents the employment of women in dangerous

⁹⁷ Law of the Republic of Uzbekistan, 1993, No. 938-XII. Ch. II, Art. 7

⁹⁸ U.S. Social Security Administration, Office of Retirement and Disability Policy. *Social Security Programs Throughout the World: Europe 2012*. By Manuel de la Puente. Washington: August 2012 (SSA Publication No. 13-11801) p. 301

⁹⁹ Labour Code, Text No. 417, (May 15, 1997), as amended (Taj.), available at:

<http://www.ilo.org/dyn/natlex/docs/WEBTEXT/48035/65091/E97TJK01.htm>.

¹⁰⁰ Labour Act of Turkey, Law No. 4857, 2003 (Turk.), available at:

<http://www.ilo.org/public/english/region/eurpro/ankara/download/labouracturkey.pdf>.

occupations and as a result women are exempted from over 90 occupations in 20 fields of employment.¹⁰¹ Further, the law prevents night work, overtime work, and work-related travel for pregnant women and women with children who are not yet one year of age. Apart from the negative impact of protective legislation on women's employment opportunities, these laws have reinforced women's traditional role as caretakers of the family.

Conclusion

As mentioned, many countries formalize women's rights to movement through constitutional provisions that deal with the right to movement of persons and freedom to choose residence and domicile on an equal basis with men. Law that limit women's capacity to move freely, to choose their occupation or to participate as a full citizen are discriminatory and negatively impact on women's agency

¹⁰¹ The Labour Code, Poland, (June 26, 1974), as amended (Pol.), *available at*: http://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&sqi=2&ved=0CCIQFjAA&url=http%3A%2F%2Fwww.paiz.gov.pl%2Ffiles%2F%3Fid_plik%3D7317&ei=9nyrUMfnGleF4ASkxYDQDA&usg=AFQjCNFbhgsq2Fgci3w8B-0s2NpHYMRRIA&sig2=wIL6QHMBbvtRAwzOYb0xYA.

Pillar III: Decision Making Over Family Formation

Family law often serves as a litmus test for broader societal gender equality and has an intimate and powerful impact on women's lives. Laws governing marriages, divorce, family planning, and child care have widespread effects on women's agency. In many countries, family codes privilege a model of marriage wherein the husband is the legal head of the family, which can give the husband power over his wife's right to work and travel. In others, lack of regulation of marriage age allows young girls to be married, usually disrupting their education and exposing them to health risks associated with early pregnancy. Legislation on contraceptives and abortion has a major impact on women's abilities to plan their families and access safe health care.

Reform of the family code has been a high-priority objective of women's rights advocates. Though attempts to change these laws often run into strong resistance from conservative factions, advocates for legal reform have made headway around the world in slowly changing laws and mindsets. Women's organizations, civil society organizations, women's rights advocates, liberal-minded lawyers, judges, and religious scholars have often been the driving force in highlighting discrimination of women and heralding reform.

Child Marriage

Child marriage is a practice that robs women of agency on a number of fronts. Not only are girls often coerced into arrangements against their will, the effects of being married at a young age tend to include lower levels of education, as girls are usually pulled out of school following marriage, and long-lasting health problems as a result of early pregnancies. Child marriage is perpetrated for a number of reasons, cultural, religious and economic, and it is important to address the conflicts between law, scripture, and tradition to eradicate the practice. For instance, the conflict between scripture and law has consistently been an integral part of the dialogue regarding the ban of childhood marriage in India. In the *Yadav, Gupta, Thahare, Kurmi, Lodh, Harijan, Bajiya, Kalwar, Pasi, Pashwan, Mourya* and *Tharu* communities, people believed that if a daughter married prior to her menstrual period, "the blessings that will accrue will be akin to the donation of 7,800 cows."¹⁰²

The international law most noted on this issue is the CEDAW, which calls on all countries to take necessary action to eliminate child marriage and encourages lawmakers to set the minimum age for marriage to 18 years.¹⁰³ Following suit, various other regions have adopted their own child marriage laws. *The African Charter on the Rights and Welfare of the Child of 1990* prohibits child marriage and specifies the minimum age of marriage to be 18 years.¹⁰⁴ On a national basis, India has taken various approaches to altering their laws in order to account for their distinct cultural traditions and customary practices, though as yet only limited progress has been seen in stopping the practice.

As early as 1869 the *Indian Penal Code* prohibited child marriage. The Native Marriage Act of 1872 promulgated by the British colonial regime fixed the age of consent to marriage at 14 years, and the Indian nationalist movement called for the Child Marriage Restraint Act of 1929. However, these laws did not necessarily translate into a successful eradication of child marriage, and several key court cases highlighted disparities in the Child Marriage Restraint Act of 1929 and further defined the boundaries of

¹⁰² UN Children Fund [UNICEF], Global Policy Section, Working Paper: Child Marriage and the Law (January 2008) (prepared by Rangita de Silva de Alwis).

¹⁰³ UN General Assembly [UNGA], *Declaration on the Elimination of Discrimination against Women*, 7 November 1967, A/RES/2263, (available at <http://www.un.org/womenwatch/daw/-cedaw/text/econvention.htm>).

¹⁰⁴ Organization of African Unity, *African Charter on the Rights and Welfare of the Child*, 11 July 1990, CAB/LEG/24.9/49 (1990), available at: <http://www.refworld.org/docid/3ae6b38c18.html> [accessed 22 May 2013].

the law. *Radha Krishnan and Ors. v. Ellamma Reddy*¹⁰⁵ clarified the law to stipulate that the 1929 act prohibited marriage of a girl under the age of fifteen, and the Andhra Pradesh High Court in *Panchireddy v. Gadela Ganapatlu*¹⁰⁶ ruled that child marriage was *void ab initio*. However, fearing that married girl children would be abandoned if the marriage were voided, this decision was reversed by a full bench of the same high court in *Vankataramana v. State*.¹⁰⁷ The case of *Smt. Sushila v. State of Rajasthan and Ors*¹⁰⁸ called for respondents to enforce the Child Marriage Restraint Act of 1929, including a request that any officer who did not prevent child marriages should be punished. In response, the court created deterrents and increased the severity of punishments for any violation¹⁰⁹ and required state governments to determine the feasibility of appointing a Child Marriage Prevention Officer for the whole state. In *Smt. Seema v. Ashwani Kumar*,¹¹⁰ the court ordered the mandatory registration of all marriages.¹¹¹

Public interest litigation on child marriage, international treaties such as CEDAW, and the Convention on the Rights of The Child (CRC) all played a role in the promulgation of the Prohibition of Child Marriage Act of 2006. In April 2003 the Forum for Fact Finding Documentation and Advocacy (FFDA), a human rights NGO, filed a public interest case that called for the strict implementation of the Child Marriage Restraint Act of 1929 citing the need for India to remain consistent with international conventions including CEDAW and the CRC.¹¹² This case was the main instigation for the Prohibition of Child Marriage Bill, which the Indian Upper House of Parliament approved in December 2006.

The Prohibition of Child Marriage Act of 2006 (PCMA) outlawed child marriages and granted children an option to void marriages two years after reaching adulthood and in certain circumstances before they have reached adulthood.¹¹³ The bill finally called for the establishment of child marriage prevention officers by state governments. Additionally, the bill provides for care of the minor girl and a place of residency and punishes males over 18 years of age who enter into a marriage with a minor by charging them with two years of imprisonment or a fine. Though the new act marked a laudable change in child marriage laws, the law still contained inconsistencies with both Hindu and Muslim personal status laws. The Delhi High Court ruled that the PCMA overrides provisions of the Hindu Marriage Act, a decision that is key to the implementation of the PCMA. Though India has made significant strides to eliminate child marriage, the past failures to fully implement the Child Marriage Act of 1929 underscore that enforcement is crucial to the new act's success.

Restriction on Divorce

Whether, when, and whom to marry as well as the decision to divorce is integral to women's freedom of movement. Restrictions on divorce affect a woman's ability to leave an abusive relationship, retain custody of her children, or equal ownership of resources.

Though most countries in the world have legalized divorce in recent decades, the law is not always enough to overcome religious standards or practices. The Philippines is one of the few countries that retain a ban on divorce. Congresswoman Luiz Llagan introduced a bill in 2010 to parliament calling for

¹⁰⁵ *Radha Krishnan and Others v. Ellamma Reddy*, (1984) 1 M.L.J. 113(1983) (India)

¹⁰⁶ AIR 1975 AP 193

¹⁰⁷ AIR 1977 AP 43

¹⁰⁸ MANU/0029/1995

¹⁰⁹ *Child Marriage Restraint Act of 1929*, No. 19, Acts of Parliament, 1929 (India)

¹¹⁰ *Smt. Seema v. Aswani Kumar*. T.P. (Civ.) No. 291 of 2005, Supreme Court of India, Nov. 18, 2005.

¹¹¹ *Id* at para 5.

¹¹² See Avani Mehta Sood, *Litigating Reproductive Rights: Using Public Interest Litigation and International Law to Promote Gender Justice in India*. Center for Reproductive Rights, 2006 at 73.

¹¹³ *2006 Prohibition of Child Marriage Act*, No. 6, Acts of Parliament, 2007 (India), available at: <http://wcd.nic.in/cma2006.pdf>.

the legalization of divorce, and in doing so observed that “many Filipinos, especially women are trapped in abusive and unhealthy relationships...”¹¹⁴ The *Family Code* currently provides three options for spouses who want to leave their marriages: legal separation, annulment, or a declaration of nullity of marriage. However, since the marriage is not dissolved in a legal separation, spouses cannot remarry and remain tied to their previous spouses.

Women’s Bodies and Policymaking

A lack of access to reproductive health is widespread with “222 million women in developing countries who want to prevent pregnancy” without modern contraception.¹¹⁵ There are many reasons for the dearth of comprehensive contraceptive options, including high costs due to scarcity or additional health care needed for safe use, religious tradition that frowns on the use of birth control, and restrictive laws and policies governing women’s bodies.¹¹⁶

Approaches to family planning resources differ greatly from region to region. Some countries offer a comprehensive approach to family planning policies, as under¹¹⁷ Kosovo’s Law on Reproductive Health, which outlines that every person “regardless of gender, ideological, religious or cultural orientation is guaranteed the right to information and education for sexual and reproductive health during all his/her life cycle.”¹¹⁸ It further outlines the responsibilities of the Ministry of Health in implementing the law by providing information, education, and advice on reproductive and maternal health.¹¹⁹ Similarly, Tajikistan’s Strategic Plan on Reproductive Health comprehensively sets goals and objectives on reproductive health.¹²⁰ Though a comprehensive policy often makes a big impact, different types of family planning laws are oftentimes addressed separately.

Mexico is an example of a success story on policies relating to family planning. During the 1980s Mexico established government-funded, community-based distribution programs that introduced modern forms of contraception to rural communities. At the same time the Mexican Ministry of Health mainstreamed family planning into all national health centers, and the national clinical guidelines for prenatal care required that providers counsel parents on family planning options.¹²¹ These changes have led to a significant uptake in contraceptives, with two-thirds of Mexican women currently using contraceptives, up from only 30 percent in 1976.¹²²

¹¹⁴ Carlos H. Conde. *Philippines Stands All but Alone in Banning Divorce*, NY TIMES, June 17, 2011.

¹¹⁵ Population Action International – Family Planning Can Level the Playing field for Women Everywhere by Suzanne Ehler <http://populationaction.org/2013/04/18/family-planning-can-level-the-playing-field-for-women-everywhere/>

¹¹⁶ Jocelyn E. Finlay, David Canning, June Y.T. Po, *Reproductive Health Laws Around the World*, Working Paper No. 96 (October 2012).

¹¹⁷ Armenia’s Law on Human Reproductive Health & Reproductive Rights was adopted in 2002. Tajikistan’s “On Reproductive Health and Reproductive Rights”, too was adopted in 2002. The reproductive health law of Georgia is regulated by Chapter XXIII Family Planning of the Law on Healthcare. Serbia has a law on Abortion in Medical Facilities and Kazakhstan has a law on Law on reproductive health of citizens and guarantees of their implementation” 16.06.2004 N 565-2.

¹¹⁸ *Law on Reproductive Health*, No. 2, 1976 (Kos.), available at: http://www.gazetazyrtare.com/e-gov/index.php?option=com_content&task=view&id=128&Itemid=28&lang=en.

¹¹⁹ *Id.*

¹²⁰ A Resolution On Approval of the Strategic Plan for Reproductive Health of the Republic of Tajikistan by 2014, Res. No. 348, (August 31, 2004) (Taj.).

¹²¹ Barber, Sarah. “Family Planning Advice and Postpartum Contraceptive Use Among Low-Income Women in Mexico,” *International Family Planning Perspectives*. March 2007.

¹²² Isobel Coleman and Gayle Tzemach Lemmon, *Family Planning and U.S. Foreign Policy: Ensuring U.S. Leadership for Healthy Families and Communities and Prosperous, Stable Societies* (April 2011), see <http://www.cfr.org/women/family-planning-us-foreign-policy/p24683>.

Right to Abortion in Lawmaking

The UN Special Rapporteur on Torture's most recent report expresses concerns about restrictions on access to abortion and even considers bans on abortion as torture and ill treatment.¹²³ Inclusive abortion laws are necessary so that women can control their fertility, career paths, and agency. Access to safe and legal abortion is also an important health issue, as pregnant women often turn to dangerous alternatives in the face of a ban on the practice. While both the laws and dialogue around pregnancy termination vary around the globe, the following examples are included to illustrate noteworthy laws in abortion jurisprudence.

In Canada, there are no explicit guarantees to the right of abortion in *The Canadian Charter*, but there exists jurisprudence on the matter relating to a 1988 case before the Supreme Court of *Canada, R. v. Morgentaler*. The court ruled in a 5-2 decision that the prohibition of abortion infringed upon the right to the security of a person, judging that this right encompasses not only physical but also psychological integrity.¹²⁴ A female judge also ruled that prohibition infringed on a woman's right to liberty, and had the effective of decriminalization of abortion.

Article 55 (1) of the Slovenian Constitution comes closest to guaranteeing a constitutional right to abortion by stating that "[e]veryone shall be free to decide whether to bear children."¹²⁵ Alone this statement is too vague to provide definitive legal basis, but in 1977 Slovenia passed legislation legalizing abortion, which states the operation can be performed up until 10 weeks and is fully covered by health insurance.¹²⁶

Though conservative religious tradition is often a major factor in restricting abortion rights, particularly in the Americas, Romania represents a case in which liberalized abortion policies were reversed because of a nationalist, pro-natalist atmosphere that feared declining birthrates. Though the government conducted a public campaign promoted the use of IUDs and other contraception methods, in Eastern Europe at that time these methods were often difficult to access or prohibitively expensive. Abortions often appeared to be the contraceptive method of choice.¹²⁷ As a result of the low fertility rates, the Romanian government brought the 1958 liberalization of abortion to a halt, banning abortions unless a woman was over 45 years old, was already supporting four children, or if her health was in danger.¹²⁸

A set of policies related to pregnancy that comes from another perspective is pre-natal diagnostic restriction laws in India. In India, historical boy child preference has led to femicide, resulting in an unbalanced male to female ratio. The government has made some attempts to prevent this practice by regulating pre-natal diagnostic techniques. In 1994, the Pre-Natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act (PNDT) was enacted,¹²⁹ and brought into operation beginning January 1, 1996.

¹²³ Human Rights Council Twenty-second session Agenda item 3 Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development /// Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Méndez /// A/HRC/22/53
http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session22/A.HRC.22.53_English.pdf

¹²⁴ *R v. Morgentaler* (1988), 1 SCR 30, 44 DLR (4th) 385 (Canada).

¹²⁵ Constitution of the Republic of Slovenia, art. 55 § 1 (Slvn.)

¹²⁶ Although Slovenia achieved independence from the former Socialist Federal Republic of Yugoslavia in 1991, abortion is still regulated by the Law of 7 October 1977. This Law was enacted by Slovenia when it was part of Yugoslavia to implement article 191 of the Federal Constitution of Yugoslavia of 21 February 1974, which proclaims that "it is a human right freely to decide on the birth of children". Under the 1977 law, an abortion may be performed on request during the first 10 weeks of pregnancy.

¹²⁷ *Id.*

¹²⁸ *Id.*

¹²⁹ *Pre-Natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act* (PNDT), 1994, available at: http://www.medindia.net/indian_health_act/the-pre-natal-diagnostic-techniques-act-rules-introduction.htm (India).

The first act received a lot of criticism for “prov[ing] largely ineffectual” because of “a loophole in the act, which leaves open the legality of newly developing sex-determination technologies.”¹³⁰ The PNNT act and rules have been updated and amended to include new technologies. The new act prohibits not only the termination of a female fetus based on sex, but “‘pre-natal diagnostic procedures’ mean[ing] all gynecological or obstetrical or medical procedures such as ultrasonography, foetoscopy, taking or removing samples...for being sent to a genetic laboratory or genetic clinic for conducting any type of analysis or pre-natal diagnostic tests for selection of sex before or after conception.”¹³¹ Targeting prospective parents and doctors, the Act works to discourage sex selection of any kind and punishes all perpetrators. However, because the procedures happen behind closed doors and in the privacy of doctors’ offices, it is difficult to enforce the Act to the fullest extent of the law.

Child Care and Family Leave as Correlatives to Women’s Agency and Voice

As women have redefined their role in the workforce over the course of the past 50 years, policies relating to child care and family leave must also be reinvented to match the changing reality. Today only a handful of countries—Liberia, Papua New Guinea, Swaziland, and the United States—do not have a national law mandating paid time off for new parents.¹³² Though there are child care and family leave policies in nearly every country, the examples of Japan, the United Arab Emirates, and Nordic countries demonstrate a range of innovative policies as well as magnify some of the discrepancies in the actual use of parental leave by mothers and fathers.

In the United Arab Emirates, civil society organizations were instrumental in the promulgation of the recent labour and child care laws. The UAE Labour Law (F. No. 8) of 1980,¹³³ which entitles women in the private sector to 45 days of fully paid maternity leave financed by the employer, was extended in Concerning Nurseries (No. 5) in 1983 and The Corporate Child Care Center Law (No. 19) of 2006.¹³⁴ The latter law mandates the creation of day care centers at ministry, government authority, public establishments, and government departments.¹³⁵ Since the first center opened in March 2009, several child care centers have been opened in other government departments with the support of the Dubai Women Establishment’s campaign for child care. Article 40 of the Law establishes the Mother and Child Supreme Council and defines the purpose of the council as “enhancing the level of mother and child care, attention, and follow-up” by increasing support in “educational, cultural, health, social, psychological, and pedagogical fields.”¹³⁶ The law also calls for a follow-up and evaluation of plans of development and promotion.¹³⁷

¹³⁰ George Washington International Law Review 453 (2004): “It’s (Still) A Boy...”: Making the Pre-Natal Diagnostic Techniques Act an Effective Weapon in India’s Struggle to Stamp out Female Feticide by Vineet Chander

¹³¹ *Pre-Natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act (PNNT), amendment to Section II, V for clause I, 1994, available at:* http://www.medindia.net/indian_health_act/the-pre-natal-diagnostic-techniques-act-rules-introduction.htm (India).

¹³² Tara Siegel Bernard. *In Paid Family Leave, U.S. Trails Most of the Globe*, NY TIMES, February 22, 2013, available at: <http://www.nytimes.com/2013/02/23/your-money/us-trails-much-of-the-world-in-providing-paid-family-leave.html?pagewanted=all& r=0>.

¹³³ Law Concerning the Regulation of Labour Relations - Federal Law No 8 of 1980, Issued on 20/4 / 1980 corresponding to 6 /// Art 30 /// Jumâdâ al - Akhir 1400H, incorporating amendments up to Federal Decree Law No 08/2007 dated 13/11/2007 § Art. 30

¹³⁴ Law No. 5, In Respect of Nurseries, of 1983 (UAE); Corporate Child Care Center Law (19) of 2006 (UAE).

¹³⁵ *National Corporate Child Care Project (NCCP)*, DUBAI WOMEN’S ESTABLISHMENT (July 28, 2013), <http://www.dwe.gov.ae/projectdetail.aspx?id=5>.

¹³⁶ Law Concerning the *Establishment of the Mother and Child Supreme Council 2003*, Article 4

¹³⁷ Law Concerning the *Establishment of the Mother and Child Supreme Council 2003*, Article 4

The Nordic countries have taken some of the most progressive approaches towards family leave lawmaking, informed by international treaties, specifically the UN Convention on the Rights of the Child, which places the child's wellbeing at the center of the lawmaking process.¹³⁸ The Nordic countries have long valued a balance between work and family, with the first maternal protection legislation promulgated in 1892 in Norway.¹³⁹ Shortly after Norway's legislation was introduced, the other Nordic countries followed with Sweden in 1900, Denmark in 1901, and Finland in 1917, illustrating the regional sharing of best practices that has helped promulgate progressive reform.¹⁴⁰ Maternity leave was introduced in Sweden as a part of the state-subsidized sickness insurance scheme.¹⁴¹ In 1955 Sweden introduced three months paid maternity leave, and in 1974 introduced the idea of parental leave in which a father could use part of the leave period instead of a mother, which was extended to fifteen months in 1989.¹⁴² Norway closely followed Sweden's example, and introduced legislation calling for a twelve-week paid maternity leave in 1956.¹⁴³

The concept of the father's quota, which designates a specific part of the leave exclusively reserved for fathers and is not available for use by the mother, was introduced in the mid-1990s.¹⁴⁴ Denmark was the first to adopt this idea in 1997; however, the government eliminated the quotas in 2002. Soon after, Denmark introduced the 3+3+3 model of parental leave, which gave each parent three months. Despite the promulgation of many policies in Nordic countries aimed to create gender equality and encourage paternity leave, mothers often take most of the leave.

Though the Nordic countries represent the most liberal and inclusive child care policies in the world, their policies are expensive. In Denmark, child care is also subsidized by the state, which drives the cost fairly low for parents, but requires extensive state funds.¹⁴⁵ Finland subsidizes mothers to have at-home child care, which was introduced by Finland's Centre Party who wanted alternatives for self-employed mothers.¹⁴⁶ In the 1990s, the National Coalition in Finland successfully added a private child care allowance.¹⁴⁷ Another trend is the development of kindergartens as a form of child care, which was introduced in Norway.¹⁴⁸

Despite progressive maternity legislation in Nordic countries, the public and private sector have vastly different family leave policies. The predominance of women in the public sector has led to better work-family balance policies and compensation due to the involvement of woman-dominated public sector unions.¹⁴⁹ However, in many cases the private sector continues to be dominated by men, subsequently

¹³⁸ UN General Assembly [UNGA], *Convention on the Rights of the Child*, 20 November 1989, United Nations, Treaty Series, vol. 1577, (available at: <http://www.unhcr.org/refworld/docid/3ae6b38f0.html>).

¹³⁹ Richard Hausmann, Laura D. Tyson and Saadia Zahidi. *The Global Gender Gap Report 2012* http://www3.weforum.org/docs/WEF_GenderGap_Report_2012.pdf.

¹⁴⁰ Ann-Zofie Duvander and Johanna Lammi-Taskula, *Parental Leave*, in *PARENTAL LEAVE, CHILDCARE, AND GENDER EQUALITY IN THE NORDIC COUNTRIES*, p. 34.

¹⁴¹ Nabanita Datta Gupta, Nina Smith, Mette Verner, *Child Care and Parental Leave in the Nordic Countries: A Model to Aspire to?*, Discussion Paper No. 2014 (March 2006).

¹⁴² *Id.*

¹⁴³ *Id.*

¹⁴⁴ Ann-Zofie Duvander and Johanna Lammi-Taskula, *Parental Leave*, in *PARENTAL LEAVE, CHILDCARE, AND GENDER EQUALITY IN THE NORDIC COUNTRIES*, p. 33.

¹⁴⁵ *Supra* note 162.

¹⁴⁶ *Id.*

¹⁴⁷ Mutsuko Takahashi, *Challenges in Nordic Childcare Policies: With Special Reference to Finland*, 4 *THE JOURNAL OF COMPARATIVE ECONOMIC STUDIES*, 41-55 (2008).

¹⁴⁸ Berit Brandth and Ingólfur V. Gíslason, *Family policies and the best interest of children*, in *PARENTAL LEAVE, CHILDCARE, AND GENDER EQUALITY IN THE NORDIC COUNTRIES*, p. 110.

¹⁴⁹ Nabanita Datta Gupta, Nina Smith, Mette Verner, *Child Care and Parental Leave in the Nordic Countries: A Model to Aspire to?*, Discussion Paper No. 2014 (March 2006).

creating less demand for family friendly leave schemes and perpetuating the wage differences between men and women.¹⁵⁰ Additionally, men rarely take the leave they are granted as fathers, contributing to a glass ceiling for women in the private sector.

Plunging fertility rates have also been found to drive family formation policies, particularly in Japan. Despite the increase of Japan's women in the workforce,¹⁵¹ Japan remains dependent on a social framework in which women bear the burden of child rearing and household work. To meet the demands of the changing role of women in the workforce and home, the government was pushed to reform work-family balance policies following a decrease in the fertility rate. The Child Care Leave Law of 1992 allows fathers to take child care leave from work, grants family care leave for 93 days, guarantees 30 percent of the monthly salary from the Employment Insurance, and emphasizes private care in the home for children.¹⁵² Though the law allows fathers to take child care leave from work, only 0.5 percent of fathers actually take the leave they are granted.¹⁵³ Only 16 percent of married women under 30 took the leave because 46 percent stated that they preferred to quit work to care for their children due to the atmosphere at work.¹⁵⁴ Additionally, the law offers allowances and maternity leave while simultaneously encouraging women to work part-time from home, maintaining societal expectations that women bear the household work and forcing women to rely on their husbands' incomes.

The updated Child Care Leave Law of 2001 prohibits employers from firing, laying off, or demoting employees who apply for child care leave. The law also provides for the limitation of working hours, including flextime and night work.¹⁵⁵ Due to the decreasing birthrate, the government enacted The Act on Advancement of Measures to Support Raising Next-Generation Children of 2005, which calls for state governments and employers to create action plans that support parents who are childrearing and local governments to create childcare support centers.¹⁵⁶ Another law that was promulgated in Japan was the Work-Life-Balance Charter in December 2007, which mandates employers, federal governments, and local governments to create action plans that call for employee's balanced work and family life.¹⁵⁷ This has provided additional safeguards but not necessarily addressed underlying societal pressures that affect how parents use the policies. Japan has one of the lowest female labor participation rates among developed countries, and it has remained relatively static since 1990 while other nations have seen significant increase.¹⁵⁸

Conclusion

While there are many barriers, progress continues to be made on what are the most volatile laws related to women's agency. Some of the greatest advances have been in the Muslim world, reclaiming religious

¹⁵⁰ *Id.*

¹⁵¹ For example, the labour force participation rate among women of childbearing years (25 to 39 years of age) increased from 60.2% in 1995 to 66.9% in 2005 (Statistics Bureau, 2006).

¹⁵² Eileen Appelbaum, Thomas Bailey, Peter Berg, and Arne L. Kalleberg, *Shared Work-Valued Care: New Norms for Organizing Market Work and Unpaid Care Work*, Economic Policy Institute (2002).

¹⁵³ *Id.*

¹⁵⁴ Hiroshi Kojima and Jean-Louis Rallu, *Fertility in Japan and France*, 10 *POPULATION: AN ENGLISH SELECTION* 2, p. 319-347 (1998).

¹⁵⁵ These limitations are available to employees with preschool children and those with children under 12 months who are not taking child care leave.

¹⁵⁶ The Act on Advancement of Measures to Support Raising Next-Generation Children in 2005, Act No. 120 of 2003 (Japan).

¹⁵⁷ Scott North, "Work-Life in Japan: The Past is Prologue." (Boston College Center for Work & Family) available at <http://www.bc.edu/content/dam/files/centers/cwf/research/publications/pdf/BCCWF%20EBS%20Work%20Life%20in%20Japan.pdf>.

¹⁵⁸ Blau, Francine and Lawrence Kahn. "Female Labor Supply: Why is the US Falling Behind?" 2013. <http://ftp.iza.org/dp7140.pdf>

discourse to present women's rights in the family through an Islamic lens. In Malaysia, efforts are being made for comprehensive reform of Malaysian Muslim family laws. This effort includes a focus on new progressive scholarship on equality, and examining strategies that have been used by women's groups in other Muslim countries to call for reform. Based on these lessons, activists in Malaysia have developed a draft family law as a starting point for negotiations, building a public constituency to sustain momentum for reform, and through the presence of women in the public sphere. Such movements towards reform are necessary in every country. As long as uneven laws are perpetrated and enforced, women will not be able to achieve full agency.

Pillar IV: Imperative of Women's Voice in Shaping Policy

Women are underrepresented in decision-making positions in every region of the world, making up only about 21 percent of national legislatures globally, and often even smaller percentages of local governments, judiciaries, and cabinets. Yet examples from across the globe indicate that the presence of women leads to better development outcomes and more inclusive policymaking. When women have a seat at the table, both women's rights and human rights are more likely to be present on policy agendas, and critical issues such as healthcare, child care, sexual harassment, domestic violence, and equal pay for equal work are given priority. Women also bring a distinct approach to lawmaking. From Kim Campbell's¹⁵⁹ inclusive procedure drafting a gun control law to Mary Robinson's¹⁶⁰ efforts to stay connected to civil society organizations during her time as Ireland's President, women help to develop laws that positively impact women, men, and children. Improving women's agency and equality in politics requires eliminating barriers to women in public service. One major structural barrier that can be mitigated by legal reforms is the electoral system.

The Reform of Election Law

The reform of election law is important to addressing the legacy of discrimination and patriarchy in politics. Equalizing the playing field ensures that women have an equal opportunity to reach positions of influence. With women constituting 50 percent of the population in most countries, equal representation and including women's voices at the decision-making table is imperative in order to address the needs of women. However, patriarchal cultures and "old boys clubs" often prevent women from entering politics. There are many types of electoral law reform that can make an impact on women's political participation. The type of electoral system in a given country is most often the biggest determinant of the levels of women at the decision-making table. For instance, proportional representation systems are generally more successful at getting women elected than first-past-the-post systems. Other factors include district size and magnitude, and the degree to which parties, versus voters decide list order, which can all be altered through election law reform.

One legislative measure that has been successful around the world in increasing the numbers of women in decision-making bodies is the implementation of a quota. Quotas are important mechanisms to achieve equal representation of women and men in politics and can be legislated through national or local electoral reform or political parties.

¹⁵⁹ Former Prime Minister and Minister of Justice in Canada

¹⁶⁰ Former President of Ireland and UN High Commissioner for Human Rights

Quotas

Around the world, the rising tide of demands made by women's movements brought about the adoption of gender quotas. Following strong feminist pressure in the last few decades, a second concept of equality is gaining relevance and support: the notion of equality of result. The argument is that real equal opportunity does not exist just because formal barriers are removed. Direct discrimination, as well as a complex pattern of hidden barriers, prevents women from getting their share of political influence. Quotas and other forms of affirmative action are thus a means towards equality of results. Quotas open the gates of male dominated legislative assemblies to women and help equalize the playing field.

Quotas are not a panacea, and will only be successful when they are used as one of many strategies for women's enhanced political participation. Birgitta Dahl, Speaker of Parliament in Sweden, argues that quotas are not the first step countries should take. She contends that it is first necessary to "la[y] the groundwork to facilitate women's entry into politics."¹⁶¹ She goes on to say, "[Sweden] prepared the women to ensure they were competent to enter the field; and we prepared the system, which made it a little less shameful for men to step aside. Then we used quotas as an instrument in segments and institutions where we needed a breakthrough."¹⁶²

Many countries have made strides toward achieving gender parity by implementing legislated quota laws that require a certain number or percentage of seats be filled by women. In Uganda, although women are elected to parliament outside of gender specific reserved seats, the thirty-nine districts are required to reserve a seat for women.¹⁶³ Electoral law in Argentina mandates that women must hold 30 percent of elective posts.¹⁶⁴ Finland's quota system is gender neutral and requires that men and women must both equal 40 percent of the members of a governmental structure.¹⁶⁵ India's 74th amendment prescribes that 33 percent of the seats in local municipal bodies are reserved for women.¹⁶⁶ Other countries that have quotas for women in parliamentary representation include Bangladesh (30 seats out of 330),¹⁶⁷ Eritrea (10 seats out of 105),¹⁶⁸ and Tanzania (15 seats out of 255).¹⁶⁹

Another form of implementing quotas is through political parties. Quotas in Denmark, Norway, and Sweden are required not by the government, but by individual political parties. Over the last 30 years, this has resulted in Scandinavian countries having among the highest political representation of women in the world. Today, women constitute 40 percent of the members of parliament in Sweden, 34 percent in Finland, 38 percent in Norway, 34 percent in Denmark, and 25 percent in Iceland. Without laws mandating representation of women in government, women's movements mobilized to lobby political parties to include women's quotas.

Despite quota laws on the books, without additional mechanisms women are often included only at the levels necessary to fulfill the letter and not the spirit of the law. Scandinavian countries have added additional safeguards to ensure parties comply with the spirit of the law. In 1994, the Swedish Social

¹⁶¹ Drude Dahlerup, *Using Quotas to Increase Women's Political Representation*, International IDEA's Handbook: *Women in Parliament Beyond Numbers*(2002)

http://www.idea.int/publications/wip2/upload/4_Increasing_Women%27s_Political_Representation.pdf

¹⁶² *Id.*

¹⁶³ Uganda CONST, art LXXVII, § 1a (Uganda)

¹⁶⁴ *Ley de Cupo Feminino*. Electoral Code, Article 60 [3]. Amended in 1991 (Arg.)

¹⁶⁵ The Act on Equality between Women and Men Finland's Quota Law (232-2005) Fin.

¹⁶⁶ India Const. art. 243, *amended by* The Constitution (Seventy Fourth Amendment) Act, 1992.

¹⁶⁷ Constitution of the People's Republic of Bangladesh, art. LXV, § 3 (amended June 30, 2011) (Bangl.)

¹⁶⁸ Eritrean Electoral Law, Art. 17.2 (2001) (Eri.)

¹⁶⁹ The Constitution of the United Republic of Tanzania, art. LXVI, § 1b (Tanz.)

Democratic Party introduced the principle of “every second on the list a woman,” which ensures women and men alternate on the list.¹⁷⁰ The implementation of the Danish Labour Party’s former quota rule presented challenges due to the exception it grants if the party fails to find a sufficient number of candidates of each sex. In contrast, the Norwegian Labour Party does not allow any exceptions or allowances, which is apparent in their success: 50 percent of the parliamentary faction of the party and 50 percent of ministers when the party is in power are women.

When putting quotas in place, the Scandinavian countries encountered two main issues: discarding popular male incumbents, and finding a sufficient number of women willing to run for office. The Danish Social Democratic Party approached the issue of unseating men by increasing the size of internal bodies and committees, which enabled them to keep the current men but also to recruit new women. Finding qualified women willing to add a political career in addition to their work and family life was difficult. This struggle highlights the necessity of support structures that aid women in balancing these responsibilities.

A number of other counties have instituted innovative policies to bolster existing quota laws and counteract parties who try to avoid placing women in winnable positions. In Burkina Faso, the quota law is tied to federal campaign funding, and offers extra funding incentives to parties who fill the 30 percent benchmark. In Mexico, a federal law requires that parties spend two percent of their funding on women’s leadership initiatives, and strong lobbying by a coalition of women’s groups ensured strong enforcement mechanisms whereby parties must submit their budgets to verify the funds are being properly spent to benefit women members.

Two other countries that have seen great success through a quota system are Rwanda and South Africa. Rwanda, which boasts a parliament where 56.3 percent are women, has the largest percentage of women in government in the world and constitutes a best practice of a quota’s ability to broaden women’s access to politics.¹⁷¹ In post-genocide Rwanda, women members played an active role in ensuring women’s rights were accounted for in the writing of the new constitution, which established electoral gender quotas guaranteeing that women would fill 30 percent of all governmental seats.¹⁷² Often referred to as the “fast track” to parliament, this mandatory 30 percent of seats for women paired with women competing for openly contested seats allowed Rwanda its current record. At the local level, the introduction of a parallel system of women councils has also increased participation. Under the decentralization arrangement, women occupy 26 percent of the posts on the executive councils of each province, which marks a substantive increase from the past.¹⁷³

Women in Rwanda also lead in the judiciary, with women formerly serving as The President of the Supreme Court of Rwanda, the Minister of Justice, and the Executive Secretary of the *Gacaca* courts. Five of the Supreme Court’s twelve judges are women.¹⁷⁴ At a lower level, the national representation of women in all the *Gacaca* courts is 35 percent, which is an important achievement considering the role of *Gacaca* judge was traditionally a role reserved for Rwandan male elites.¹⁷⁵

¹⁷⁰ Sweden, QuotaProject.org, <http://www.quotaproject.org/uid/countryview.cfm?ul=en&country=197> (March 4, 2010)

¹⁷¹ Women in Politics – The Fight to End Violence Against Women (Feb. 25, 2010), <http://www.un.org/wcm/content/site/chronicle/home/archive/issues2010/empoweringwomen/womeninpoliticsfightviolenceagainstwomen>

¹⁷² Rwanda Const. Art. LXXVI §2.

¹⁷³ Jeanne Izabiliza, *The Role of Women in Reconstruction: Experience in Rwanda* <http://www.unesco.org/new/fileadmin/MULTIMEDIA/HQ/SHS/pdf/Role-Women-Rwanda.pdf>

¹⁷⁴ *Id.*

¹⁷⁵ *Id.*

Before the African National Congress enacted a 30 percent quota for female candidates, South Africa ranked 141st in the world in the percentage of legislative seats held by women. Just six years later, in 2000, South Africa ranked 10th, with 29.7 percent of its lower parliamentary seats filled by women. Currently, South Africa ranks 7th in the world, with 42 percent of women in parliament and 40 percent of women Ministers.¹⁷⁶ At the local level, South African women consisted of 40 percent of local authority councilors in 2006.¹⁷⁷ This large percentage of women is partially attributed to South Africa's commitment to the Southern African Development Community (SADC) Gender and Development Protocol, which demands 50 percent women in positions of political and decision-making structures by 2015.¹⁷⁸

South Africa continues to make efforts toward gender parity. The increased presence of women in all levels of government resulted in the promulgation of various laws, including the Promotion of Equality and Prevention of Unfair Discrimination Act,¹⁷⁹ followed by the Women Empowerment and Gender Equality Bill. The bill calls for equal participation of women in the economy and in decision-making positions across the private and public sectors.¹⁸⁰ Additionally, it provides for the monitoring of all legislation that addresses inequalities, discrimination, and violence against women. The South Africa Local Government Association (SALGA) previously campaigned for 50/50 representation of men and women prior to the 2006 local government elections. Although they did not reach their mark, they are still working toward this goal, now known as the *Benoni Declaration*.¹⁸¹

Even when quotas succeed at raising the numbers of women in government, they do not necessarily lead to true equality for women. Afghanistan's constitution grants 25 percent of seats to women in the *Wolesi Jirga* (its lower house of parliament), and 17 percent of seats to women in the upper house, the *Meshrano Jirga*. 25 percent of seats for women in district and provincial councils are guaranteed as well.¹⁸² Women occupied 69 seats, or 28 percent, in the Afghan parliament in 2011.¹⁸³ There were also two women presidential candidates in the 2010 elections. Afghanistan has committed itself to improving women's representation in the legislature to 30 percent by 2020. The government also pledged to ensure that 30 percent of all civil servants are female by 2013.¹⁸⁴ Unfortunately, psychological and physical pressure from warlords in rural areas and a traditional patriarchal culture frequently dissuade women from running in elections. Female political participation is often inhibited by threats and religious restrictions on appearing in public and travelling alone. In areas under Taliban control, women are facing constant threats, intimidation, and violence. Girls' schools, students, and teachers have been targeted along with female political leaders and activists. Furthermore, the extremely high percentage of female illiteracy also contributes to female participation remaining low. While women have gained access to a number of positions of power, their actual influence remains challenged. Due in part to threats and attacks against women, the number of women in the civil services has dropped from 31 percent in 2006 to 18.5 percent in 2010.¹⁸⁵

¹⁷⁶ Richard Hausmann, Laura D. Tyson and Saadia Zahidi. *The Global Gender Gap Report 2012*
http://www3.weforum.org/docs/WEF_GenderGap_Report_2012.pdf

¹⁷⁷ Sara Simonen, *South Africa, in Gender Equality in Local Governance* (Karita Immonen, 2010).

¹⁷⁸ Southern African Development Community [SADC], *Protocol on Gender and Development*, Art. 12, (August 17, 2008)

¹⁷⁹ Promotion of Equality and Prevention of Unfair Discrimination Act, 4 of 2000 (South Africa)

¹⁸⁰ Women Empowerment and Gender Equality Bill, 701 of 2012

¹⁸¹ The "Declaration Affirming Support for Global and Pan-African Actions to End Violence Against Women and Children" was created by 170 delegates from 23 African Countries gathered in South Africa for "The Gender in Justice in Africa Colloquium" to share information on African Best Practices to combat Gender Based Violence (November 23-27, 2006)

¹⁸² Ahmad Khan, *Women and Gender in Afghanistan* https://www.cimicweb.org/cmo/afg/Documents/Afghanistan-RDPs/CFC_Afghanistan_Women-and-Gender_Feb12.pdf

¹⁸³ *Id.*

¹⁸⁴ *Id.*

¹⁸⁵ *Id.*

The case of Andorra shows that representation alone does not ensure policy change or the elevation of women's voice in decision-making. There has been a significant increase in the number of women in positions of leadership in the government, parliament, and local administration. In the 2011 parliamentary election women took 15 seats out of 28 available, making Andorra the first European country to elect a majority female legislature, and the second globally after Rwanda. Since reaching parity, women's role in economic life has improved and legislation exists that provides for equality between women and men in employment and for maternity leave. However, inequalities still exist. Not only are women concentrated in sectors like education, health care, administration, and tourism, but women still make 35 percent less per hour than their male counterparts.¹⁸⁶ Additionally, there has been a documented increase in domestic violence cases from 2007 to 2010,¹⁸⁷ and the country does not have legislation in place prohibiting domestic violence.

There is Strength in Numbers

Parliamentary Committees and Caucuses

The Beijing Platform of Action of 1995 identifies 30 percent as a minimum critical mass that must be achieved before the presence of women can have a transformative effect. Only 33 countries have reached this in their national legislatures, but in these and other bodies women are transforming politics by banding together to make change even if they remain a minority. Parliamentary committees and caucuses have played a major role in amplifying the collective voices of women and uniting women across party lines. Parliamentary committees specialize in issues dealing with gender by partnering with other groups including ministries, committees, organizations, and expert groups, as well as overseeing the gender mainstreaming process, and ensuring government accountability. According to the Inter-Parliamentary Union, over 60 parliaments have now established committees to deal with gender issues and to mainstream gender issues in their committee work.

Several countries have particularly effective practices in their gender committees, including South Africa's Parliamentary Joint Monitoring Committee on the Improvement of Quality of Life and Status of Women. The committee oversees legislation and policy to ensure compliance with international norms and gender sensitivity. They also oversee the work of government departments and facilitate communication between parliamentarians and women's organizations. They have been particularly effective in shaping numerous pieces of legislation, such as the Employment Equity Act 55 of 1998¹⁸⁸ and the Labour Relations Act 66 of 1995.¹⁸⁹ The Uganda Women Parliamentary Association (UWOPA) also does significant work in engendering the legislative process, including through a lobbying and advocacy function for which they create awareness campaigns, foster networking, and disseminate information. The association also enables women to gather together to share their experiences, and provides support activities to improve women's participation and leadership. Cyprus's Committee on Equal Opportunities for Men and Women has an oversight function in which they scrutinize actions of the parliament and executive branches in addition to ensuring compliance with international norms. In particular, the committee has focused on policy, including the implementation of gender equality laws in the workplace and laws regarding violence against women. In Spain, the Equality Commission of Spain's Chambers of

¹⁸⁶ Country Reports on Human Rights Practices for 2012: Andorra, US Bureau of Democracy, Human Rights and Labor (Feb. 25, 2013), <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm#wrapper>

¹⁸⁷ *Id.*

¹⁸⁸ South Africa Employment Equity Act 55 of 1998 (S. Afr.)

¹⁸⁹ South Africa Labour Relations Act 66 of 1995 (S. Afr.)

Deputies promulgated the Equality Law¹⁹⁰ as well as a 2008 provision that required all approved legislation to be accompanied by a gender impact report prepared by the executive branch.¹⁹¹

In Sweden, which has seen widespread success in mainstreaming gender throughout the parliamentary committee's work, the Minister for Gender Equality and the Parliamentary Committee on the Labour Market have responsibility to oversee and monitor that each committee includes gender equality in their mission and to ensure consensus in international conventions.

Women's caucuses are multi-party forums where women in parliament can come together across party lines to discuss and debate gender issues as well as to provide capacity-building initiatives for women in parliament and a platform for women to interact and work with civil society organizations. Because the presence of women in parliament does not guarantee lasting change for women, caucuses work to introduce progressive gender-equality legislation, establish networks of women parliamentarians, and ensure affected groups are aware of legislation impacting them. Caucuses generally consist only of women legislators, though some—including those in Ecuador, Morocco, and Uganda—allow men to serve as honorary members. Rwanda has a women's parliamentary forum that works on gender issues, including gender legislation, policy monitoring, and budgets. Similarly, Malawi's caucus focuses on widows and inheritance, the custody and maintenance of children, citizenship laws, and marriage and divorce laws. In Uganda, the Women Parliamentarians Association has worked to constitutionalize gender equality. In Afghanistan, the Network of Women Parliamentarians worked to fight against the abolishment of the Ministry of Women Affairs.

In several countries, the women's caucus votes together as a bloc on certain issues. Brazil has most effectively achieved its goals in this way, as the caucus promoted legislation to establish a gender quota and a law on violence against women. The caucus worked to promote the inclusion of funds for social programs and gender equality initiatives into the budget. They also ensured the 1988 Brazilian Constitution included women's rights. Similarly, the Uruguayan Bicameral Women's Caucus worked to push through a law on domestic violence and to allow Uruguayan women a day off work for an annual gynecological exam. Colombia's caucus similarly worked to have a comprehensive law on a woman's right to a life without violence introduced and passed by the legislature.

Though caucuses have often been highly effective in mainstreaming gender issues on a national agenda, there have been many distinct challenges in caucuses. Most notably, struggles include "maintaining equilibrium between commitment to gender issues and party visions; keeping gender issues on the public agenda; and creating a sustainable critical mass of women legislators committed to advancing a gender equality agenda."¹⁹² In order to overcome these hurdles, caucuses must work with gender committees; men must play a role in gender committees; caucuses must forge partnerships with national commissions on gender; and caucuses must formalize relations with agencies and committees. Lasting change for women can only be successfully implemented when women collaborate and work together.

In addition to formal and informal legislative caucuses, national machineries can be established to promote women's equality and monitor the implementation of laws relating to nondiscrimination. National commissions on women have been created, as in India and the UK, as parliamentary bodies and independent agencies, sometimes in conjunction with a national action plan with the purpose of seeing to its implementation in all sectors.

¹⁹⁰ Law Guaranteeing Equality Between Women and Men (L.O. 2007) (Spain)

¹⁹¹ *Id.*

¹⁹² NDI, *One Size Does Not Fit All*, June 2010, available at: http://www.ndi.org/files/One_Size_Does_Not_Fit_All_eng_0.pdf

Strategic Partnerships Forge Change

In addition to forming coalitions within legislative bodies, strategic partnerships between women and various other entities—including civil society organizations, trade unions, political parties, policymakers and parliamentarians, experts, and male allies—are crucial to elevating the status of women around the world. In Mexico, women members of parliament at the local and federal level as well as community-based organizations, meet each year to develop the year’s legislative agenda at all levels of government. The established and formalized network has addressed many gender equity concerns, including violence against women, parliamentary equity commissions, and the creation of the National Women’s Institute. This cooperation has also brought a focus on gender budgeting.

Cooperation between NGOs and legislative caucuses is often a prerequisite to policy change. Cooperation with NGOs bolsters public awareness through mass media and robust education campaigns. In Zimbabwe, NGOs and women’s groups have partnered with the women’s caucus to effect change together. Additionally, cooperation between caucuses and gender commissions is an effective way to facilitate a conversation among legislators; create a forum to address discrimination of women legislators; increase the visibility of women in parliament and in society; provide training of women legislators through workshops, mentoring programs, and networks; and create a joint agenda on issues.

Conclusion

Women’s participation in decision making ensures the governance process is democratic and reflective of both women’s and men’s voices. However, women’s family responsibilities, the costs of campaigning, and the recalcitrance on the part of parties to actively recruit women discourage women from seeking political office. Quotas are often the crucial first step towards the creation of a critical mass of women able to influence policy and decision making effectively. Networks, especially transnational networks, have allowed ideas to travel and take root, but the next generation of transnational alliances must see greater connections with different social movements including male alliances. Gender quotas address inequality in political representation and advance women’s representation, however quotas themselves do not necessarily guarantee that women who are elected embrace women’s concerns.

Pillar V: The Role of Women’s Movements in Pushing for Law Reform

Secretary Clinton’s clarion call, that women’s rights are human rights, at the Beijing Conference in 1995 galvanized women’s movements around the world to push for women’s rights. From civil society activists to women Parliamentarians, women animate Secretary Clinton’s call and push for the incorporation of international norms into local and national laws. Around the world, women’s movements have been an integral part of the efforts to promote progressive legislation that benefits women, mobilizing popular support, working to change cultural norms and identifying priority areas for legal reform.

Autonomous national women’s movements are powerful international constituents, as evidenced by the success of the movement against gender-based violence. Radhika Coomaraswamy,¹⁹³ the first UN Special Rapporteur on violence against women, has stated that the violence against women movement is “perhaps the greatest success story of international mobilization around a specific human rights issue leading to the

¹⁹³ Radhika Coomaraswamy is the special representative of the secretary-general for children and armed conflict. <http://www.un.org/children/conflict/english/radhikacoomaraswamy.html>

articulation of international norms and standards and the formulation of international programs and policies.”¹⁹⁴

The efforts of national movements helped bring about the emergence of international norms and standards, and facilitated the development of monitoring and reporting mechanisms. At the World Human Rights Conference in Vienna in 1993,¹⁹⁵ women’s organizations galvanized for international recognition of freedom from violence as a human right. As Saskia Sassen¹⁹⁶ states: “(s)tudying the global...[requires] also a focus on locally-scaled practices and conditions.”¹⁹⁷ Because these women’s movements understand the cultural, social, and political structures in their own countries, they are able to advocate effectively for context-specific measures in international law. Consistent with the notion that local knowledge can inform global movements, women’s movements have played an important role in lawmaking.¹⁹⁸ Mobilized by the global Beijing Platform of Action, feminist and women’s groups helped bring gender issues to the forefront of local policy making. Meanwhile, lawmaking processes created new opportunities for the participation of local citizens.¹⁹⁹ Even if the movements did not fully achieve their goals, grassroots mobilization efforts were instrumental in lawmaking efforts on women’s voice and agency, as illustrated by the examples that follow:

Uniting Against Violence Against Women

Turkey

In Turkey, the women’s movement was fundamental to the process of reforming domestic violence laws. The rise of the women’s movement in the 1980s led to a network of women’s NGOs who pushed for legal reform and to put women’s rights on the agenda.²⁰⁰ As a result of extensive lobbying by 120 women’s partner organizations, unequal laws garnered media and public attention. In 2001 the *Civil Code* was amended to reflect the guarantees granted to women in CEDAW, including granting women equal rights to matrimonial property, raising the marriage age to 17 to prevent early marriages, annulment of forced marriages within the first five years, and allowing violence and maltreatment to constitute grounds for divorce.²⁰¹

Another extensive reform in Turkey was the 2004 reform of the *Penal Code*. For three years, 60 women’s organizations campaigned for a comprehensive reform to the *Penal Code*. The Turkish Penal Code Draft Law was brought to the Turkish Parliament Grand National Assembly on September 26, 2004, a few months prior to Turkey’s CEDAW review in January 2005. The reformed *Penal Code* included the re-framing of sexual offenses as a crime against individuals rather than a crime against public morality, the expanded definition of rape and sexual abuse, and the criminalization of sexual harassment in the workplace. Most significantly, honor killings were redefined as aggravated homicide rather than “killings in the name of customary law.”²⁰²

¹⁹⁴ Coomaraswamy R. The varied contours of violence against women in South Asia, paper presented at the Fifth South Asia Regional Ministerial Conference, Celebrating Beijing +10, Islamabad, Pakistan, 3-5 May 2005.

¹⁹⁵ Official cite of the conference: World Human Rights Conference in Vienna in 1993

¹⁹⁶ Robert S. Lynd Professor of Sociology at Columbia University and Centennial visiting Professor at the LSE

¹⁹⁷ Sassen, Saskia. *Chapter 7: Space and Power*.

<http://www.columbia.edu/~sjs2/PDFs/Gane-Sassen.pdf> [Accessed November 11, 2010]

¹⁹⁸ The Mongolian Law on Domestic Violence, for instance, was drafted with the help of the Mongolian women’s rights groups.

¹⁹⁹ An NGO in the Philippines, Gabriella, provides legal services with counseling, home visits, and shelter. Nepal has national rapporteurs monitor anti-trafficking activities.

²⁰⁰ Vol. II, Selen Yilmaz, *Legal Reforms from a Gender Perspective—Turkey Women Leading Change*, in RABAT ROUNDTABLE PAPERS 101, 101 (Wellesley Centers for Women, 2011).

²⁰¹ *Id.*

²⁰² *Id.*

In October 2007, the *Constitutional Draft* was first introduced to the public of Turkey. Again the Women's Constitution Platform—consisting of more than 200 women's organizations—met to draft and formulate demands. To attract attention to their case, the women launched a petition and used public leaflets, statements, lobbying, and street action to make their voices heard.²⁰³

International collaboration against rape as a weapon of war

Another powerful example of women's organizations working together is the successful push for international recognition of violence against women during World War II. The Korean Council for Women Drafted for Military Sexual Slavery by Japan (the Council) was established on November 16, 1990 by eighteen groups of social organizations and women's organizations in order to help the victims of the militarism based sexual slavery instituted by the Japanese Imperial Army during World War II.²⁰⁴ These Council utilized the radio and television to find victims and encourage them to tell their stories. Press conferences were also held which enabled the women's groups to gather together and show widespread support for addressing the issue. Through these processes the groups gained access to international lawyers who provided advice regarding wartime rape and statutory limitations in Japan and the Philippines. As a result of the Council's efforts, which included building support among other NGOs around the world, in 1998 a new international standard was set that defined violence against women during war as a serious war crime and human rights violation. This case study shows the way in which local, national, and global movements coalesced to highlight horrific acts of violence against women with potential for new norm creation at the international level.

Approach to Equal Citizenship

In the 1980s, a group of women's rights activists in Botswana established the *Emang Basadi* Women's Association, for the purpose of removing all discriminatory laws against women in Botswana. As a first step, the women's group focused on the Citizenship Act, which denied women the right to pass their nationality onto their children and foreign husbands.²⁰⁵ The strategy to challenge discrimination included a court case, lobbying lawmakers to amend the Citizenship Act, and concerted public education and media coverage.

As part of *Emang Basadi's* multi-pronged approach, the organization conducted extensive research into the background of the Act and worked to make the public aware through storytelling in the press that it was a discriminatory policy that affected ordinary rural women in addition to elite urban women. Concurrently, they pushed for change through the Parliamentary Law Reform Committee. In 1986, their submission to the committee identified the discriminatory provisions of the Act, and recommended some revisions.

In 1990, Unity Dow, a female lawyer from Botswana brought litigation before the High Court challenging the constitutionality of the Citizenship Act on the basis that it discriminated against her by denying the right to pass on her Botswana citizenship to her children, a right granted to male Botswana citizens.²⁰⁶ The court upheld her pleading and ruled the relevant provisions of Act to be discriminatory against women and a violation of the constitution of Botswana. The Citizenship Act Amendment, which introduced gender-neutral provisions for passing down citizenship, was passed in compliance with the court decision.²⁰⁷

²⁰³ *Id.*

²⁰⁴ <http://www.vcn.bc.ca/alpha/learn/comp.htm>

²⁰⁵ The Citizenship Act (1980) (Bots.).

²⁰⁶ Attorney-General v. Dow, (1994) Appeal Court (Bots.).

²⁰⁷ The Citizenship Act (1980) (amended 1990) (Bots.).

Community Support for Family Law Reform

The groundswell of the women's movement was central to the changes to the personal status code in Morocco, especially the *Union de l'Action Feminine's* One Million Signatures campaign in March, 1992. The campaign called for reform of the Penal Code²⁰⁸ and educated women and men about the proposed changes. As a result a consultative commission was established and charged with preparing a draft revision of the code, which was put into law in 1992 by royal decree after approval from the women's organizations.²⁰⁹

The 1999 change in the government and their proposed plan of action to improve the position of women in Moroccan society faced extensive backlash from Islamists and conservatives.²¹⁰ A split among the Islamic opposition after a bombing in Casablanca gave women the opportunity to push the commission for reform and recommendations. After extensive deliberation, the commission presented the King with their recommendations, which were the basis of a bill submitted to Parliament in October.²¹¹ The bill was debated and passed into law in January 2004. The reformed bill makes a comprehensive reform to family law in Morocco. Most significantly, the new law redefines marriage as a "legal contract by which a man and a woman consent to unite in order to have a common and lasting marital life," as well as setting the marriage age at 18, ushering in changes to the polygamy law, and allowing women to initiate divorce and take custody of children.²¹²

The lessons from the Morocco case have also been applied to a family law case in Malaysia. Sisters of Islam, a Malaysian NGO, drafted a preliminary family law bill to overhaul the Islamic Family Law (Federal Territories) Act of 1984.²¹³ The proposed reforms included raising the marriage age, ending the requirement that a male guardian consent to a woman's marriage, the prohibition of polygamy, equal right to divorce, equal division of assets in a divorce, and equal right to custody of children. Taking lessons from Morocco's women's movement, Sisters in Islam drew on international human rights norms as well as other Muslim countries in the drafting of their proposed bill.

Another illustrative case of the effect of grassroots organizing on legal reform is Egypt's ban on female genital mutilation/cutting (FGM). Between 100 million and 140 million women and girls worldwide suffer from the practice of FGM, with 3 million additional girls at risk of the practice each year.²¹⁴ In addition to representing a man's control over the female body, the practice causes innumerable health problems for women, including complications during childbirth and even death. Moushira Khattab, the former Minister for Family and Population in Egypt, used Islamic scripture to fight FGM and worked in communities to garner widespread grassroots support, shifting the anti-FGM movement from an elite political movement to a grassroots movement that involved mothers, fathers, and daughters. As a result, the revised Children's Law of 2008 criminalized FGM and sentenced those guilty of practicing it from three months to two years in prison in addition to a fine of £1,000 to £5,000.

²⁰⁸ Ziba Mir-Hosseini, *How the Door of Ijtihad Was Opened and Closed: A Comparative Analysis of Recent Family Law Reforms in Iran and Morocco*, 64 Wash. & Lee L.R. 1499 (2007), see <http://scholarlycommons.law.wlu.edu/wlulr/vol64/iss4/10>.

²⁰⁹ *Id.*

²¹⁰ *Id.*

²¹¹ Ziba Mir-Hosseini, *The Road to Justice in MENA: National, International, and Traditional Justice Systems Working together - The Case of Morocco* (June 25-26, 2010 from The World Justice Project's MENA Rule of Law Conference).

²¹² Family Code of Morocco. In Mor OG of February 3, 2004, no. 70.03.

²¹³ The Islamic Family Law (Federal Territories) Act of 1984 (Act No. 303, 1984).

²¹⁴ UN Women, United Nations bans female genital mutilation (December 20, 2012), <http://www.unwomen.org/2012/12/united-nations-bans-female-genital-mutilation/>.

In a good practice case study of partnership between a national government and grassroots organizations, women's organizations helped Khattab ensure the law's success. Khattab began to separate the link between FGM and Islamic precepts in social consciousness by citing the lack of references to female circumcision in the Koran, in *Sunna*, and in other schools of thought.²¹⁵ Women's groups helped spread these messages in families and communities around Egypt. Cultural shifts and changes in accepted norms played an important part in the reform process.²¹⁶ A year after the promulgation of the law, several Islamist lawyers teamed together to file a lawsuit against the newly formed law, citing Article 2 of the 1971 Constitution and claiming the new law was inconsistent with Sharia Law, but Egypt's High Constitutional Court rejected the lawsuit.²¹⁷ The Demographic Health Survey of 2008²¹⁸ showed 87 percent of girls aged 15 to 30 were circumcised, decreasing from almost 98 percent in 1995,²¹⁹ representing significant progress for Egypt's women.

Conclusion

Women's voices continue to be marginalized across a range of private and public spheres, including during transitional justice and constitutional-making processes. But progress is evident, and women around the world are using the human rights framework as a basis for making their voices heard and are leading legal, political, and social change in their communities and around the world.

The legal reforms discussed in this paper represent only a fraction of the work that women are doing around the world to ensure fairer and safer societies. Each case illustrates the great potential of international frameworks, strong women's movements, and advocacy from within and outside the system to create change, as well as the recognition that passing legislation is only the first step to achieving real change. The large gaps that often exist between de jure and de facto law must be continually questioned if governments are to be held accountable to their own, and international standards. As the cases presented here demonstrate, it often takes many years of refining and challenging laws to address these gaps and create sustainable and successful mechanisms or enforcement.

The indefatigable work of women's movements and women leaders is a powerful indicator that progress will happen. Women's agency and voice influence and shape development and rule of law just as the law can restrict or encourage women's agency. Women's leadership can an impact across borders as transnational ideas are shared, exchanged, and translated into a universal vernacular. Through transnational networks, new links are being built among women's groups in civil societies, states, and international organizations, thus multiplying the opportunities for dialogue and exchange.

²¹⁵ Rangita de Silva de Alwis, *Introduction*, in *WOMEN LEADING CHANGE*, (Wellesley Centers for Women, 2010).

²¹⁶ *Id.*

²¹⁷ *Egypt constitutional court rules in favour of criminalising FGM*, AHAM ONLINE, FEB 3, 2013, available at <http://english.ahram.org.eg/NewsContent/1/64/63946/Egypt/Politics-/Egypt-constitutional-court-rules-in-favour-of-crim.aspx>.

²¹⁸ Fatma El-Zanaty and Ann Way. 2009. *Egypt Demographic and Health Survey 2008*. Cairo, Egypt: Ministry of Health, El-Zanaty and Associates, and Macro International.

²¹⁹ Fatma El-Zanaty, Enas M. Hussein, Gihan A. Shawky, Ann A. Way, and Sunita Kishor. 1996. *Egypt Demographic and Health Survey 1995*. Calverton, Maryland [USA]: National Population Council [Egypt] and Macro International Inc.