

“We have to celebrate because over the last ten years we have taken these struggles and repositioned them at the centres of power at the national, regional and international levels. By placing women’s concerns and aspirations within a human rights paradigm, we have made an undeniable proposition: that women are human and that on that basis, they claim and are entitled to the fundamental rights and freedoms inherent in all humanity.”

Florence Butegwa,
Former member of the African Commission on Human and People’s Rights, ‘Women 2000: A Symposium on Future Directions for Women’s Human Rights’, New York, 4 June 2000

‘Women’s Rights Are Human Rights’ A New Language and New Standards

*i*n the past twenty years, awareness and understanding of violence against women has advanced dramatically. In all regions of the world, women have accomplished a crucially important shift in how acts of violence are understood and how societies respond to them. Advocates have brought these acts of violence out of the private sphere, where they were treated as personal tragedies, and into the public realm, where they have become the basis for policy, legislation and demands for accountability.

This change has been achieved through shifts at two different levels. First, women’s consciousness, awareness and language have altered: More women now understand and speak about their right to live free of violence. Second, women’s advocacy has reshaped the international legal framework: States can no longer deny responsibility for the acts of individuals.

Over one thousand Lebanese and Palestinian women joined the “World Women’s March” in Beirut in September 2000 to protest violence

against women and poverty and to demand equal rights for women.

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There are norms and standards now that hold governments accountable for allowing patterns of violence — in public and in private — and call on them to take concrete steps, preventive actions and remedial measures.¹² In short, women have transformed an issue that was once shrouded in silence into a basic human rights claim.

A revolution in understanding was critically needed. By rejecting the idea that violence was merely a personal or family misfortune, activists have insisted on its public importance and political significance. Women’s movements have developed new concepts and definitions that show the problem as originating in society’s very structure. Violence against women has been placed in the context of women’s social and economic inequality, and linked to the many different forms of discrimination affecting their status. In this new understanding, violence against women is a consequence of the gender order established in a society, of the hierarchy and power relations that characterize the relations between the sexes. While certain forms of violence are specific to regions and countries, reflecting different historical experiences, a universal pattern of domination connects them all.

The human rights perspective brings governments’ obligations into focus, providing a clear framework for what is expected of them, and uses the power of international law to

bring about change. This perspective also highlights the fact it is domination and power exerted by men over women that leads to violence. It shows how, in many places and contexts throughout a given day, men assert their domination over women through the use or threat of violence, whether physical or psychological. It also shows that women experience gender-specific forms of violence that are different from violence as experienced by men. It clarifies the way in which women are targeted for particular forms and heightened levels of violence not only because of their gender but also because of their race, ethnicity, sexuality, class or caste, or because of their status as refugees or as part of an indigenous group, or even because of a disability.

The human rights perspective also sheds light on the continuum of violence that women face: The heinous violence inflicted on women in conflict areas — mass rape, abduction and sexual slavery are the norm in many war zones — can be seen as a brutal extension of the violence women face in everyday life. Abusive husbands and partners, sexual harassers, traffickers, rapists and armed combatants who abuse women all use violence, particularly sexual violence, to assert their power and to shame and subordinate women. Through this assertion of power, men instil fear in women, control their behaviour, appropriate their labour, exploit their sexuality and deny them access to the public world.

This comprehensive understanding of violence against women has led to the assertion that women's rights are human rights, and that women therefore have a right to a life free from all forms of violence. The language of human rights has added a new ethical thrust to women's efforts to advance their demands for equality and to combat discrimination.

The shift to a human rights perspective did not happen overnight, nor was it the result of chance. It grew out of small steps that, added together, outlined a new way of looking at women's lives. In local, national and regional gatherings, women began using human rights language to describe more accurately the subordination that denied their most basic aspirations to a life of dignity. In 1993, at the World Conference on Human Rights in Vienna, women raised the profile of this effort. The Global Campaign for Women's Human Rights, a coalition of NGOs and individuals, led the effort to place women's human rights on the conference agenda, and the Vienna Tribunal, organized by the US-based Center for Women's Global Leadership, provided testimonies from women survivors of violence that showed important patterns in human rights violations. Until then, the human rights community had remained largely unresponsive when confronted with advocates' descriptions of the battery, rape, trafficking and sexual assault they were seeing in their day-to-day work with women. But as a result of the lobbying of women's human rights advocates, the World Conference placed women's rights issues on its agenda and declared violence against women — in public and in private — to be a human rights violation requiring urgent and immediate attention.¹³

The core statement of the Vienna Declaration and Programme of Action produced at the

conference — “Women’s rights are human rights” — sums up the major shift of the last decade. This statement transformed women’s demands from being ‘unimportant’ to being recognized as the rightful claims of one half of humanity, and shed light on the relation between gender and human rights violations. The Global Campaign for Women’s Human Rights challenged the international community to examine not only gender-based violence, but also the fact that when women experienced violations similar to those perpetrated against men, the violations were less visible and therefore less frequently condemned and punished.

Soon after the Vienna conference, governments’ obligation to address violence against women was further delineated in the UN Declaration on the Elimination of Violence Against Women. The Declaration asserts that violence against women is a manifestation of power relations and “is one of the crucial social mechanisms by which women are forced into a subordinate position compared with men.”¹⁴ It states that governments have the responsibility to develop plans and programmes aimed at the eradication of these social mechanisms. The Declaration emphasizes that governments have the opportunity, as Radhika Coomaraswamy and Lisa Kois point out in an analysis of the Declaration, “to create a new history in which violence against women would be condemned and not recognized as an inevitable and unchangeable consequence of gender relations.”¹⁵ It breaks away from the traditional notion of violence against women as an issue of criminal justice and places it in the framework of human rights delineated in Vienna. States are thus required to utilize the standard of due diligence: the requirement to prevent violations where possible, investigate them when they occur and punish perpetrators.

The Declaration defines violence against women as “any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life.” As such, it understands that violence against women encompasses, but is not limited to:

“(a) Physical, sexual and psychological violence occurring in the family, including battering, sexual abuse of female children in the household, dowry-related violence,

For civil society, international legal instruments have become important tools for bringing pressure to bear on governments to adopt measures to prevent, eradicate and punish violence against women. Since most of these countries have signed and ratified these instruments, the challenge is to get their precepts actually implemented. The different countries’ main weaknesses must be examined in greater detail, and the public must be familiarized with these rights and principles.

– UNIFEM Regional Scan, Latin America & the Caribbean

marital rape, female genital mutilation and other traditional practices harmful to women, non-spousal violence and violence related to exploitation;

(b) Physical, sexual and psychological violence occurring within the general community, including rape, sexual abuse, sexual harassment and intimidation at work, in educational institutions and elsewhere, trafficking in women and forced prostitution;

(c) Physical, sexual and psychological violence perpetrated or condoned by the State, wherever it occurs.”¹⁶

Adopted unanimously by the United Nations General Assembly, the Declaration on the Elimination of Violence Against Women was a major victory for those who had been struggling to focus international attention on women’s human rights. It also served as the framework for the mandate of the UN Special Rapporteur on violence against women, its causes and consequences, a post established a few months later by the UN Commission on Human Rights. The Special Rapporteur was charged with examining, reporting on and making recommendations concerning the specific ways in which women’s rights — including the right to a life free from violence — are violated.

As the Special Rapporteur has observed, in the context of historical unequal power relations between men and women, women have had to “confront the problem that men control the knowledge systems of the world.”¹⁷ This control of knowledge systems has legitimized and trivialized violence against women, and this ability to minimize women’s experience of violence has until recently ensured that hardly any remedial action was taken by either States or individuals. Even now, although most countries recognize the importance of human rights standards, many still claim that culture or tradition prevent them from honouring international norms on women’s human rights.

The Special Rapporteur has also pointed out the bias inherent in this argument since it is raised “only with regard to women’s rights, those rights that affect the practices in the family and the community.”¹⁸ In this context, one of the great successes of the women’s human rights movement has been to insist that the terms of the discussion must be changed — that women’s rights *are* human rights.

Human Rights on the International Agenda

Beyond providing an important new analysis of gender-based violence, the human rights framework gives women access to a number of treaties and international documents that set human rights standards and require States to take action.

The last decade has been one of extraordinary growth in terms of international treaties that delineate the clear and specific responsibilities of governments to address violence against women. For example, the Convention on the Elimination of All Forms of Discrimination against Women (also known as the Women’s Convention) has been inter-

Selected International Treaties, Declarations and Human Rights Mechanisms

Declaration on the Elimination of Discrimination against Women, 1967: Proclaimed by the UN General Assembly, it recognizes that “discrimination against women, denying or limiting as it does their equality of rights with men, is fundamentally unjust and constitutes an offence against human dignity.”

Convention on the Elimination of All Forms of Discrimination against Women (the Women’s Convention or CEDAW), 1979: To date the Women’s Convention has been ratified by 174 states and is recognized as one of the six major international human rights treaties. Its implementation is supervised by the Committee on the Elimination of Discrimination against Women (the CEDAW Committee), composed of 23 independent experts.

General Recommendation 19 on Violence against Women, 1992: Adopted by the CEDAW Committee, it defines violence against women as “a form of discrimination that seriously inhibits women’s ability to enjoy rights and freedoms on a basis of equality with men”, and makes clear that ending gender-based violence is an obligation states take on when they ratify the Convention.

Declaration on the Elimination of Violence against Women, 1993: A major victory for activists struggling to focus international attention on women’s rights, this was adopted unanimously by the UN General Assembly, and makes clear governments’ obligation to address violence against women.

Special Rapporteur on violence against women, its causes and consequences, 1994: Established by the UN Commission on Human Rights to examine, report on and make recommendations concerning the ways in which women’s rights are violated.

Platform for Action of the Fourth World Conference on Women in Beijing, 1995: Reiterates the responsibility of all governments to “take integrated measures to prevent and eliminate violence against women.” The 189 nations that adopted the Platform for Action committed themselves to developing comprehensive programmes to end gender-based violence.

General Assembly Resolution 52/86 on Crime Prevention and Criminal Justice Measures to Eliminate Violence against Women, 1997: Urges Member States to take measures to ensure that women are treated fairly by the criminal justice system, calls for research on the causes and consequences of violence against women, and outlines preventive measures and includes model strategies for eradicating violence against women.

Statute of the the International Criminal Court (Rome Statute), 1998: Recognizes rape, sexual slavery, forced prostitution, pregnancy and sterilization and other forms of sexual violence of comparable gravity in its definitions of ‘crimes against humanity’ and ‘war crimes’.

Optional Protocol to CEDAW, 1999: Allows individuals and groups to bring petitions to the CEDAW Committee concerning alleged violations of the Women’s Convention. Also allows the Committee to conduct inquiries into grave or systematic violations of the rights of women as spelled out in the Convention. The Optional Protocol entered into force in 2003.

General Comment 28 on Equality of Rights Between Men and Women (Article 3, International Covenant on Civil and Political Rights), 2000: Adopted by the Human Rights Committee (HRC), asserts the responsibility of States to provide for the equal enjoyment of rights and to put an end to discriminatory practices in the public and private spheres. State parties are to ensure that “traditional, historical, religious or cultural attitudes are not used to justify violations of women’s right to equality before the law and to equal enjoyment of all Covenant rights.” States are urged to report to the HRC on measures to protect women from gender-based violence.

UN Security Council Resolution 1325 on Women, Peace and Security, 2000: Provides a framework for addressing women’s need for and right to protection during conflict and acknowledges the importance of their role in peace building.

UN Convention on Transnational Organized Crime, 2000: Includes a Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children.

Putting Human Rights Treaties into Practice

In 1992, a group of women's NGOs brought a petition to the Supreme Court of India that asked the Court to draft a law to prohibit sexual harassment, claiming the Indian Parliament had failed to do so. They used the national Constitution, the Women's Convention (CEDAW) and the CEDAW Committee's General Recommendation 19 on violence against women to justify their right to bring the request before the Court.

The case that provoked this unprecedented request, *Vishaka v State of Rajasthan*, originated in the gang rape of a social worker by her own colleagues in a village in Rajasthan, where local authorities failed to investigate or prosecute the perpetrators. The issue before the Court was whether this failure to act represented a larger failure by the Indian Government to protect women from sexual harassment based on the constitutional prohibition of discrimination on the basis of sex, and on the State's obligation to guarantee just and humane conditions of work. The Court decided that the State, in making official commitments at the 1995 Fourth World Conference on Women in Beijing, had endorsed international standards on women's human rights and therefore should use the Women's Convention — which had also been ratified by the Government — to bolster inadequate constitutional guarantees. It ruled that, according to international standards, gender equality requires protection from sexual harassment. The Court used the CEDAW Committee's General Recommendation 19 to draw up a set of guidelines and norms for use until the Government passed suitable legislation.²⁰

preted by its monitoring body, the CEDAW Committee, to require States to take affirmative steps to end violence against women.¹⁹ Although the treaty drafters left out an explicit mention of violence against women, the CEDAW Committee has found that the treaty's guarantee of non-discrimination requires States parties to the Convention to ensure that women are not subjected to gender-based violence of any type.

The steps required to achieve this goal may take different forms in different countries, but all States are obligated to adopt the most effective measures possible — and to change priorities and approaches when progress fails. The CEDAW Committee calls for a holistic approach that assesses causes and designs prevention programmes that ensure that women have access to many different types of remedies. According to the Women's Convention, if misperceptions and discriminatory attitudes hamper law enforcement and influence the judges and lawyers who are asked to prosecute the laws, governments must take steps to eliminate that bias. In cases where women's ability to access legal remedies is limited — especially if they are poor, from rural areas, or members of minority ethnic and racial groups — governments are required to develop programmes such as subsidized or free legal assistance, counselling, assistance with relocation and vocational training.

Human Rights at the Regional Level

Regional treaties and protocols also impose conditions on member nations, and women's rights advocates have worked to include prohibitions of gender-based violence in these documents. One of the most significant regional documents is the Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against

Women (commonly known as the Convention of Belém do Pará). Adopted in 1994, it is the first human rights treaty to focus entirely on gender-based violence and to include specific provisions that prohibit violence in the home. It also calls on States parties to address the root causes of gender-based violence with special measures, which could include creating education programmes to counter gender stereotypes or developing social services for victims of violence. The Convention has had a powerful impact on national laws in the entire region, especially in the area of domestic violence.

In 2003, the African Union adopted a Protocol on the Rights of Women in Africa, which is equally ground-breaking. The Protocol, which supplements the African Charter on Human and Peoples' Rights, makes important new commitments to various areas of women's human rights, going beyond the Women's Convention and incorporating aspects from the UN Declaration on Violence Against Women and the Vienna, Beijing and Cairo²¹ conferences. One advance is the call for countries to protect women from 'harmful practices', which include female genital mutilation, through legislative measures, public awareness, and support in the form of health services, legal assistance, counselling and vocational training.

Article 4 of the Protocol, which covers violence against women and includes unwanted or forced sex, specifically articulates the need for adequate budgetary resources for implementing and monitoring actions to prevent and eradicate such violence. Additional rights enshrined in the Protocol include access to justice, widows' rights, the right to inheritance, the right to a peaceful existence, rights in marriage and divorce, and health and reproductive rights, including the right to medical abortion under certain circumstances.

Various other regional instruments have also had an impact on national laws. As countries in Central and Eastern Europe and the Commonwealth of Independent States (CEE/CIS) apply to become members of the European Union (EU), they have had to adopt measures to meet the EU requirement that member nations take all necessary measures to prevent violence against women. The Southern African Development Community (SADC) is also incorporating gender-based violence in its protocols, and has issued a statement of intent to eradicate violence against women and children that all ten member States are expected to honour.

Putting Human Rights to Work

Armed with these treaties and standards, feminists have returned to their communities, nations and regions with new tools and a new sense of entitlement that empowers them to imagine better lives and to create stronger alliances. Using human rights standards, women have successfully lobbied for legislation, reviewed budget allocations and pushed for policy reform. They have demanded services and access to criminal penalties. They have lobbied for improved political representation and conducted research.

Regional Conventions, Charters and Protocols

AFRICA

Protocol on the Rights of Women in Africa, 2003, African Charter on Human and Peoples' Rights: Supplements the provisions of the African Charter by requiring State parties to take appropriate measures to prohibit all forms of violence against women, identify the causes, punish the perpetrators and ensure effective rehabilitation and reparations for victims.

African Commission on Human and Peoples' Rights — Special Rapporteur on Women's Rights, 1999: The Special Rapporteur researches and recommends measures aimed at eliminating gender-based abuse of women in Africa, as well as its causes and consequences at the international, regional and national level.

The Prevention and Eradication of Violence Against Women and Children, 1998: Addendum to the Southern African Development Community (SADC) Gender and Development Declaration. Commits all signatory countries to take measures to prevent and deal with increasing levels of violence against women and children through legal, social, economic, cultural and political policies.

Declaration and Action Plan on the Fight against Trafficking of Human Beings, Economic Community of West African States (ECOWAS), 2001: Emphasizes the commitment of ECOWAS countries to ending trafficking in persons, with a special focus on trafficking in women and children, and sets out mandatory measures to be taken by governments.

AMERICAS

Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women, 1994 (Convention of Belém do Pará): Recognizes that every woman has the right to be free from violence in both public and private spheres and condemns all forms of violence against women. States parties commit themselves to condemn violence against women and agree to pursue policies to prevent, punish and eradicate such violence. To date, 31 of the 35 countries in the Americas have ratified the Convention.²²

Inter-American Commission on Human Rights — Rapporteur on the Rights of Women, 1994: The Rapporteur analyses the extent to which member States' laws and practices affecting the rights of women comply with the broad obligations of equality and non-discrimination contained in the American Declaration of the Rights and Duties of Man and the Inter-American Convention on Human Rights.

ASIA

Association of South East Asian Nations (ASEAN) Sub-Committee on Women, 1975: Fosters regional cooperation in order to effectively address trafficking and crimes of violence against women, and works toward the full implementation of the Women's Convention and other international instruments related to women.

South Asian Association for Regional Cooperation (SAARC) Convention on Preventing and Combating Trafficking in Women and Children for Prostitution, 2002: Calls on member States to effectively prevent, interdict and suppress trafficking in women and children; to provide repatriation and rehabilitation to victims; and to prevent the use of women and children in international prostitution networks.

EUROPE

European Parliament Resolution on Violence against Women, 1986: Calls for a review of legislation on sexual violence, including recognition of rape in marriage; training for judges, lawyers and police as well as any professionals who may come into contact with victims of violence in the home; greater cooperation among legal, health and voluntary sectors; recognition of the vulnerability of migrant women; creation of national budgetary lines for work on women's self-defence and self-help groups; and the right of battered women to housing, including the return to their own homes.

Council of Europe Measures to Combat Violence Against Women, 2002: Numerous measures adopted by the Council, including Recommendations from the Committee of Ministers, call on member States to address violence against women through legislative and policy revisions, education and awareness-raising, research and monitoring, and to support women experiencing violence.

Ciudad Juárez: 'No More Murders of Women'

Women have changed the face of the standards, imbuing them with cultural relevance and regional specificity. Thus the international legal obligations to end violence against women, coupled with growing demands from female citizenry, have compelled governments to take concrete and often creative steps.

As the causes and consequences of violence against women are increasingly understood, and as models for ending different forms of violence are tested, the standards will need further modification and refinement. The crucial fact, however, remains: The human rights system has been changed forever. There can be no retreat from the understanding that women's rights are human rights, or from the fact that women have the right to live in equality and dignity, free from violence. Through united action, women's advocates have ensured that States can never again push violence into the corner or off the table. They are accountable, now and in the future, and must respect, protect and fulfil women's right to a life free of violence.

The following sections address some of the efforts to implement international laws at the national level. For activists, the international mobilization efforts constitute valuable tools for changing the conditions that affect women's everyday lives. They are being used to persuade governments, to educate other women, to enlist allies, to shape public policy and to create the conditions that will foster the protection and promotion of the human rights of women.

During the last 10 years more than 300 young women have been murdered and hundreds more have disappeared in Mexico's Ciudad Juárez, which sits on the border with the United States. Over the years a series of special prosecutors have been appointed, but there has been only one guilty verdict while hundreds of cases remain unresolved and the murders continue. Women's organizations have mobilized at the local, state, national and international levels, demanding that the Mexican Government investigate, prosecute and punish the perpetrators of these crimes, as well as develop strategies to prevent more murders. The authorities' response was to suggest that women stay home at night, avoid wearing provocative clothes and walk in groups.²³

In 2001, a coalition of networks and organizations launched a coordinated campaign with support from UNIFEM entitled, 'Stop Impunity: No More Murders of Women'. The campaign has asked that the cases be transferred to federal jurisdiction, and has sought support from representatives of international and regional human rights commissions. Both the Special Rapporteur on extrajudicial, summary or arbitrary executions and the Special Rapporteur on the independence of judges and lawyers from the UN Commission on Human Rights have condemned the lack of political will to clear the cases and prevent further killings. The campaign promoted a visit of the Women's Rights Rapporteur of the Inter-American Commission to Ciudad Juárez, who then released a report with specific recommendations for the Government. As a result of all these activities, the federal government now presents monthly reports to the regional Commission and has launched a security plan for Ciudad Juárez.