

Elements of responses to  
gender-based violence  
against women (GBVAW)  
based on a

# **Strategic Consultation to Develop a Global Response to GBVAW**

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International Women's Rights  
Action Watch Asia Pacific

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## **A. Background**

In the past 30 years, gender-based violence against women (GBVAW) has progressed from an issue of relative insignificance on the international agenda to an issue that is receiving greater visibility, with widespread and varied manifestations of GBVAW being well documented. International human rights laws have recognized GBVAW as a consequence of the unequal power relations between men and women, and have established norms and standards outlining the obligation of states to address GBVAW as a human rights violation. International mechanisms such as the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW) have clarified this position by stating that gender based violence, which impairs or nullifies the enjoyment by women of their human rights and fundamental freedoms under general international law or under human rights conventions, is an obstacle to gender equality and discrimination as defined in Article 1 of the CEDAW Convention.<sup>1</sup> Regional mechanisms have also been developed, adding specificity to reflect each

regional context. The Belém do Pará Convention was adopted in the Americas, the Maputo Protocol in the African region, and the Istanbul Convention in Europe.

In the last few decades, many countries have adopted legislative, institutional and policy measures in the attempt to address GBVAW. These have ranged from statutory recognition of domestic violence, rape and sexual harassment, to special courts for GBVAW, as well as changes and reform of procedures and evidentiary rules.<sup>2</sup> This shows that there has been some shift in how GBVAW is perceived within states. Many states no longer characterize GBVAW as a purely private matter between individuals, and recognize it as a human rights violation requiring state action. States are aware that they have the obligation to prevent, protect against, and punish violence against women whether perpetrated by private or public actors and that they have a responsibility to uphold standards of due diligence and take steps to fulfil their responsibility to protect individuals from human rights abuses. Despite this shift, GBVAW remains widespread, as the underlying structures of patriarchy and

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<sup>1</sup> General Recommendation 19 of CEDAW. Although the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) does not explicitly articulate GBVAW as a women's rights violation in its main text, the CEDAW Committee has developed detailed standards articulating state obligations to address GBVAW through its general recommendations, concluding observations and decisions and reports under the Optional Protocol to the Convention.

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<sup>2</sup> For examples of progress on legal reform to expand the scope of women's rights, including addressing GBVAW please refer to *UN Women's 2011-2012 Progress Report on Progress of the World's Women in Pursuit of Justice* 2011 pg.34

structural inequalities that discriminate against women remain the same.

The progress made in establishing international norms, standards and strategies to address GBVAW has not been matched by similar progress in their implementation at the national level. The various national laws and policies adopted in efforts to comply with the international standards on women's human rights remain inadequate and inconsistent across the world. In spite of growing awareness of the magnitude of GBVAW as a human rights violation, its dimensions, forms, consequences and costs to both the individual and society at large, the political and social will to end the culture of impunity, and to effectively prevent and address GBVAW, has not yet materialised. All too often, perpetrators of violence against women go unpunished.

Culture, religious interpretations, customs and social expectations are often invoked to justify, accept and condone GBVAW, ensuring the impunity of perpetrators. States' failure to eliminate such practices and provide justice to the victims and survivors has perpetuated a culture of violence against women and led to its social and political acceptance. The office of the UN Secretary-General in its global report on

Violence against Women<sup>3</sup> has identified this failure of the State to act as a key factor that contributes to the high levels of violence against women throughout the world.

The stereotyped social, economic, political and cultural roles assigned to men and women causes the subordination of women that is manifested through GBVAW. GBVAW finds its roots in multiple and intersecting forms of discrimination, inequalities and subordination to which many women are subjected in public and private spaces. However, many approaches to laws and policies aimed at addressing GBVAW still fail to comprehensively address the root causes of GBVAW, gender discrimination and inequality, and do not adequately protect survivors of GBVAW or address impunity. This is further exacerbated by geopolitical and economic developments, and the political backlash against the women's rights movement, which has led to shrinking democratic spaces for activism and political dialogues, and increased normalization of GBVAW. Overall, states do not manifest the level of political will necessary to address GBVAW.

Among the factors that create an environment in which GBVAW is condoned

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<sup>3</sup> Secretary General's report on the *In-depth Study on all Forms of Violence against Women* (2006). (A/61/122/Add.1)

and in which women continue to be denied access to justice are:

- The erosion in democratic values/ practice and in the rule of law that heightens the vulnerability of women to violence committed by and/or condoned by agents of the state or non-state actors ( including private sector and business actors);
- The impact of globalization on economic and political structures that undermine laws and policies that protect women's rights in the interests of economic growth, in particular as seen in the impact on women of the activities of multinational corporations, financial institutions, intergovernmental organizations, etc;
- The use of culture and religion to justify violations of women's human rights and to undermine their enjoyment. An increase in forms of conservatism, extremism and religious fundamentalism that attribute the honor of the community and of the family to the 'purity' of the woman as well as seeking to exert control over women's individuality and sexuality, thus heightening their vulnerability to violence, in particular to sexual violence.
- Laws and policies that perpetuate patriarchal and hetero-normative

frameworks of discrimination against women, including laws that have narrow definitions of rape, that do not recognize marital rape and emerging forms of gender-based or sexual violence

- Lack of sensitivity within the institutions such as the judiciary, law enforcement and the criminal justice system to the complexities of the issue of violence against women and specific concerns of women victims and survivors of violence
- The global political economy which supports militarism and conflict further exacerbates sexual and gender based violence in the private and public spheres.
- Lack of resources and political and public support to strengthen institutional capacity to address GBVAW.

The persistence of GBVAW as a grave human rights violation and a systemic global problem rooted in gender inequality, power imbalance and discrimination, makes it imperative for the international community and the women's rights movement to review the current challenges to efforts to eliminate GBVAW in the different contexts within which it occurs, and to adopt stronger legal, societal and cultural strategies to address GBVAW. Arguments related to culture,

religion, traditional beliefs and public morality continue to limit and undermine the rights of women. The approach to address GBVAW therefore needs to reinvigorate global support to strengthen women's voices, capacity, advocacy and rights protection as well as developing a holistic accountability framework for eliminating violence and discrimination against women.

This paper is based on various ideas and priorities that emerged at a global discussion with 33 participants from women's groups and human rights experts in Bangkok in December 2016.<sup>4</sup> It does not attempt to provide an exhaustive list of challenges and responses to GBVAW. It aims to highlight some of the challenges that continue to impede measures to address GBVAW, and to stimulate further discussion and to generate strategies on responding to these global challenges effectively. It is hoped that the women's movement will continue to engage and share its ideological framing and its

advocacy and political strategies in addressing GBVAW as a global human rights concern.

## **B. Context and Challenges in Addressing GBVAW**

### **I. Addressing Emerging and Evolving Forms of Violence and Focus on Specific Manifestations of Violence**

The way in which 'non-traditional' forms of GBVAW, such as economic and online violence, is defined, conceptualized and operationalized within laws and policies requires deeper analysis. Addressing 'non-traditional' forms of GBVAW requires laws to reflect the structural inequalities faced by women, as well as the disproportionate impact of GBVAW. The definition of GBVAW within laws needs to be sufficiently comprehensive and capable of recognizing its manifestations in different spaces and forms. However, in adopting broad notions of violence, the question then becomes one of operationalizing and clarifying the obligation of states in addressing GBVAW.

#### **Online Violence**

As the speed, vastness and relative ease of use of ICT reduces time and distance between people, ICT platforms have provided survivors of GBVAW with access to information and assistance, but has also

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<sup>4</sup> This paper has been developed by IRAW Asia Pacific based on a Strategic Consultation to Develop a Global Response to GBVAW that took place on the 5-6 December 2016 in Bangkok, Thailand. The Consultation was attended by 33 participants from national women rights organizations, regional human rights instruments, as well as members from the CEDAW Committee and the CAT Committee. The aim of this consultation was to assess the evolving context in which GBVAW occurs globally, with an emphasis on highlighting challenges that continue to impede measures to address VAW holistically, and to explore how to make responses to GBVAW more effective. For the full proceedings report of the consultation, go to: <http://bit.ly/GBVAWreport>

increased opportunities for abusers to commit violence. There is a growing incidence of technology-related GBVAW with the most common cases documented being cyberstalking, sexual harassment, surveillance, and the unauthorized use and manipulation of private information, including images and videos.

Within the discourse of GBVAW, 'online violence' has initially been viewed as a separate form of violence, requiring specific treatment and response. This perspective fails to locate the 'online' within the daily 'offline' inequalities and discrimination faced by women. The GBVAW discourse is increasingly recognising that online violence is part of the offline violence continuum. While this is highly welcomed, translating that recognition into clear policies and laws that prevent and address online violence against women requires not only further conceptual clarity on the nature of online violence and better technical understanding of how ICTs function, but also deeper analysis on how ICT are developed, as well as the extent of women's representation in the governance of ICTs and the media.

Many states still fail to recognise online violence as a serious offence and prioritise the protection of other rights before taking technology-related GBVAW into account. Technology-related GBVAW covers

different behaviour and actions that are invasive of privacy as well as personal and psychological integrity. However, since these offences happen via technology, they are not taken seriously. On one hand there is a frequent misconception is that if harassment or stalking takes place online then it should be dealt with online. On the other hand, there remains the perception that violence taking place online is not "real" and is therefore less harmful as its impact is still minimal compared to physical violence.

Ensuring accountability for online violence also remains problematic. States still lack legal frameworks and capacity to hold private companies that own online spaces, including social media platforms and mobile or online messaging services, accountable for the failure to monitor and address online violence against women. In addition, the cross-jurisdictional nature of the internet means that authorities, including law enforcement or even Internet intermediaries can find it difficult to investigate and pursue cases of online harassment and abuse as well as gender-based violence.<sup>5</sup>

While capacity-building of all stakeholders and education and safety planning for women on the risks of online violence are important areas of work, responses to

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[http://www.genderit.org/sites/default/upload/flow\\_corporate\\_policies\\_formatted\\_final.pdf](http://www.genderit.org/sites/default/upload/flow_corporate_policies_formatted_final.pdf)

online violence need to go further to comprehensively address the underlying structures of gender disparity and the culture of sexism that facilitates the perpetuation of online GBVAW. This includes the need for greater regulatory guidelines and measures to both provide recognition to online violence as a form of GBVAW, as well as resources for and the prioritisation of training first level responders in this issue, and the need for more equal participation of women in technology development and decision-making.

### **Economic Violence**

Economic violence is an example of a 'non-traditional' form of violence that is often neglected from lack of conceptual clarity and thus correlating weak policy responses, as there appears to be a lack of guidance on the terms in international norms and standards. Recognizing economic violence in the domestic context is important as most women are not able to bring a claim under civil laws that cover fraudulent conduct due to evidentiary difficulties as well as inequality of economic power between men and women within the domestic sphere. However, distinguishing economic harm as a consequence of other forms of discrimination, and economic violence is particularly problematic. If economic violence is included in national laws as a form of violence, the circumstances in which

economic violence occurs should also be limited and defined. A broad definition of economic violence would conflate economic violence and economic harm as a consequence of discrimination, and potentially create legal uncertainty in terms of evidence, making it difficult for victims to prove that economic violence has occurred.

For example, in Australia the Family Violence Protection Act provides the Court the ability to issue a family violence intervention order on the grounds of economic abuse and may include provisions relating to personal property, including with respect to the return of personal property and access to premises in order to retrieve personal property. However, these conditions rarely appear in an intervention order as a mechanism to protect victims from economic abuse due to the lack of conceptual clarity within the legal community on the scope of economic abuse and the difficulty in identifying intent and conduct of economic abuse.<sup>6</sup>

### **II. Decontextualization of GBVAW**

One of the major achievements of the women's rights movement in addressing GBVAW is its conceptualization of GBVAW as the manifestation of a systemic form of discrimination rather than individual and

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<http://www.womenslegal.org.au/files/file/Economic%20Abuse%20Submission.pdf>



isolated incidences of violence. By focusing on extreme forms of violence, pathologizing perpetrators and being gender neutral, the recent responses of states have had the impact of dismantling the interconnectedness of GBVAW with the larger economic, political and cultural factors that contributes to it.

### **Focus on Extreme Forms of Violence**

In recent years, the focus of the media and state responses to GBVAW has shifted towards cases of violence that have very extreme elements or have become 'spectacles' in public and legal discourse. GBVAW has come to be seen as routine, a daily "normal" occurrence, only grabbing headlines and eliciting swift state action when there are "exceptional" and extreme forms of violence like gang rapes and 'brutal' murders. The reactive public discourse and public outrage that occur following exceptional incidents of VAW create pressure on states to respond. The responses to sensationalized incidents of violence are often concentrated on retributive justice. As a result, legislative and judicial institutions adopt measures that are often focused on higher penalization of perpetrators, with little focus on inequality, non-discrimination, institutional and structural biases that are at the root of GBVAW.

For example, in the aftermath of the highly publicized *Nirbhaya* gang-rape in Delhi, state action was mostly concentrated on penal code reformation, without sufficient attention to procedural laws related to sexual violence, or sustained efforts to address institutional weaknesses and biases in addressing GBVAW. As a result, delays in the police registration of victims' complaints still persist and discriminatory laws such as the 'two finger test' is still applied in courts.<sup>7</sup> In imposing death sentences on the perpetrators on the basis of their "exceptional depravity" and on the "extreme brutality" of a crime that aroused "intense and extreme indignation of society,"<sup>8</sup> the retributive approach applied by the Delhi Courts treated the convicts as deviants from the social norms. Shifting the blame squarely on the perpetrators implies that justice is served simply by exterminating them. It fails to address the entrenched injustices in society, the structural weaknesses, the cultural inequality and the political torpor that were complicit in causing the general context of sexual violence in the first place. It assumes that the rape of *Nirbhaya* is a disruption of a society that is already just and harmonious,<sup>9</sup> and that harmony will be

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<sup>7</sup> Aparna Chandra *A Capricious Noose: A Comment on the Trial Court Sentencing Order in the December 16 Gang Rape Case 2014* Journal of National Law University, Delhi pg. 138

<sup>8</sup> State v. Ram Singh and Ors., SC No. 114/2013

<sup>9</sup> Aparna Chandra *A Capricious Noose: A Comment*

restored and justice will be achieved by visiting an equally strong punishment on the offenders.

### **Overemphasis on Pathologization of Perpetrators**

The overemphasis on the pathologization of perpetrators of GBVAW in laws and policies that focus on individual accountability, creates the impact of shifting attention away from more structural and institutional weaknesses and (strict liability and due diligence) obligations of states to eliminate GBVAW.

In Finland for example, activists have raised concerns over state responses to GBVAW that overemphasize 'help' for perpetrators in a way that is equated with the support needed by victims.<sup>10</sup> This discourse risks pathologizing men who use violence against women, medicalising them as atypical men in need of 'help' or 'mediation' and erases the social forces that contribute to violence from economic and cultural factors. Although rehabilitation of perpetrators play an important role in addressing GBVAW, such responses should not be prioritized at the expense of support for victim/survivors

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*on the Trial Court Sentencing Order in the December 16 Gang Rape Case 2014 Journal of National Law University, Delhi pg. 139*

<sup>10</sup> Ministry of Social Affairs and Health (2008): *'Interpersonal and domestic violence is easily over looked as both the victim and the perpetrator find it difficult to report it and seek help because of feelings of shame, guilt and fear*

and broader social inequalities, especially in the context of competing and limited state resources. In addition, such responses often lead to laws and policies on GBVAW that are 'gender neutral'.

### **Shift towards Gender Neutral Responses in Law and Policymaking**

Increasingly, state responses to GBVAW have moved from gender specificity to gender neutrality, where gender-neutral laws, policies and services are being increasingly favoured. Predicated on a formal approach to equality between men and women, 'gender neutral' responses fail to recognize the systemic discrimination faced by women historically.<sup>11</sup> They further marginalize women, particularly women with intersecting identities, as they are unable to take into account the particular needs of survivors of GBVAW and fail to address the structural inequality causing GBVAW. For example, South Africa, like many countries, has adopted gender neutral domestic violence laws that have led to the prosecution of survivors of domestic violence acting in self-defence. In the United Kingdom, GBVAW activists challenged the gender neutrality in provision of services for victims of domestic violence including the provision of shelters that would be shared

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<sup>11</sup> IRAW Asia Pacific Occasional Paper Working Series No.14 *Equity or Equality for Women? Understanding CEDAW's Equality Principles* 2009 pg. 22

by male and female victims of domestic violence. Currently there are no studies to show the relative effectiveness of gender neutral or gender specific laws relating to domestic violence in curbing GBVAW, although there may be an evolutionary trajectory to the ideological framework in relation to laws on domestic violence which seek to protect the rights of men, women and gender non-conforming persons holistically.

The approach to GBVAW that focuses on formal equal treatment between men and women has also seen the increasing participation of groups that support the role of men in promoting gender equality. While it is imperative that men are also engaged in this process, women's groups noted that the focus on the role of men and the culture of toxic masculinities in perpetuating violence, seemed to individualize GBVAW as an isolated 'indecent' and delinks its causes and manifestations from structural discrimination and the institutionalisation of patriarchy. The analytical foundations of men's studies focused on patterns of privilege and power often have little impact on policies based on social and structural transformation<sup>12</sup>.

### **III. Increasing Extremisms**

Religious, right wing and nationalistic forms of extremism as global phenomena are inextricably linked to political, social and economic factors, including geopolitics, systemic inequalities and economic disparities and militarism. State and non-state actors that draw power from exploiting religious and nationalistic ideologies gain/maintain institutional authority by normalizing the inequalities perpetuated, and by giving their patriarchal policies divine justification and greater political clout. As a result, measures that relegate women to the private sphere and curtail their autonomy are harder to challenge.

In the context of postcolonial neoliberal globalization, ostensibly secular systems and democracies have seen a surge in right-wing extremism leading to the deprioritization of women's rights and increased budget cuts to services to prevent and address GBVAW (and social services in general). Democracy has been hollowed out into a mere electoral process, and we have witnessed a surge in populism and increased marginalization of vulnerable groups. Nationalism and protection of national values are used as an excuse to permit violence and deny the rights of women of certain identities. The rhetoric of

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<sup>12</sup>

<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4706022/>

protecting 'traditional family values' has led to increased policing of women's bodies, and discrimination against LGBTQI groups. In trying to address increasing right-wing sentiment in its own region, the West must also ask how it has been complicit in and complacent with the erosion of democracy in the South.

In the experience of women's rights activists, a significant factor in the rise of religious extremism and right-wing nationalism include the opposition against women's improved status or autonomy, and the recognition of the human rights framework. A clear example of such opposition from right wing nationalism can be seen in Russia's recent move to decriminalize domestic violence in the name of 'protecting traditional Russian family values.'<sup>13</sup> Both religious and right wing extremism are becoming increasingly influential in stalling efforts on rights treaties, and diluting progressive discourse with the aim of immobilizing the international human rights system. Progressive national laws and policies aimed at addressing GBVAW are being dismantled, and the human rights framework continue to be delegitimized as an artificial and non-indigenous idea imported from the liberal

West.

Responding to these types of extremisms that are some of the causes of GBVAW requires women's rights organizations to mobilize in a way that cuts across regions, issues and religious contexts. Conceptually, the similarity between religious extremism and right-wing extremist ideologies in perpetuating patriarchal norms and their impact on women's human rights should be articulated more clearly, and work on GBVAW addressing both areas should be linked more systematically. In addition, the role of women in participating in and legitimizing right-wing extremism in democratic systems should also be dissected and examined.

#### **IV. Shrinking Democratic Space for Women Human Rights Advocacy**

Women groups and advocates working on GBVAW sit within a larger civil society space that is increasingly facing a backlash from authoritarian regimes and vocal religious or right-wing communities. Women's human rights organizations identified that some of the major challenges to organising and advocating for cohesive and comprehensive action to address GBVAW were that human rights defenders themselves are targets of State violence, and that the State institutions that deal with

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<http://www.aljazeera.com/news/2017/01/russian-mps-easing-punishment-domestic-abuse-170127114725967.html>

governance and justice, police investigations, stigmatization and surveillance are generally weak and lack funding.

“The list of countries with shrinking spaces for social justice work and increasing criminalization of dissent is getting longer. These crackdowns are presenting not just as prejudiced abuse of power by authorities, but as a rewrite of laws aimed at shackling some social justice organizations to prevent them from doing their work. In many instances, these actions are being justified by ‘national security’ concerns – and are related to a larger clash of ideologies and geo-political shifts the world is currently undergoing - with crippling implications for civil society organizations that receive their funding from foreign sources.”<sup>14</sup>

#### **V. The Normative Gap: Gaps between International Legal Framework and Domestic Laws**

In her 2014 report to the General Assembly, the previous Special Rapporteur on Violence against Women, and its causes and consequences identified the existence

of a ‘normative gap’ within the international human rights system as one of the main barriers in eliminating GBVAW.<sup>15</sup> This normative gap arises because of the absence of an explicit binding treaty or customary international legal obligation which recognises GBVAW as ‘a human rights violation in and of itself’ and which articulates and defines in detail a state obligation to eliminate GBVAW. Despite the existence of many useful non-binding, ‘soft law’ standards such as CEDAW General Recommendation 19, the report argued that given the widespread failure of states to adequately address GBVAW, there was a need for a new binding instrument that clearly stated such an obligation and defined its dimensions in detail (including States’ due diligence obligations).<sup>16</sup>

It is well-accepted that such pronouncements of the United Nations human rights treaty bodies are not in themselves formally binding as a matter of international law. This is case with CEDAW’s pronouncements – they are not formally binding interpretations of the Convention. The fact that the CEDAW

<sup>14</sup> *Shrinking Civil Spaces: Backlash or Push Back* Nana Darkoa Sekyiamah, Kamardip Singh and Angelika Arutyunova <https://www.awid.org/news-and-analysis/shrinking-civil-spaces-backlash-or-push-back>

<sup>15</sup> United Nations General Assembly, Report of the Special Rapporteur on violence against women, its causes and consequences, A/69/368, 1 September 2014

<sup>16</sup> For a review and response to some of these arguments, see **A Byrnes**, ‘Whose International Law Is It? Some Reflections on the Contributions of Non-State Actors to the Development and Implementation of International Human Rights Law’ (2016) 59 *Japanese Yearbook of International Law* 14, 32-43.

Committee may not have the legal power to issue formally binding interpretations of the Convention, does not mean that its interpretations are not an accurate statement of the scope of States parties' binding obligations under the treaty. The question is whether the Convention, properly interpreted, imposes such obligations on States parties, not the formal legal status of CEDAW's views.<sup>17</sup> In this light, the characterization of current non-binding frameworks and how they assist women in claiming rights is important in informing our future strategies of strengthening responses to address GBVAW. To suggest that these instruments have no legal force, may not only undermine the gains that have been made within the international human rights mechanism in relation to GBVAW, but also fails also to recognize the strategic value of these instruments and role they have played to conscientize and pressure states to address GBVAW.

While the CEDAW General Recommendation 19 is not legally binding in itself, the standards and extent of state obligations articulated under the General Recommendation have been used as a tool by women's rights organization to advocate

for state compliance to address and eliminate GBVAW, and have been operationalised in state practice.<sup>18</sup> By locating GBVAW within the matrix of non-discrimination and substantive equality, General Recommendation 19 conceptualizes GBVAW not only as a form of discrimination, but also as a consequence of structural inequality. Since the adoption of General Recommendation 19 in 1992, over 100 states have reported on the measures that have been taken to address GBVAW in their periodic review. In addition, jurisprudence on GBVAW as a form of violation of women's human rights has been developed through the OP CEDAW mechanism. A number of states have subsequently adopted legislative measures, policies and action plans to address GBVAW to meet their obligations as articulated in recommendations made by the CEDAW Committee in the concluding observations, and decisions in OP-CEDAW cases.

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<sup>17</sup> IWRAW Asia Pacific *Gender-Based Violence Against Women And International Human Rights Law: Options For Strengthening The International Framework Discussion Paper* 2016 pg. 15

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<sup>18</sup> States have indicated their acceptance of the Convention's coverage of violence generally and of General recommendation 19 in particular in a number of ways, both tacit and explicit. For example, in the 109 State party reports submitted under the Convention between January 2010 and March 2015, there were explicit endorsements of General recommendation 19 by 29 States parties. There were also eleven general endorsements of CEDAW's General recommendations. All States parties reported on violence against women in their periodic reports, in pursuance of their obligation under article 18 of the Convention to report on 'the legislative, judicial, administrative or other measures which they have adopted to give effect to the provisions of the present Convention and on the progress made in this respect'

The norms of GBVAW has also been strengthened by the focus of other international human rights treaty bodies and the adoption of other regional human rights instruments by various regional systems. The Committee against Torture for example, has specifically recognized the applicability of the Convention against Torture to gender and especially to domestic violence in its general recommendations, and expanded its awareness of the issue of GBVAW and rape.<sup>19</sup> It now routinely addresses the subject in its concluding observations following examinations of periodic state reports.<sup>20</sup> The Committee on the Rights of the Child also requires states to address forms of violence that disproportionately affect girls, such as child marriage, sexual violence and female genital mutilation.<sup>21</sup>

Thus, CEDAW and the treaty bodies, as well as other regional frameworks have strengthened the normative framework in addressing GBVAW. At the most minimal level, the CEDAW reporting mechanism and

its subsequent recommendations has [acted as] [provided?] a space for women's rights organizations to organize and engage in constructive dialogues with states, thereby supplementing the work of women's rights organization at the national level in creating pressure on states to take measures towards addressing GBVAW. State ratification of international human treaties symbolizes recognition of particular acceptance of GBVAW as a violation of women's human rights in international law. However, the implementation of these international human rights standards, are aimed at catalysing changes in laws, policies, as well as culture to address human rights violations; this still rests primarily on the political will of the state, which ultimately responds to political pressure created by its people and by movements.

## **VI. Gaps in Implementation of Laws**

Most of the concerns articulated by women's rights groups suggest that any form of response to GBVAW should focus on efforts in strengthening compliance of laws at the national level. Secondly, where good laws exist then the focus should be on implementation of these laws. Although many states have ratified CEDAW and enacted laws aimed at eliminating GBVAW, state responses to GBVAW often fail to

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<sup>19</sup> UN Committee Against Torture (CAT), *General Comment No. 2: Implementation of Article 2 by States Parties*, 24 January 2008, CAT/C/GC/2

<sup>20</sup> For example, the Committee identified rape as an issue under the Convention in 39 States between 2002-2012.

<sup>21</sup> The Committee on the Elimination of Discrimination against Women and the Committee on the Rights of the Child *Joint general recommendation No. 31 of the Committee on the Elimination of Discrimination against Women/general comment No. 18 of the Committee on the Rights of the Child on harmful practices* (2014)

translate into transformative change as implementation of these laws remain tenuous, uneven, weakly resourced and contested.

### **Domestication and Incorporation**

Despite the widespread ratification of CEDAW, many states face legal barriers in effectively incorporating and domesticating CEDAW within their national laws. In countries where dualist legal systems operate, international law can only be binding and enforceable if it has been directly incorporated into the domestic legal system. This means that in the absence of specific legislation or provisions in the constitution expressly incorporating CEDAW within domestic laws, CEDAW does not have force of law and cannot be enforced, but is still a useful tool for interpretation and law reform in the absence of a comprehensive legal framework on substantive equality. This was illustrated in the decision of the High Court of Malaysia in the *Noorfadilla Ahmad Saikin* case where CEDAW was applied in interpreting the provisions on gender equality incorporated in the Malaysian Constitution.<sup>22</sup> While legal scholarship may have moved away from viewing most legal systems as rigidly either monist or dualist, the courts in many countries still continue to refuse to apply

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<sup>22</sup> *Noorfadilla Ahmad Saikin v. Chayed Basirun et. al.* (2012) 1 CLJ 781-3

CEDAW directly within national legal systems on the ground that treaties that have not been implemented by domestic law cannot be invoked as an independent sources of rights or obligations.<sup>23</sup>

### **Plural Systems**

Although pluralism is neither inherently good nor bad for women's rights, in practice many women are at a disadvantage where customary and/or religious legal systems prevail. Parallel and/or plural legal systems remain a challenge as potential conflicts in laws or between the different legal systems weaken the state's ability to enact laws that address GBVAW and gender equality laws to promote and protect women's human rights. A women's access to justice approach dictates that domestic legal frameworks cannot exempt customary law related to legal personhood, legal equality between spouses, discriminatory customary or religious enactments that exist outside of/in parallel to the civil law from subordinating to the principles of equality under national constitutions. There should be greater focus on eliminating legal lacunae, clarifying conflicting norms and

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<sup>23</sup> Despite cases such as *Noorfadilla* that suggest that Malaysian domestic courts are more willing to accept the relevance of international law others have fallen back on the strict dualist position. In the 2014 case of *Airasia Berhad v Rafizah Shima bt Mohamed Aris* where a similar situation of termination on grounds of pregnancy occurred, the Court of Appeal held that CEDAW does not have the force of law in Malaysia because it has not been enacted as domestic law.



other administrative gaps which have the intent or effect of discriminating against women.

For example, in the province of Aceh in Indonesia, Qanun Jinayat under Shariah law makes it almost impossible for a woman to bring charges of rape. Shariah law shifts the burden of proof of rape on the woman by requiring the testimony of four witnesses as evidence. If she is unprepared to take a vow, the victim can be accused of qadzaf (or alleging somebody to have committed adultery) with the punishment of 80 lashes. In addition, many countries inequality in the minimum age of marriage and legal justifications for allowing child marriages are upheld through customary laws and personal status laws, creating a loophole in national/civil laws that aim at protecting girls from forced/early marriages.

### **Access to Justice**

A culture of compliance with international human rights laws reaches far beyond the enactment of laws; it also requires an enabling environment for women to seek justice and hold states accountable. Despite progressive laws to address GBVAW, justice systems and law enforcement institutions, encompassing the police, prosecutors and judges, are often unable to respond to the needs of women and other vulnerable groups. At the domestic level the

lived realities of most survivors reveal that while GBVAW laws and policies are in place, the lack of understanding, awareness, training and resources mean that the necessary protection and redress are not available.

For instance, a protection order against a domestic violence perpetrator is useless if the police do not have the resources or the will to respond to a crisis call by a survivor. A worker wanting to complain about sexual harassment is told that there is no formal mechanism in her workplace because sexual harassment may be addressed only in voluntary policies by employers. The attrition may occur at the very start of the process, if, when making a police report, survivors are treated disrespectfully, and this is then followed by poor police investigations and a long wearing trial process. In cases of domestic violence, mediation and conciliation is routinely used to discourage the survivor from making a police report. An interagency coordinated approach amongst the judiciary, police, prosecutors, social services agencies, providers of services to survivors and women's groups is critical. Implementing agencies generally do not follow Standard Operating Protocols within a human rights framework.

Institutional biases and prejudices, as well

as corruption within these national institutions perpetuate the culture of impunity and the normalization of GBVAW. Stereotypical assumptions caused by patriarchal culture related to gender norms and roles continue to discriminate the ability of survivors of GBVAW in their right of access to justice. As laws alone are not able to address these issues, a sustained effort to engender the policies and culture of these institutions is also required. This should not be limited to measures related to capacity building programs for public officials, such as gender sensitivity training for the police. GBVAW needs to be prioritized as a political issue within public institutions to include resource allocation, spending of budget, and ensuring meaningful participation and representation of women, etc.

## **C. Strategic Responses to GBVAW**

### **I. National Efforts Beyond the Law**

Generally, responses to GBVAW should revolve around strengthening state compliance to CEDAW, moving beyond the creation of laws. Laws on GBVAW needs to be placed within the current political, economic and social context, and in relation to other responses focused on holistic and greater accountability of states. Laws on GBVAW should act as interpretative

frameworks on the causes and consequences of GBVAW, not only prescriptive responses to specific forms of GBVAW.

### **Strengthening Implementation**

Strategies should focus on supporting implementation of laws within national institutions (especially the legislature, law enforcement, judicial actors, sectoral ministries, local governments) and ensuring that these laws are sufficiently socialized within those institutions. More resources need to be developed, documenting challenges, best practices and strategies in implementing laws to address GBVAW, and should be shared more widely within the women's movement and international human rights mechanisms. For example, the recent call of the Special Rapporteur on Violence against Women for submissions on protection orders and shelters is an opportunity and platform for the women's rights movement, international and regional mechanism to exchange best practices, challenges and strategies, international and regional instruments for strengthening the implementation of measure to protect survivors of domestic violence.

### **Reframing GBVAW as a Political Imperative**

National movements are key actors in pushing for state accountability for GBVAW.

The gains made so far at the international and national level could not have been achieved without the force of the women's movement in exerting political pressure on states to address GBVAW as a serious human rights violation that requires urgent action. Relying on laws alone, whether national, regional and international, will not transform social, economic and cultural structures that cause GBVAW and perpetuates impunity.

GBVAW as an issue needs to be analyzed and reprioritised within the global, national and regional political and economic context. Strategies in holding states accountable for GBVAW must catalyze the political will of states to prevent and address GBVAW as a priority issue.

### **Reclaiming Culture and Challenging Cultural Norms that Perpetuate/Sanction GBVAW**

Holistic responses to prevent GBVAW require sustained strategies to transform patriarchal cultures and attitudes that underlie discrimination and inequality. The women's rights movement must continue to challenge harmful practices and gender stereotypes that justify GBVAW on the basis of culture, tradition and religion.

It must also be recognised that while laws play an important role in changing cultural

attitudes towards GBVAW and gender equality more generally, discriminatory laws are also symptomatic of patriarchal norms within institutional cultures and society at large. Education programmes and grassroots-level activism to inform women of their rights still remain critical.

Article 5 (a) of CEDAW requires States to take measures to seek to eliminate prejudices and customs based on the idea of the inferiority or the superiority of one sex or on stereotyped role for men and women. Not taking measures to address what is deemed as unchangeable under the guise of religion and culture is unacceptable, if culture undermines women, then policy and programmes must address discriminatory attitudes, patterns and practices.

### **Towards a More Inclusive Movement**

The global GBVAW movement has made great progress in putting this issue at the centre of global policy discussions and in framing the issue of culture as both a challenge as well as an opportunity for creating change – further initiatives are needed to move efforts in a coherent transformative and progressive trajectory.

Strategies to address GBVAW must be focused on framing responses that aim to address the rights contexts of the most marginalized women and enable the

meaningful inclusion of their voices/activism. The way in which GBVAW is conceptualized and prioritized needs to be cognizant of the multiple layers of discrimination faced by marginalized women with intersecting identities. More work needs to be done to ensure the women's movement itself is more inclusive and women from marginalized groups meaningfully represented at all levels. This requires reflection and recognition of the structural inequalities and discrimination that exist within the women's rights movement itself. In addition, there needs to be greater collaboration between the women's human rights movement and other movements including groups of women migrant workers, refugees, lesbians, transgender persons, sex workers, indigenous women, women of colour, etc. in sharing knowledge on strategies to address GBVAW, and linking standards between different international human rights treaties and instruments.

## **II. Pursuing a New International Instrument**

The lack of a legally binding treaty as discussed in Section B. IV. above has been used as a basis for advocating for the creation of a new international instrument specifically addressing GBVAW. However, it remains unclear what form this new instrument will take and how pursuing an

international treaty would address the normative gap and effectively respond to the wide array of challenges within the current political, economic and social context linked to GBVAW.

Pursuing a new treaty would be valuable in so far that it is capable of strengthening compliance of states to international law standards. As implementation and incorporation of international standards still rests on the political will of states, a new instrument will only be effective if it is capable of creating greater political impetus for states to take action to prevent and address GBVAW compared to other international instruments already available. However, the hostile environment created by the pushback on human rights and in particular women's human rights raises the question whether the political climate is conducive to creating higher standards compared to those already available in international law. A new international convention on the rights of older people has been on the drafting table since 2010 and there appears to be little room or energy for negotiations for another treaty.<sup>24</sup>

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<sup>24</sup> For a more detailed discussion on the advantages and drawbacks of a new treaty, refer to IWRAW Asia Pacific Gender-Based Violence Against Women And International Human Rights Law: Options For Strengthening The International Framework Discussion Paper 2016 pg. 18

Drafting a new convention is a highly political process and runs the risk of states attempting to limit what is understood as violence by excluding certain practices in the definition within the text in the name of cultural and religious beliefs as well as acceptable economic practice. Women's rights organizations are also concerned about the considerable governmental and civil society resources that would be required in negotiating a new convention, and the potential risk of diverting significant energy from implementation of the existing norms. A long drawn out campaign to persuade States to ratify the new convention can also draw energy and resources away from implementation efforts.

If a decision were taken to elaborate a new instrument, any such instrument should affirm CEDAW's binding obligations in relation to GBVAW and emphasise the links between GBVAW and the denial of rights to non-discrimination and substantive equality guaranteed under CEDAW and other human rights instruments. However, it is unclear how a new binding treaty on GBVAW will impact the well-established body of jurisprudence and recommendations developed by the Committee in connecting GBVAW with other forms of discrimination. Placing GBVAW within the matrix of discrimination has

allowed elucidation of new forms GBVAW and expanded the scope of state obligation to protect women against GBVAW. It has created a link between GBVAW and other forms of discrimination that are a consequence of inequality within the global political economy and in local economic, social, cultural and religious context. An instrument grounded on the manifestations of violence may make it difficult to operationalize a comprehensive response and address the underlying causes and consequences of GBVAW.

### **III. Strengthening and Utilizing Existing International Mechanisms**

#### **CEDAW and the Update of General Recommendation 19**

The CEDAW Committee is currently updating General Recommendation No. 19 (1992) to accelerate efforts on gender-based violence against women. By mid-2017 the updated General Recommendation 19 will be made available and this will provide the implementers at the domestic level whether they are advocates, government officials or courts with a new advocacy tool, an opportunity to use it for advocacy.

The updated General Recommendation should be seen by national groups as an opportunity to regalanise the political impetus to demand state accountability for GBVAW. It also provides a framework to

reconsider the context in which GBVAW occurs and clarify state obligations that reflect the current complexities of global political and economic systems that have contributed to the manifestation and perpetuation of GBVAW and acted as barriers to eliminating GBVAW.

### **Utilizing the Sustainable Development Goal (SDGs) as Another Entry Point**

The interest of governments in allocating resources and energy to align national policies and actions with the indicators established under the Sustainable Development Goals, can be used as an opportunity to propel government action for greater accountability of GBVAW. In particular, Goal 5 on Gender Equality and Empowerment has as a target the elimination of all forms of violence against all women and girls in the public and private spheres. Goal 5, as well as the intersection of gender across the SDG indicators can be viewed as entry points for women's rights organisations to influence national implementation programmes. Women's rights organizations should organise and strategize on ways to influence the High-level Political Forum to bring GBVAW to the forefront and to encourage the collection of gender-disaggregated data related to implementation of gender specific policies and GBVAW.

### **Taking advantage of the Universal Periodic Review**

The Universal Periodic Review (UPR) facilitates another opportunity for advocacy. The UPR established by the UN General Assembly on 15 March 2006 is one of the key elements of the Human Rights Council which reminds States of their responsibility to fully respect and implement all human rights and fundamental freedoms. The process of engagement includes national consultations, lobbying embassies, submitting a NGO report, making an oral Statement and following up on pledges made by a State at the Human Rights Council. It is a unique process, which involves a review of the human rights records of all 192 UN Member States once every four years. Under the UPR procedure, the issue of violence against women has been addressed regularly during the consideration of States' efforts to ensure the enjoyment of all human rights, including women's human rights.

### **Coordinating and Integrating the Work of All International Mechanisms that Have a Stake in Gender Based Violence against Women**

To further develop an intersectional approach to GBVAW at the international

level, GBVAW as an issue must not be limited to the remit of CEDAW. As the possibilities of addressing GBVAW through other UN Human Rights Treaty bodies such as the Human Rights Council, CRC, and ICESCR have yet to be explored, greater cooperation across these international treaties should be considered to facilitate stronger linkages between GBVAW and other forms of discriminations. In addition, measures could also be taken to enhance cooperation between the work of the Special Rapporteur on violence against women and other Special Rapporteurs such as the Special Rapporteur on poverty, the Special Rapporteur on migration and the Special Rapporteur on slavery in order to draw connection between each field of expertise and to foreground GBVAW's more structural causes.

Special Rapporteurs, treaty bodies, UN working groups tend to work in silos, although there have been some instances of joint efforts. In November 2016, there was a joint press statement ahead of the International Day on the Elimination of Violence against Women, where the United Nations Special Rapporteur on violence against women, its causes and consequences, the CEDAW, the Inter-American Special Rapporteur on violence against women, the Special Rapporteur on the Rights of Women in Africa, the United

Nations Working Group on the issue of discrimination against women in law and in practice, the Committee of Experts of the Follow-up Mechanism to the Belém do Pará Convention (MESECVI) and the Group of Experts on Action against Violence against Women and Domestic Violence of the Council of Europe (GREVIO), as key global and regional women's rights expert mechanisms, jointly called for intensification of international, regional and national efforts for prevention of femicide and GBVAW.

#### **D. Conclusion**

In adopting strategies to address GBVAW, the gains that have been made as reflected in the development of international and regional standards on GBVAW, as well as national laws and policies should be further strengthened and used in articulating strong legal frameworks that address prevention, protection, prosecution, and remedies. Discussions in the women's movement have also highlighted the need for a more critical and conceptual and ideological framework that places GBVAW in the centre of public and political discourse about rights and global inequality, which can help strengthen and operationalise our ability to create the shifts required for social, cultural and political transformation which will work comprehensively in eliminating. In this light, any measures taken must respond to the current political, economic and cultural

climate, with greater engagement between national women's rights organizations and international and regional human rights bodies. In addition, strategies for addressing GBVAW must further strengthen the linkages between GBVAW as a manifestation of inequality between men and women, and other forms of

discrimination. Efforts in cross-fertilizing human rights standards to address GBVAW need to be strengthened, through greater collaboration between different international human rights bodies as well as between the women's rights movement and other movements.

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