

Violence against Women: From Victimization to Empowerment*

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I- Introduction: United Nations Agenda on Violence against Women

Violence against women (VAW) is a late comer to the United Nations (UN) gender agenda. In the 1970's, when the draft convention on the Elimination of All Forms of Discrimination against Women (CEDAW) – commonly known as women's international bill of rights – was being negotiated it was not possible to agree on including VAW within its provisions. At the time, the issue was considered a private family matter by the majority of the delegates representing their States at the Commission on the Status of Women (CSW). After the adoption of CEDAW in 1979, it took another 13 years of activism to bridge the gap in the only legal instrument on women's rights when the Committee responsible for monitoring the Convention adopted General Recommendation 19, mandating states parties to include VAW in their periodic reporting.

In 1993, the Vienna Conference, officially declared VAW a human rights violation and the same year the General Assembly (GA) adopted the Declaration on the Elimination of Violence against Women (DEVAW), which provides an internationally agreed definition of the problem and a normative framework for its eradication. The following year, in 1994, the Commission on Human Rights created the post of Special Rapporteur on VAW within the special procedures as the first mechanism to monitor private life in terms of human rights violations.¹

Empowerment and VAW

What is the link between VAW and empowerment? In order to answer this question, it is important to recall the parameters of DEVAW and the mandate on the elimination of violence against women, its causes and consequences. According to these, VAW unlike most other forms of human rights violations is not merely a problem of victimization but rather it is inherently linked to the historically rooted patriarchal system of gender relations. Therefore, elimination of VAW cannot be approached within a narrow victim approach. In this respect, it requires an engagement beyond redress and protection of the victim, while fully recognizing that there are victims of violence and it is a disempowering force, which erodes women's self dignity, their capabilities and ability to enjoy the full spectrum of their human rights, with lasting impact on the victim's mental and physical health. Yet, escaping violence and its eventual eradication as a systematic tool of patriarchal control requires women's empowered resistance. As such, the VAW

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mandate is part and parcel of the empowerment agenda of the Beijing Platform for Action (BPfA).

Putting violence on public agenda helped break the silence in which violation of women's rights took place, particularly in the private sphere. As articulated by Foucault in his *The History of Sexuality*, silence and secrecy shelter power and its prohibitions (101) and helps shield the taboo around private life from public eye. The silence allows the status quo to prevail as laws, institutions, conventions and everyday practices, which are inherently laden with gendered interests, continue to preserve the taboo without significant opposition.

Thus, the VAW mandate provided a venue for the voices of those who dared to break the silence and it helped mobilize women from around the world, linking individual experiences of women with that of the collective; local with the global; particular with the universal. Understanding the diverse trajectories of women's individual and collective resistance to oppression and violence, therefore, has provided a powerful insight for determining the parameters of the agenda and on how it can be moved forward in tackling the 'pandemic' of violence against women in all parts of the world. In the process, our understanding of the earlier gender agendas based on the achievement of formal equality and women in development (WID), which followed, have also broadened, demonstrating that the advancement of women and achievement of gender equality requires a holistic strategy embedded in women's empowerment – socially, politically and economically. It is at this juncture that the link between VAW and women's empowerment is established as a dynamic force for change.

II- Transformative Impact of the VAW Agenda

VAW has been a powerful entry point for enhancing women's human rights as it inherently questions hierarchy, power, and the taken for granted aspects of everyday life. The evolving agenda placed the problem at the center of human rights thinking, which after two devastating world wars was formulated to prevent atrocities in the hands of State agents in the public domain – notoriously overlooking the specific manifestations of women's human rights violations mainly in the private sphere.

Applying the human rights discourse to VAW fundamentally altered the discourse itself and its transformative impact has been significant particularly in three respects: (i) transformation of conventional understandings of human rights beyond violations perpetuated by state actors in the public sphere; (ii) transformation of the doctrine of state responsibility to include the actions of private individuals, thus, together with the former point, demystifying the public/private dichotomy of international human rights law; and (iii) transformation of the criminal justice systems with the recognition of new species of crimes, such as rape, domestic violence, marital rape, etc.

Today, rape in conflict situations is considered a crime against humanity that can be prosecuted by the International Criminal Court. Criminalization of domestic violence and marital rape in the legislation of many countries challenges the liberal notion of private life that for so long guarded the home as a safe haven for the man thus concealing abuse

in intimate relationships from public gaze and from law. In many countries a special law on domestic violence has been adopted, in many others existing laws are amended to eliminate gender biases.

Most importantly, applying a human rights approach to VAW has led to a broader understanding of the problem and enabled a move away from a humanitarian / welfare approach to one of perceiving a life free of violence an entitlement.

These developments demonstrate that violence is not an isolated incident targeting vulnerable women but a systematically used tool of patriarchal control to ensure that 'women stay in their place'. Therefore, the agenda for the elimination of VAW is not about victimization but rather about the empowerment of women to overcome and eventually change patriarchal hierarchies.

III- The Persisting Gaps in Implementation

The agenda for gender equality in general and the VAW mandate in particular are unique in that unlike most other areas of concern of the UN, gender issues gained recognition as result of the struggle of women themselves. In that sense, it reflects the demands and interests of women and not that of policy makers or politicians. The global women's movement has succeeded in making violence against women a public policy issue at the international level, which has been slowly but surely trickling down to the national level policy frameworks.

Although, gender relations shows great variation world wide, its dynamics are embedded in a common history that cuts across all "civilizations, i.e. gender inequality is a universal norm, preserved through diverse forms of violence against women. However, in many parts of the world, historical transformations and women's individual and collective struggles resulted in significant deviations from this norm towards greater equality between the sexes and a recognition that VAW can and should be eliminated. This has required and continues to require a firm political commitment, prioritizing gender equality as public policy issue and constantly stimulating and monitoring changes in the culture of major institutions of society through informed political and legislative action.

While many norms and standards for enhancing women's rights are now in place they are inadequately implemented. What continues to be universal today is violence and violation of women's rights with impunity. There are many reasons why this is so, including the fact that the very notion of universality of human rights is constantly belittled by the deepening inequalities among nations, groups and women and men as well as the polarized global power structure, which put women on different sides of the global power struggle. There are also conceptual and institutional problems specific to the VAW discourse, which impede implementation. Some of these are:

1- Tendency to de-link VAW from its root causes

(a) Women are still seen as vulnerable, weak and in need of protection. As a result, in many countries women are categorized along with vulnerable groups such as children,

disabled, the elderly etc. This not only conceals the patriarchal disempowering elements in hegemonic gender relations inherent in laws, institutions, policies and societal values but it perpetuates women's dependent and subordinate status.

(b) VAW is perceived as the problem of the "other", therefore, there is a tendency to single out groups that are likely targets of violence or perpetrators of violence, such as: poor / ignorant women, acts of alcoholic / deviant men or a problem of cultures assumed to be inherently misogynous – such as immigrant / Muslim communities. Cultural essentialism assumes culture to be something out there and distinguishes modern / legal / rational structures from traditional ones, the former understood as being gender neutral. For instance, the fact that 50 percent of female homicide victims in the USA in 2003 were shot and killed with a gun often goes unnoticed as gendered violence within what is perceived as seemingly a gender neutral practice of the "gun culture" (A/HRC/34: para 48). As such, "othering" creates the "we" and the "they" and locks the crimes against the other into a cultural discourse which only reinforces the defense of its perpetrators and weakens the resistance of its victims. It, therefore, distorts reality and carries racist undertones while at the same time disempowers women by fragmenting the common gender agenda, which has been instrumental in achieving the many gains made thus far.

(c) Crimes against women receive differential attention and treatment, with some deserving of urgent response and others not. This selective approach is partially linked to the above issue of "othering" but it is also inherent in viewing crimes in a hierarchical manner, i.e. some being worst than others. For example, in recent years, the so called "crimes of honour" have attracted much attention in research, policy as well as legislative reforms. Since 2003 the UN General Assembly has adopted specific resolutions on these crimes. Similarly, sexual violence in conflict zones has been identified as matters of urgent attention. In this regard, the SC recently adopted resolution 1820 on sexual violence in conflict zones. These are no doubt positive developments in giving recognition at the highest level of decision making to formerly neglected violations of women's rights. However, there is a potential danger if certain crimes are singled out as important, separate and unique in themselves. Such an approach naturally overlooks the continuum and intersectionality of the manifestations of violence against women and results in normalizing or disguising forms of violence perceived to be trivial.

(d) Gender mainstreaming, which has become a widely accepted policy tool, is narrowly and sometimes erroneously interpreted and applied.² For example, in some national legislation VAW is defined as a law and order issue, separate from women's status in general. In this respect, all members of the household are accepted as potential victims of violence and all members as potential perpetrators. While this assertion is correct in

² The term gender, which forms the basis of the mainstreaming approach, is often used in abstraction from its socio-historic content - that is, the social construction of masculinities and femininities within hierarchical and unequal relational systems. As a result, gender is used synonymously with women or refers to mere difference between women and men. Mainstreaming exercise based on such an understanding of gender naturally diverts the attention away from gendered inequalities. For a discussion of these concepts see: Y. Ertürk. 2004. "Considering the Role of Men in Gender Agenda Setting: Conceptual and Policy Issues." *Feminist Review*. Issue 78: 3-22.

principle, in practice it needs to be qualified with evidence as well as by distinguishing the nature of violence different members of the household are likely to encounter. Evidence shows that, in all countries, domestic violence is patterned and gendered. The vast majority of the crimes committed in the private domain take place within hierarchical relationships and their victims are more often than not women. Violence encountered by men, on the other hand, is either contextual – where women may indeed be the perpetrator- or linked to the contestation over power among men themselves. It must be borne in mind that patriarchy is a hierarchical structure of power which not only subordinates women – thereby demarcating masculine and feminine gender identities - but also distinguishes status differentiation among men. Not all men have equal access to power therefore violence may be used among men in competing for power, such as in wars but also in everyday life situations. By and large, while men experience violence as a result of differential access to power at any given time, women experience violence because of their systematic subordination to male based power, a phenomenon which is also often condoned and approved by society. In other words, what makes special attention to VAW a necessity is its systematic and patterned nature and its embeddedness in patriarchal control to keep women “in their accorded place”.

2- The United Nations Framework

The UN, as a platform for consensus among states, provides an invaluable framework for establishing universal standards to advance equality and rights around the world.³ The legitimacy that arises out of decisions derived through intergovernmental consensus provide on the one hand standards for state responsibility and on the other hand offer rights advocates tools with which to work at national and local levels. However, the international system is not free of the prevailing biases inherent in global power relations, including gender relations. The western and male bias attributed to international human rights law has been and continues to be a site for struggle since the creation of the Organization.⁴

In the area of VAW, the most concrete expression of such a bias is reflected in the “harmful traditional practices” approach, which evolved with the establishment in 1984, by the Sub-commission on Prevention of Discrimination and Protection of Minorities (now the sub-commission on Protection of Human Rights), of a working group on “harmful traditional practices”. In 1988 a Special Rapporteur was appointed to monitor and report on the issue.⁵ Within this context, although several traditional practices were

³ For a discussion of the UN gender framework see: Y. Ertürk. 2005. “The UN agenda for women’s rights and gender equality.” In *Perceptions: Journal of International Affairs*. Vol X Number 2: 91-113.

⁴ The human rights movement itself struggled for a long time to recognize that the equality of women and men constitutes a logical and indispensable element of a normative system built on dignity and equality. For further reading on relevant issues see: Z. Arat. 2006. “Forging A Global Culture of Human Rights.” *Human Rights Quarterly*. 28: 416-437; M. Chanock. 2000. “Culture and Human Rights.” In M. Mamdani (Ed). *Beyond Rights Talk and Culture Talk*. NY: St Martin’s Press: 15-36; C. Chikin. 2000. “Gender and International Society.” In R. Thakur and E. Newman (Eds.). *New Millennium , New Perspectives*. Tokyo: UN University Press: 242-260.

⁵ Economic and Social Council. Study on traditional practices affecting the health of women and children; final report by the Special Rapporteur, Mrs. Halima Embarek Warzazi, E/CN.4/Sub.2/1991/6 (1991).

identified, the main focus was on female genital mutilation (FGM)⁶ (A/HRC/4/34: para 32). While, this agenda has helped to mobilize international and local constituencies for the eradication of practices that were formerly justified along cultural lines, it also contributed to reducing the problem to a cultural sphere by essentializing certain cultures as the source of the problem. As one writer put it, the harmful traditional practices agenda "...unfortunately reinforced the notion that metropolitan centers of the West contain no 'tradition' or 'culture' harmful to women, and that the violence which does exist is idiosyncratic and individualized rather than culturally condoned."⁷

A 1995 United Nations Publication on harmful traditional practices, for instance, seems to juxtapose non-western traditional practices with "non-traditional practices, such as rape and domestic violence" (sic).⁸ This classification is dubious and highlights the problem the concept of "tradition" entails. Since high rates of domestic violence and rape persist in the Western world,⁹ despite commendable legal and institutional measures in place for women's advancement, it is hard not to perceive these violations as harmful social traditions rather than merely as the crimes of individual, deviant perpetrators (A/HRC/4/34: para 32).

Compartmentalizing violence against women and neatly partitioning it into "practices" may at times also be counter-productive, if commonalities and shared root causes of such practices are not identified and integrated into a holistic strategy. In some cases, merely suppressing a harmful practice may only shift the problem to other areas, unless the root causes are thoroughly addressed (A/HRC/4/34: para 33).

Aside from conceptual ambiguities and biases inherent in approaches employed within the UN gender work, there are problems emanating from the Organization's fragmented institutional structure, which is exasperated by insufficient coordination and collaboration. Most relevant in this regard is the division between CSW which is the main UN policy formulation body on gender issues and the HRC which houses the special procedures mechanism of which the SRVAW is part of. While there is good reason for having created the VAW within the human rights framework, the fact that the SRVAW is not mandated to report to the CSW reinforces the gap between efforts to eliminate VAW and the broader agenda for women's advancement. This issue was

⁶ Any procedure involving partial or total removal of the external female genitalia or other injury to the female genital organs for cultural, religious or other non-therapeutic reasons and thereby causes physical and/or psychological harm must be regarded as female genital mutilation, regardless under what medical conditions it is carried out.

Some have argued that the treatment of female genital mutilation as a harmful practice to women is an ethnocentric stand that ignores the fact that the practice provides women with more sexual power over her partner and makes them more proactive in sex. Such notions could have been entertained if we were to assume that women are free agents and do not behave under severe patriarchal constraints. Paradoxically, such claims are themselves ethnocentric and are advanced by taking women's subordination as a given.

⁷ Winter, B., Thompson, D. & Jeffreys, S. 2002. "The UN Approach to Harmful Traditional Practices." *International Feminist Journal of Politics*, vol. 4, No.1: 72-94.

⁸ See UN, 1995. Human Rights Fact Sheet on "Harmful Traditional Practices Affecting the Health of Women and Children:" Human Rights Fact Sheet No. 23.

⁹ See my mission reports on Sweden (A/HRC/4/34/Add. 3) and Netherlands (A/HRC/4/34/Add. 4).

partially addressed in the SG's 2006 report on violence against women (A/61/122/Add.1) but still remains unresolved.

3. The Due Diligence Obligation of the State and Non-State Actors

The Declaration on the Elimination of Violence against Women, adopted by the UNGA in 1993, urges States (Article 4c) to 'exercise due diligence¹⁰ to prevent, investigate and, in accordance with national legislation, punish acts of violence against women, whether those acts are perpetrated by the state or by private persons'. Accordingly, the concept of due diligence provides a framework for action while at the same time it is a criteria by which to determine whether a state has met or failed to meet its obligations to combat violence against women.

However, there has been a general tendency in human rights work to treat violence against women largely within a welfare/humanitarian paradigm. As a result, the application of the due diligence standard has tended to be limited to responding to violence when it occurs, i.e., protecting the victims and punishing the perpetrators. There has been relatively less work done on the more general obligation of preventing violence from occurring, including by supporting women's empowerment and engaging in transformative change at the community and societal levels to eradicate patriarchal norms and values that underlie violence and the subordination of women.¹¹

This has limited the VAW mandate to a victimization approach, which has created much disillusionment among women's rights advocates. What is needed is to re-define what it means for a state to be diligent in not only protecting the victim and punishing the perpetrator but also in preventing violence from occurring in the first place. In a thematic report to the Commission on Human Rights, I have attempted such an expanded understanding of State obligation to prevent VAW by greater engagement in measures to support women's empowerment as foreseen in the BPfA as well as in challenging patriarchal norms and practices in society through 'cultural negotiation' strategies (E/CN.4/2006/61).

The report also draws attention to the exclusively State-centric nature of the current practices of due diligence obligation, which fails to take into account the changing power dynamics and the challenges these pose for State authority as well as the new questions they raise about accountability. Therefore, an expanded understanding of the due diligence obligation in responding to VAW requires an examination of the shared responsibilities of State and non-State actors and establishing standards to ensure accountability of the latter, particularly actors at the transnational level that command

10. *Merriam-Webster Dictionary of Law* defines due diligence as 'such diligence as a reasonable person under the same circumstances would use' (Merriam-Webster Inc., 1996).

11 Ertürk, Y. Forthcoming. "The Due Diligence Standard: What Does It Entail for Women's Rights?" in Carin Benninger-Budel (Ed.). *Due Diligence: State Responsibility to Combat Violence against Women*. Leiden: Martinus Nijhoff Publishers.

considerable power over various aspects of life at national and international levels with direct implications for VAW.

In short, the due diligence obligation of States and other relevant actors – to prevent, protect, prosecute and compensate – requires carefully crafted intervention strategies at the level of the individual, the community, the state apparatuses and the transnational arena. This suggests a matrix in identifying and operationalizing tasks/measures related to each obligation at the different levels of intervention.

4- Indicators and measurement of VAW and State response to violence

Evaluating State compliance with the obligation to effectively respond to VAW is facilitated where data is gathered systematically, disaggregated into relevant categories and published periodically. However, such data is dramatically lacking in relation to women and girls.¹² Moreover, at the international level there are no agreed indicators or benchmarks for assessing progress over time.¹³

There are numerous proposals for VAW indicators across UN agencies, regional bodies, governments and civil society organizations. While there is no consensus, the general focus has been on measuring intimate partner violence (IPV), largely due to the fact that the international knowledge base is strongest here.

In my most recent thematic report to the Human Rights Council¹⁴ I have made proposals to guide the development of indicators for VAW as well as state accountability. These proposals are guided by human rights standards, including those contained in the CEDAW and the DEVAW. They aim at developing internationally comparable indicators and those that capture national specificities (A/HRC/7/6). The report does not claim to resolve longstanding academic debates on how to define and measure forms of violence. Rather, issues and questions that are often neglected are considered and proposals on measuring VAW and State response are suggested.

Although considerable work needs to be done to move from proposals to implementation, there are many entry points for internationally comparable indicators on violence against women, which the report points to, and which governments, the United Nations, and civil society should further explore, starting with the creation of an expert working group to develop a technical guidance manual, oversee piloting and capacity building requirements in resource rich and poor contexts. The GA has mandated the Statistical Commission to develop VAW indicators. It is important that the work of the Commission builds on the feminist insight and knowledge gained over the years on the subject concerned.

¹²*The World's Women 2005 Progress in Statistics*. New York: UN.

¹³ In 1999, the previous Special Rapporteur on violence against women noted the need to develop indicators to monitor State responses to VAW.

¹⁴ The Commission on Human Rights which was established under the UN Economic and Social Council, in 2006 has been turned into a Council .

IV- Concluding Comments

The link between VAW and women's empowerment is an intricate one. VAW disempowers women, destroys their self confidence and self worth thus diminishing their ability to resist and live their full potential. Therefore, it is only through empowering strategies – individually and collectively – can women's resistance to abuse be enhanced not only to *cope* with oppression on a daily basis but more importantly to overcome disempowering forces and transform gender hierarchies. While some violence will always occur in the private sphere, ending VAW – understood as a systematically used tool of patriarchal control over women – requires approaching the problem within an empowerment rather than a victimization framework, whereby keeping the focus on unequal gender structures – intersecting with other systems of inequality- that underlie women's subordination.

The struggle for women's rights and equality is not about a battle of the sexes but rather about a battle against oppression in which both men and women have a stake in. I would like to end by quoting from James Baldwin¹⁵, an African-American civil rights advocate and scholar, who was writing in the 1950s about race relations but his views are very relevant to gender relations as well. He said; "it is only when a man is able to surrender a dream or a privilege he has long cherished or a privilege he has long possessed – that he is set free – he has set himself free for higher dreams and for greater privilege."

The struggle to end violence against women is an empowering process for us all women and men alike.

¹⁵ J. Baldwin. 1961. *Nobody knows my name*. New York: Dell Publishing.

