

WHAT'S LAW GOT TO DO WITH IT?: AN OVERVIEW OF CEDAW'S TREATMENT OF VIOLENCE AGAINST WOMEN AND GIRLS THROUGH CASE STUDIES

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INTRODUCTION

In the U.N. Declaration on the Elimination of Violence against Women, the definition of violence against women includes physical, sexual, and emotional violence in multiple forms: battering, rape, sexual abuse, female genital cutting, trafficking, dowry-linked

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harm, sexual harassment, and exploitation.¹ Notwithstanding forty years of activism and law reform to eliminate violence against women and girls (VAWG), its lingering global prevalence indicates that the world community is shortchanging women and girls. Nonetheless, it is plain that women have advanced further toward civil, cultural, economic, political, and social equality than in all prior centuries put together. Creating a true VAWG revolution calls for a tactical, multi-faceted strategy—one that refashions attitudes and convictions at individual and collective levels, spurs progress in informal and formal institutions, and boosts the availability of resources to women.

Cross-cultural studies have shown that where cultural norms promote female financial reliance, male dominance, and conflict management that prioritizes violence or honor, high societal levels of VAWG are prone to result.² More recently, a study by Valerie Hudson confirmed that the larger the inequality gap between men and women in a society, the more likely the country will be entangled in intra- and interstate conflict, using increased violence as a recourse.³ Using the largest existing database on the status of women, Hudson demonstrated a significant link between state security and women's security, with the best forecast of a state's peacefulness being how well its women fare.⁴ There is a connection between interpersonal, gendered violence against women and the structural violence of economic inequality, hunger, social exclusion, colonialism, and racism.⁵ Still, laws and social norms persevere in exposing women to violence by failing to adequately safeguard their rights or by creating a sense of entitlement to commit violence against women.⁶

1. Declaration on the Elimination of Violence against Women, G.A. Res. 48/104, art. 2, U.N. Doc. A/RES/48/104 (Dec. 20, 1993). For the purposes of this Article, I will focus on male violence against women.

2. See, e.g., LORI L. HEISE, JACQUELINE PITANGUY & ADRIENNE GERMAIN, WORLD BANK, DISCUSSION PAPERS NO. 255, VIOLENCE AGAINST WOMEN: THE HIDDEN HEALTH BURDEN (1994).

3. Valerie M. Hudson, *What Sex Means for World Peace*, FOREIGN POL'Y (Apr. 24, 2012), http://www.foreignpolicy.com/articles/2012/04/24/what_sex_means_for_world_peace?page=0,1.

4. *Id.*

5. SALLY ENGLE MERRY, GENDER VIOLENCE: A CULTURAL PERSPECTIVE 102 (2009).

6. WORLD HEALTH ORG. & LONDON SCH. OF HYGIENE & TROPICAL MED., PREVENTING INTIMATE PARTNER AND SEXUAL VIOLENCE AGAINST WOMEN: TAKING ACTION AND GENERATING EVIDENCE 30-31, 53-57 (2010), *available at*

In the past few years, VAWG has worsened in many places across the globe, aggravated by conflict, economic inequality, nationalism, and insecurity.⁷ It has touched women of all ages and socioeconomic backgrounds. Particularly, women who are poor, refugee, migrant, indigenous, disabled, human rights defenders, present in conflict zones, or members of minority populations face increased exposure to violence.⁸ Women's unequal status to men in societies and the absence of women's agency over their own lives are the foundation of VAWG. This Article is premised on an understanding that VAWG is structural in nature and is fed by gender-defined roles and disparate power relations. Eradicating VAWG is key to effecting gender justice. As Sally Engle Merry notes, it necessitates a cultural transformation.⁹ A study conducted in seventy countries from 1975 through 2005 shows that "feminist mobilization in civil society—not intra-legislative political phenomena such as leftist parties or women in government or economic factors like national wealth—" ¹⁰ affects national policy and "produce[s] an enduring impact on VAW[G] policy through the institutionalization of feminist ideas in international norms."¹¹

This Article will review the role of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) in contributing to this cultural transformation. Specifically, I will examine two examples of its use by advocates and activists in the women's movements to assist in the eradication of VAWG.

http://apps.who.int/iris/bitstream/10665/44350/1/9789241564007_eng.pdf?ua=1&ua=1.

7. See, e.g., *Afghanistan: Rights Setbacks Fan Future Fears*, HUM. RTS. WATCH (Jan. 21, 2014), <http://www.hrw.org/news/2014/01/21/afghanistan-rights-setbacks-fan-future-fears>.

8. JACQUI TRUE, *THE POLITICAL ECONOMY OF VIOLENCE AGAINST WOMEN* 3 (2012).

9. MERRY, *supra* note 5, at 46.

10. Mala Htun & S. Laurel Weldon, *The Civic Origins of Progressive Policy Change: Combating Violence Against Women in Global Perspective, 1975-2005*, 106 AM. POL. SCI. REV. 548, 548 (2012).

11. *Id.*

I. HISTORY OF CEDAW AND VAWG

A. General Overview

Since the late 1970s, international, regional, and national legal orders have founded laws and policy structures designed to remedy VAWG¹² in both public and private forms.¹³ They include General Recommendation No. 19 of the Committee on the Elimination of Discrimination against Women (1992);¹⁴ the Declaration on the Elimination of Violence against Women (1994); the Beijing Platform for Action of the Fourth World Conference on Women (1995); reports from the Special Rapporteur on violence against women, its causes and consequences; and the United Nations Secretary-General's report on the in-depth study on all forms of violence against women (2006).¹⁵ These documents all describe the conditions regarding VAWG and propose solutions to eradicate the practice through dealing justly with perpetrators and promoting relief for the victims and survivors.¹⁶

Given the success of the invention of laws and other standards to fight VAWG, it might be expected that women's human rights have advanced. The implementation of laws and norms in this area, however, is insufficient globally.¹⁷ Despite the improvement in people's understanding of the import of the various challenges of

12. The United Nations Declaration on the Elimination of Violence against Women 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." G.A. Res. 48/104, *supra* note 1, art. 1.

13. INT'L WOMEN'S RIGHTS ACTION WATCH ASIA PAC., SOUTHEAST ASIA MEETING ON THE APPLICATION OF CEDAW FRAMEWORK TO ADDRESS IMPUNITY IN THE CONTEXT OF VIOLENCE AGAINST WOMEN 12-13 (2008); *see also* CERI HAYES, EQUAL. & HUMAN RIGHTS COMM'N, A LEVER FOR CHANGE: USING THE OPTIONAL PROTOCOL TO THE CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN 38-40 (2010), *available at* http://www.equalityhumanrights.com/uploaded_files/humanrights/a_lever_for_change.pdf (providing examples of other international antidotes for women's human rights).

14. *See infra* Section I.B.

15. INT'L WOMEN'S RIGHTS ACTION WATCH ASIA PAC., *supra* note 13, at 12-13.

16. *Id.*

17. *Id.* at 13.

VAWG, the momentum to disturb the status quo of myriad forms of gender-based VAWG has not coalesced.¹⁸

CEDAW is a U.N. treaty that aims to advance women's status.¹⁹ The General Assembly approved CEDAW in December 1979, and it entered into force on September 3, 1981.²⁰ CEDAW concentrates on the prejudices that exclusively befall women²¹ and cements the idea that each state must answer for the human rights of its women.²² Through issuance of General Recommendations, the CEDAW Committee has provided guidance on interpretation and execution of articles of CEDAW.²³ To date, 187 out of 194 countries have ratified CEDAW,²⁴ although the United States is not among them.²⁵

At the time of CEDAW's approval, the drafters depended on an inter-State complaints mechanism and a reporting procedure to ensure States parties' adherence to their treaty obligations.²⁶ CEDAW's Optional Protocol, a different treaty, introduced two much-needed options to enforce CEDAW. The U.N. General Assembly adopted the Optional Protocol in 1999, and it entered into force on December 22, 2000.²⁷

B. Evolution of VAWG and CEDAW

States are bound to combat violence against woman and girls according to international norms and laws.²⁸ Yet, a variety of social

18. *Id.*

19. Sally Engle Merry, *Constructing a Global Law-Violence Against Women and the Human Rights System*, 28 LAW & SOC. INQUIRY 941, 942 (2003).

20. *Short History of CEDAW Convention*, UN WOMEN, <http://www.un.org/womenwatch/daw/cedaw/history.htm> (last visited Apr. 12, 2014).

21. Loveday Hodson, *Women's Rights and the Periphery: CEDAW's Optional Protocol*, EUR. J. INT'L L. 1, 2 (forthcoming 2014).

22. INT'L WOMEN'S RIGHTS ACTION WATCH ASIA PAC., OUR RIGHTS ARE NOT OPTIONAL! ADVOCATING FOR THE IMPLEMENTATION OF THE CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN (CEDAW) THROUGH ITS OPTIONAL PROTOCOL xiii (2d ed. 2008).

23. See Merry, *supra* note 19, at 942-43.

24. *Frequently Asked Questions*, CEDAW 2014, <http://www.cedaw2011.org/index.php/about-cedaw/faq> (last visited Apr. 12, 2014).

25. *Id.*

26. Hodson, *supra* note 21, at 2.

27. G.A. Res. 54/4, U.N. Doc. A/RES/54/4 (Oct. 15, 1999); HAYES, *supra* note 13, at 14.

28. U.N. Secretary-General, *In-depth Study on All Forms of Violence against Women: Rep. of the Secretary-General*, ¶ 2, U.N. Doc. A/61/122/Add.1 (July 6, 2006); INT'L WOMEN'S RIGHTS ACTION WATCH ASIA PAC., *supra* note 13, at 13.

and cultural practices that permit VAWG persist due to inadequate measures by states that should enact laws and policies to counter VAWG and dedicate adequate resources for the success of such laws and policies.²⁹ States' lack of follow-through is a major reason why VAWG remains high worldwide, according to the office of the U.N. Secretary-General in its global report on violence against women.³⁰

The Secretary-General's report on the In-depth Study on All Forms of Violence against Women (2006) opines that VAWG remains rampant despite ample efforts by states, U.N. organizations, and other agents.³¹ The report addressed impunity for VAWG:

Impunity for violence against women compounds the effects of such violence as a mechanism of control. When the State fails to hold the perpetrators accountable, impunity not only intensifies the subordination and powerlessness of the targets of violence, but also sends a message to society that male violence against women is both acceptable and inevitable. As a result, patterns of violent behaviour are normalized.³²

There are various elements that support impunity for VAWG: (1) a division between the private and the public invoked in law and in social mores to justify the absence of state action for interfamilial violence; (2) insensitivity to the reality of heteronormative, cishnormative, and other patriarchal notions, including the intricacy of the causes of VAWG and its effects on survivors and women at large, within state laws and standards; (3) an absence of sensitivity to and understanding of the complexity of VAWG within the criminal justice system, including law enforcement; (4) religious extremism's focus on women's and girls' purity and honor, and that of their community, which dictates women's sexuality and increases the likelihood of VAWG; (5) weak rule of law that increases the probability of VAWG perpetrated or sanctioned by states; and (6) globalization's effect of eroding laws and standards to enhance women's rights vis-à-vis economic growth, specifically caused by

29. *In-depth Study on All Forms of Violence against Women: Rep. of the Secretary-General*, *supra* note 28, ¶ 4; INT'L WOMEN'S RIGHTS ACTION WATCH ASIA PAC., *supra* note 13, at 13.

30. *In-depth Study on All Forms of Violence against Women: Rep. of the Secretary-General*, *supra* note 28, ¶ 96; INT'L WOMEN'S RIGHTS ACTION WATCH ASIA PAC., *supra* note 13, at 13.

31. *In-depth Study on All Forms of Violence against Women: Rep. of the Secretary-General*, *supra* note 28, ¶ 3; INT'L WOMEN'S RIGHTS ACTION WATCH ASIA PAC., *supra* note 13, at 14.

32. *In-depth Study on All Forms of Violence against Women: Rep. of the Secretary-General*, *supra* note 28, ¶ 76.

acts of multinational corporations and other financially effective bodies.³³

Despite the need for a mechanism to address VAWG, the emergence of CEDAW in the late 1970s and early 1980s did not specifically address VAWG, likely because it was not widely understood as problematic at the time.³⁴ CEDAW came into being to supplement other human rights instruments, such as the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, as a comprehensive and intersectional approach to women's human rights.³⁵ Although CEDAW itself does not explicitly mention VAWG, the Committee responsible for monitoring the implementation of CEDAW has clarified in its General Recommendation No. 19³⁶ that States parties to the Convention are under an obligation "to take all appropriate measures to eliminate VAW[G]."³⁷

CEDAW elevates women's human rights via three protocols: (1) substantive equality; (2) non-discrimination; and (3) state obligation.³⁸ To satisfy the first criterion, States parties must provide the same "opportunity, access and results" to women as to men.³⁹ As the treaty body that monitors progress in the implementation of CEDAW, the Committee is responsible for interpreting the rights to non-discrimination and equality and elucidating the measures needed

33. INT'L WOMEN'S RIGHTS ACTION WATCH ASIA PAC., *supra* note 13, at 14-15.

34. Merry, *supra* note 19, at 952.

35. INT'L WOMEN'S RIGHTS ACTION WATCH ASIA PAC., *supra* note 13, at 31.

36. General Recommendation 19 was created in 1992 and defines gender-based violence as "violence that is directed against a woman because she is a woman or that affects women disproportionately. It includes acts that inflict physical, mental or sexual harm or suffering, threats of such acts, coercion and any other deprivations of liberty." Rep. of the Comm. on the Elimination of Discrimination against Women, 11th Sess., Jan. 20-30, 1992, at 1, U.N. Doc. A/47/38; GAOR, 47th Sess., Supp. No. 38 (1993) [hereinafter 11th Sess. Report]. While CEDAW general recommendations, unlike CEDAW itself, are not legally binding, their purpose encompasses offering detailed explanation of States parties' obligations under CEDAW. In this way, CEDAW's regard for VAWG falls under the rubric of discrimination against women. Merry, *supra* note 19, at 952.

37. INT'L WOMEN'S RIGHTS ACTION WATCH ASIA PAC., *supra* note 13, at 32.

38. HAYES, *supra* note 13, at 10-11; *see also* INT'L WOMEN'S RIGHTS ACTION WATCH ASIA PAC., *supra* note 22, at 4.

39. HAYES, *supra* note 13, at 10.

to ensure women's de jure and de facto equality with men.⁴⁰ While the authoritativeness of the Committee's opinions in individual communications, reports on inquiries, and interpretative statements in concluding observations and general recommendations is debatable, they carry great weight for States parties looking to comply with CEDAW.⁴¹

The CEDAW Committee has liberally interpreted and applied the Convention's rights to non-discrimination and equality in matters of VAWG and reproductive health but has not given a liberal application to such rights vis-à-vis economic, political, and civil rights.⁴² In communications regarding VAWG or reproductive matters, the Committee has rigorously examined the facts of each case through a lens that accommodates women's needs and the facts of women's lives, thus achieving consistency between its interpretation and application of these rights.⁴³

CEDAW is enforced via a reporting procedure, whereby States parties submit periodic reports to the CEDAW Committee.⁴⁴ The only sanction available to the CEDAW Committee is the means of publicly shaming noncompliant States parties.⁴⁵ Nonetheless, there are many past-due reports and delays, and many States parties have failed to address violations.⁴⁶

States parties to CEDAW must work against social and cultural mores that impede women from accessing their rights.⁴⁷ CEDAW's potential stems from its ability to mold a rights paradigm, and its promise relies on the ability of the non-governmental organizations (NGOs), the CEDAW Committee, and others to exert pressure on States parties to effect change.⁴⁸ Activists believe that to eradicate discrimination against women, we must dismantle all patriarchal systems.⁴⁹

40. Simone Cusack & Lisa Pusey, *CEDAW and the Rights to Non-Discrimination and Equality*, 14 MELB. J. INT'L L. 54, 57-58 (2013).

41. *Id.*

42. *Id.* at 56.

43. *Id.*

44. Merry, *supra* note 19, at 942.

45. *Id.*

46. *Id.*

47. INT'L WOMEN'S RIGHTS ACTION WATCH ASIA PAC., *supra* note 13, at 7.

48. Merry, *supra* note 19, at 973.

49. ALDA FACIO, INT'L WOMEN'S RIGHTS ACTION WATCH ASIA PAC., THE OP-CEDAW AS A MECHANISM FOR IMPLEMENTING WOMEN'S HUMAN RIGHTS: AN ANALYSIS OF THE FIRST FIVE CASES UNDER THE COMMUNICATIONS PROCEDURE OF THE OP-CEDAW 46 (2008), available at <http://admin.iwraw->

C. The Optional Protocol to CEDAW

In 1991, the Secretary-General to the Commission on the Status of Women (CSW) suggested fortifying CEDAW's means of exerting pressure on States parties.⁵⁰ Finally, on October 6, 1999, the U.N. General Assembly adopted the Optional Protocol,⁵¹ which entered into force on December 22, 2000.⁵² Women's NGOs and the movement for women's rights have been major players in all aspects of the Optional Protocol.⁵³

Before the adoption of the Optional Protocol, individual petitioners had no means to petition the CEDAW Committee to redress their rights under CEDAW.⁵⁴ While the Optional Protocol constitutes a freestanding treaty, it creates no new rights—only two enforcement mechanisms: “the communications procedure and the inquiry procedure.”⁵⁵

The Optional Protocol's communications procedure⁵⁶ permits women to individually or collectively petition the CEDAW Committee regarding alleged violations of CEDAW.⁵⁷ The Optional Protocol's inquiry procedure⁵⁸ allows the CEDAW Committee to guide investigations into grave or organized abuses in a specific State party.⁵⁹

D. Due Diligence

Under international human rights standards, States parties to CEDAW must exercise due diligence to address VAWG committed

ap.org/plugins/tinymce/plugins/moxiemanager/data/files/Organization%3EOur%20Publications/Training%20Materials/2%20OPS12_Final_for_publication_April_28.pdf.

50. Hodson, *supra* note 21, at 4.

51. G.A. Res. 54/4, *supra* note 27, ¶ 3.

52. Hodson, *supra* note 21, at 4. For a detailed explanation of the Optional Protocol's adoption process, see generally *id.*

53. INT'L WOMEN'S RIGHTS ACTION WATCH ASIA PAC., *supra* note 22, at v.

54. Hodson, *supra* note 21, at 2.

55. HAYES, *supra* note 13, at 14.

56. G.A. Res. 54/4, *supra* note 27, arts. 2-7.

57. See GEETA RAMASESHAN, INT'L WOMEN'S RIGHTS ACTION WATCH ASIA PAC., THE OP-CEDAW AS A MECHANISM FOR IMPLEMENTING WOMEN'S HUMAN RIGHTS: AN ANALYSIS OF DECISIONS NOS. 6-10 OF THE CEDAW COMMITTEE UNDER THE COMMUNICATIONS PROCEDURE OF THE OP-CEDAW 7-8 (2009); see also Cusack & Pusey, *supra* note 40, at 66-69.

58. G.A. Res. 54/4, *supra* note 27, arts. 8-9.

59. See RAMASESHAN, *supra* note 57, at 8.

by non-state actors.⁶⁰ Through its case law, the Optional Protocol construed States parties' duties regarding VAWG committed by private actors to encompass due diligence measures in four ways: (1) protection of victims and survivors; (2) prevention of perpetration; (3) prosecution and punishment; and (4) compensation and reparation.⁶¹

Through cases under the Optional Protocol, the CEDAW Committee construed that protection of women and girls must be effective and prompt, as seen in *A.T. v. Hungary*.⁶² Prevention can include detention of the perpetrator, and "women's . . . rights to life and to physical and mental integrity" cannot be displaced by others' rights to privacy and property.⁶³ The Committee noted that prosecution alone is not sufficient.⁶⁴ Finally, the Committee suggested compensation be provided to victims and survivors.⁶⁵

II. WOMEN'S MOVEMENTS' STRATEGIC USE OF CEDAW

This Part of the Article will review how women's movements globally have made strategic use of CEDAW when addressing VAWG. Women's rights organizations have developed their own reports, called shadow reports, to provide to the Committee when their government produces a report, in order to correct any omissions or falsehoods in the official report.⁶⁶ In many countries, production of such reports has catalyzed women's organizations to join together in addressing certain problems.⁶⁷ Collaboration at a national level is

60. See Rep. of the Human Rights Comm., 79th Sess., 80th Sess., 81st Sess., Oct. 20-Nov. 7, 2003, Mar. 15-Apr. 2, 2004, July 5-30, 2004, ¶ 8, U.N. Doc. A/59/40, Annex III; GAOR, 59th Sess., Supp. No. 40 (Vol. I) (2004) (discussing the accountability of non-state actors under the International Covenant on Civil and Political Rights); G.A. Res. 61/143, art. 7, 8(h), U.N. Doc. A/RES/61/143 (Dec. 19, 2006); see also Ineke Boerefijn & Eva Naezer, *Emerging Human Rights Obligations for Non-State Actors, in DUE DILIGENCE AND ITS APPLICATION TO PROTECT WOMEN FROM VIOLENCE* 91, 94 (Carin Benninger-Budel ed., 2008) (discussing states' responsibility to protect individuals from each other under international human rights law).

61. INT'L WOMEN'S RIGHTS ACTION WATCH ASIA PAC., *supra* note 13, at 34.

62. *Id.*

63. *Id.*

64. *Id.*

65. *Id.*

66. See HAYES, *supra* note 13, at 13.

67. See SUSAN BAZILLI, ASSESSMENT OF NGO MONITORING ON CEDAW IMPLEMENTATION IN SE ASIA 11, 14 (2012), available at <http://iwrp.org/wp-content/uploads/2010/07/FINAL-REPORT-JULY-26-PDF.pdf>.

essential for both producing factual information for shadow reports, which may prove indispensable for disproving government reports, and for assembling inter- and intra-country movements.⁶⁸ Shadow reports and other documents submitted to the Committee predominantly address the absence of VAWG laws, the poor execution of the currently existing laws, and the interconnectedness of VAWG to women's substantive equality.⁶⁹

The International Women's Rights Action Watch Asia Pacific (IWRAP AP), an NGO based in Malaysia,⁷⁰ has a joint network of over eighty national and regional partners across Africa, Europe, Asia, and the Pacific.⁷¹ This network serves to build feminist alliances and supply expert consultation to national organizations.⁷² IWRAP AP foresaw that women's NGOs from the local to the international level could make serious contributions to women's human rights through CEDAW, as movement building relies on actors from the governmental to community levels.⁷³ In this way, NGOs can hold governments accountable to CEDAW's standards.⁷⁴

IWRAP AP's Global to Local program forms the core of IWRAP AP's advocacy efforts.⁷⁵ It furnishes national-level NGOs and activists with guidance on how to best advocate for women's human rights via CEDAW, how to energetically engage activists from reporting States parties in all stages of the CEDAW review

68. *See id.* at 11.

69. *See id.* at 11, 14.

70. *See History and Background*, INT'L WOMEN'S RTS. ACTION WATCH ASIA PAC., <http://www.iwraw-ap.org/organisation/background.htm> (last visited Apr. 12, 2014).

71. *See Our Geographic Focus*, INT'L WOMEN'S RTS. ACTION WATCH ASIA PAC., <http://www.iwraw-ap.org/organisation/geographic.htm> (last visited Apr. 12, 2014).

72. *Making a Difference to Women's Activism: Celebrating 20 Years*, INT'L WOMEN'S RTS. ACTION WATCH ASIA PAC., <http://www.iwraw-ap.org/> (last visited Apr. 12, 2014); *Women Change the World*, INT'L WOMEN'S RTS. ACTION WATCH, <http://www1.umn.edu/humanrts/iwraw/index.html> (last visited Apr. 12, 2014).

73. *See The Conceptual Framework of CEDAW*, INT'L WOMEN'S RTS. ACTION WATCH ASIA PAC., <http://www.iwraw-ap.org/organisation/framework.htm> (last visited Apr. 12, 2014).

74. *Id.*

75. *See From Global to Local: A CEDAW Monitoring and Implementation Programme*, INT'L WOMEN'S RTS. ACTION WATCH ASIA PAC., <http://www.iwraw-ap.org/promgrammes/globaltolocal.htm> (last visited Apr. 12, 2014).

process, and how to guarantee that States adhere to the Convention through the CEDAW reporting mechanism.⁷⁶

In many countries, women's NGOs' relationships with their governments have improved, leading to improved implementation of the CEDAW Committee's Concluding Observations.⁷⁷ Another key outcome includes a stronger base for advocacy at the national level because the process of writing the shadow reports has fostered resolution among various groups that may not historically have consulted together, resulting in a larger and more coordinated lobby group at the national level.⁷⁸ That is, the goal of developing strategies to implement the CEDAW Committee's Concluding Observations, including implementation of national laws, policies, and programs that protect and promote women's human rights, can unite coalitions of NGOs.

The most significant challenge that feminists face in state accountability may lie with their own governments.⁷⁹ Strong national foundations are required for women's organizations,⁸⁰ and organizations are most useful when they mobilize a large group of women as agents of change and engage societies in reducing gender inequality.⁸¹ A decrease in funding for women's movements,⁸² threats against women's human rights defenders,⁸³ and the expansion of inequitable economic policies and their corresponding link to VAWG⁸⁴ all impede women's movements worldwide. Global

76. See *From Global to Local: A CEDAW Monitoring and Implementation Programme*, *supra* note 75.

77. BAZILLI, *supra* note 67, at 11.

78. *Id.*

79. See *id.* at 15.

80. WOMEN'S MOVEMENTS IN THE GLOBAL ERA: THE POWER OF LOCAL FEMINISMS 3 (Amrita Basu ed., 2010).

81. See Gabriela De Ciccio & Srilatha Batliwala, *Women Moving Mountains—Successful Strategies and Funding Mechanisms to Eradicate Violence Against Women*, AWID (Aug. 3, 2013), <http://www.awid.org/News-Analysis/Friday-Files/Women-Moving-Mountains-Successful-Strategies-and-Funding-Mechanisms-to-Eradicate-Violence-Against-Women>.

82. *Id.*

83. See *Resources*, WOMEN HUM. RTS. DEFENDERS INT'L COALITION, <http://www.defendingwomen-defendingrights.org/our-work/resources> (last visited Apr. 12, 2014); *UN Adopts Landmark Resolution on Protecting Women Human Rights Defenders*, INT'L SERVICE FOR HUM. RTS. (Nov. 28, 2013), <http://www.ishr.ch/news/un-adopts-landmark-resolution-protecting-women-human-rights-defenders>.

84. See Vandana Shiva, *Vandana Shiva: Our Violent Economy Is Hurting Women*, YES! MAGAZINE (Jan. 18, 2013), <http://www.yesmagazine.org/peace-justice/violent-economic-reforms-and-women>.

women's movements, in spite of continuing and new obstacles, employ CEDAW for various purposes, not only to advocate for women's human rights before the CEDAW Committee, but also to organize activists, to teach communities, and to evolve national policies and legislation.

III. CASE STUDIES USING CEDAW TO ADDRESS VAWG

This Part offers two case studies on women's NGOs' strategic employment of CEDAW in eradicating VAWG. First, I offer some general remarks. While some points are particularized to the Asia-Pacific region,⁸⁵ the information applies globally.

Women's NGOs' surveillance of their respective States parties' adherence to their CEDAW-derived obligations cannot be understated.⁸⁶ In the last decade, this responsibility has multiplied—the upshot of which yields NGOs' cooperation with each other in developing the best tactics for state monitoring.⁸⁷ An increased grasp of CEDAW and women's human rights stems from civil society's efforts, including educating other NGOs and teaching the public through a bottom-up approach.⁸⁸ As such, an equality-and-rights-based foundation dominates a large number of their projects.⁸⁹ CEDAW serves to substantiate women's NGOs' activism before their governments, as it dictates States parties' duties for passage and implementation of measures to further women's human rights.⁹⁰ Often, NGOs purposefully bolster their States parties' requirements with the Committee's Concluding Observations.⁹¹ Moreover, they have developed schemes to observe their governments' implementation of CEDAW in order to hold them accountable for their proclaimed commitments to women's human rights.⁹²

Women's organizations' use of CEDAW in this way has contributed to fostering dialogue with non-women's rights NGOs, inspiring them to spearhead initiatives that reflect gender equality.⁹³ It assists too in encouraging grassroots discourse on human rights.⁹⁴

85. See BAZILLI, *supra* note 67, at 4, 5.

86. *Id.* at 10.

87. *Id.*

88. *Id.*

89. *Id.* at 5-7.

90. *Id.* at 10.

91. *Id.*

92. *Id.*

93. *Id.*

94. *Id.*

VAWG is a cornerstone issue of women's human rights, and in most countries, NGOs prioritize public education programs and initiatives to promote increased government attention to this issue.⁹⁵ CEDAW's importance plays out at multiple levels: in NGOs' use of CEDAW to increase and legitimize their stipulations for increased protective measures for abused women, in using CEDAW to elucidate the rights women can access in currently existing VAWG legislation, and as a benchmark against which to advocate for legislation to address VAWG.⁹⁶

Throughout the Asia-Pacific region, certain categories of women face severe and intersecting barriers to life and health, such as sex workers, women with disabilities, women living in rural and backwards regions, indigenous or other minority women, and women migrants or refugees.⁹⁷ Their hardships include increased susceptibility to trafficking, barriers to citizenship, and lack of access to justice.⁹⁸ Fortunately, an increasing number of NGOs at the community and national level now offer programs and services, such as healthcare education and literacy training, to such women.⁹⁹ Despite this, CEDAW's ideas of "equality" and "rights" do not easily transfer to the life situations of highly discriminated women.¹⁰⁰ Certain NGOs now involve organizations for indigenous and rural women in formulating their CEDAW shadow reports.¹⁰¹ While this practice amplifies the importance of these women's experiences, it also makes available desperately needed information regarding this subset of women,¹⁰² an integral part of translating CEDAW's purpose into practice.

The next Sections will analyze two case studies in depth.

A. The Missing and Murdered Aboriginal Women in Canada

This case study discusses the protracted, continuing struggle to address the femicide of Canadian Aboriginal women, including the deliberate use of CEDAW, since activists have exhausted all national mechanisms.

95. *Id.* at 10-11.

96. *Id.* at 11.

97. *Id.*

98. INT'L WOMEN'S RIGHTS ACTION WATCH ASIA PAC., *supra* note 13, at 30.

99. BAZILLI, *supra* note 67, at 11.

100. *Id.*

101. *Id.*

102. *Id.*

Violence against Canadian Aboriginal women and girls is an immense problem,¹⁰³ one where Aboriginal women self-report sexual assault and domestic violence at over three times the rate of non-Aboriginal women.¹⁰⁴ Human Rights Watch produced a report based on five weeks of field research in northern British Columbia during 2012. *Those Who Take Us Away*¹⁰⁵ discusses violence done to Aboriginal women and girls at the hands of Canadian police, including verbal abuse of both a sexist and racist nature, physical and sexual assault, and male officers' strip searches.¹⁰⁶ Moreover, the report demonstrates police neglect to protect Aboriginal women from violence by others.¹⁰⁷ In addition to violence overlooked and perpetrated by police, Canadian Aboriginal women and girls undergo sexist and racist stereotypes that impede prosecution of violent crimes.¹⁰⁸ This behavior exacerbates a longstanding strain between local indigenous peoples and the Royal Canadian Mounted Police (RCMP).¹⁰⁹

James Anaya, the United Nations Special Rapporteur on the Rights of Indigenous Peoples, acknowledged the tremendous

103. See SHANNON BRENNAN, *VIOLENT VICTIMIZATION OF ABORIGINAL WOMEN IN THE CANADIAN PROVINCES*, 2009, at 5 (2011), available at <http://www.statcan.gc.ca/pub/85-002-x/2011001/article/11439-eng.pdf>.

104. HUMAN RIGHTS WATCH, *THOSE WHO TAKE US AWAY: ABUSIVE POLICING AND FAILURES IN PROTECTION OF INDIGENOUS WOMEN AND GIRLS IN NORTHERN BRITISH COLUMBIA*, CANADA 25 (2013), available at <http://www.hrw.org/sites/default/files/reports/canada0213webwcover.pdf>; see also JODI-ANNE BRZOZOWSKI, ANDREA TAYLOR-BUTTS & SARA JOHNSON, *Victimization and Offending Among the Aboriginal Population in Canada*, in 26 JURISTAT: CANADIAN CENTRE FOR JUSTICE STATISTICS 1 (2006), available at <http://dsp-psd.tpsgc.gc.ca/Collection-R/Statcan/85-002-XIE/85-002-XIE2006003.pdf>.

105. See generally HUMAN RIGHTS WATCH, *supra* note 104.

106. *Id.* at 8.

107. *Id.* at 59-72.

108. NATIVE WOMEN'S ASS'N OF CAN. & CANADIAN FEMINIST ALLIANCE FOR INT'L ACTION, *MURDERS AND DISAPPEARANCES OF ABORIGINAL WOMEN AND GIRLS IN CANADA* 9 (2013) [hereinafter NWAC FAFIA REPORT], available at <http://fafia-afai.org/wp-content/uploads/2012/03/CEDAWreportJune252013.pdf>. (citing JUSTICE FOR GIRLS & JUSTICE FOR GIRLS INT'L, *SUBMISSION TO UN COMMITTEE ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN AT ITS 7TH PERIODIC REVIEW OF CANADA* 9 (2008), available at http://www.justiceforgirls.org/publications/pdfs/CEDAW_Submission-FINAL.pdf; HUMAN RIGHTS WATCH, *supra* note 104, at 8); see also *id.* at 10-11 (providing information on social and economic hardships faced by Canadian Aboriginal women and girls).

109. HUMAN RIGHTS WATCH, *supra* note 104, at 10.

violence Canadian Aboriginal women and girls face.¹¹⁰ In September 2012, he remarked that, among the problems indigenous peoples currently confront, violence against indigenous women and girls ranks highly.¹¹¹ Rashida Manjoo, United Nations Special Rapporteur on Violence Against Women, commented in 2012 on the extreme violence Canadian Aboriginal women undergo: “the ‘intersection of different layers of discrimination based on race, ethnic identity, sex, class, education and political views . . . further disenfranchises indigenous and aboriginal women, reproducing a multi-level oppression that culminates in violence.’”¹¹²

Against this backdrop of discrimination and violence, a large number of Canadian Aboriginal women have disappeared in Canada in the past decades. Murdered or missing, the RCMP has uncovered 1,181 homicides and unsolved cases of missing Aboriginal females from 1980 to 2010.¹¹³

Notwithstanding the statistics, many activists feel that the Canadian government has refused to acknowledge the gravity of the violations of Aboriginal women’s and girls’ human rights,¹¹⁴ and that it has miscarried its obligation of due diligence under international human rights law.¹¹⁵ In response to mounting public pressure, the British Columbian government founded the Missing Women Commission of Inquiry on September 27, 2010.¹¹⁶ The Commission

110. *Violence Against Women, Property Rights Most Pressing Indigenous Issues—UN Expert*, UN NEWS CENTRE (Sep. 18, 2012), <http://www.un.org/apps/news/story.asp?NewsID=42924#U0DfgfldWoM>.

111. NWAC FAFIA REPORT, *supra* note 108, at 21 (citing *Violence Against Women, Property Rights Most Pressing Indigenous Issues—UN Expert*, *supra* note 110).

112. *Id.* at 20-21 (quoting Rashida Manjoo, Special Rapporteur on Violence Against Women, Its Causes and Consequences, *Report of the Special Rapporteur on Violence Against Women, Its Causes and Consequences*, ¶ 62, Human Rights Council, U.N. Doc. A/HRC/20/16 (May 23, 2012) (by Rashida Manjoo)).

113. ROYAL CANADIAN MOUNTED POLICE, MISSING AND MURDERED ABORIGINAL WOMEN: A NATIONAL OPERATIONAL OVERVIEW 3 (2014), *available at* <http://www.rcmp-grc.gc.ca/pubs/mmaw-faapd-eng.pdf>; *see also* Mary Agnes Welch, *New Database Lists 824 Murdered, Missing Native Women in Canada*, WINNIPEG FREE PRESS (March 14, 2014) (according to this independent researcher, 824 Aboriginal women in Canada have been identified as missing or murdered), <http://www.winnipegfreepress.com/local/grim-number-jumps-in-study-241776001.html>; HUMAN RIGHTS WATCH, *supra* note 104, at 7 (discussing how the Native Women’s Association of Canada identified 582 missing or murdered Canadian Aboriginal women since at least the 1960s).

114. *See* HUMAN RIGHTS WATCH, *supra* note 104, at 7.

115. NWAC FAFIA REPORT, *supra* note 108, at 7.

116. *Id.* at 25.

received mandates to scrutinize the British Columbia Criminal Justice Branch's 1998 decision to stay proceedings on charges of aggravated assault, assault with a weapon, forcible confinement, and attempted murder against Robert William Pickton,¹¹⁷ and to probe into the police investigations of the missing or murdered Canadian Aboriginal women from Vancouver's Downtown Eastside from January 1997 to February 2002.¹¹⁸ The Missing Women Commission of Inquiry's closing report, *Forsaken*, was released on December 17, 2012.¹¹⁹ Today, however, public outrage over Canadian governmental inaction continues.¹²⁰

Canadian Aboriginal women's NGOs remain hard at work. Founded in 1974, the Native Women's Association of Canada (NWAC) was established "to enhance, promote, and foster the social, economic, cultural and political well-being of First Nations and Métis women within First Nations and Canadian societies."¹²¹ NWAC works on behalf of Aboriginal women and girls by undertaking projects that advance new and improved legislation and programs to further Aboriginal women's rights, collaborating with Canadian governments and outside organizations.¹²² Part of NWAC's activism involves providing periodic reports to the CEDAW Committee.¹²³

Violence against Aboriginal women and girls continues to gain recognition in Canada primarily due to the ongoing advocacy and organizing by NWAC and Aboriginal communities. In 2011, the Feminist Alliance for International Action (FAFIA) and NWAC asked the CEDAW Committee, under Article 8 of the Optional Protocol, to open an inquiry into Aboriginal women's and girls'

117. Pickton was convicted of the second-degree murder of six women but likely responsible for many more murders. See John Bart Gerald, *Canada: On Missing Aboriginal Women*, GLOBAL RES., <http://www.globalresearch.ca/canada-on-missing-aboriginal-women/5347218>.

118. NWAC FAFIA REPORT, *supra* note 108 (citing MISSING WOMEN COMM'N OF INQUIRY, <http://www.missingwomeninquiry.ca/> (last visited Apr. 12, 2014)).

119. *Id.*

120. See, e.g., 'Am I Next?' Campaign Aims To Push Harper On Missing, Murdered Aboriginal Women, HUFFINGTON POST CANADA (Aug. 6, 2014), http://www.huffingtonpost.ca/2014/09/06/am-i-next-campaign-harper_n_5777178.html.

121. NWAC FAFIA REPORT, *supra* note 108, at 2.

122. *Id.*

123. *Id.*

disappearances and murders.¹²⁴ The CEDAW Committee complied and conducted a secret visit in September 2013.¹²⁵

Canadian governments at the federal and provincial levels have remained obdurate, amplifying the want of remedy via CEDAW and NGOs that advocate for Aboriginal women through such international mechanisms, such as FAFIA and NWAC. The CEDAW Committee's report on its investigation should issue in early 2015.¹²⁶

B. Hungary

Ms. A.T. v. Hungary, a case brought to the CEDAW Committee under the Optional Protocol's communications procedure, proved seminal in drawing international attention to Hungary's treatment of domestic violence.¹²⁷ The CEDAW Committee held that civil proceedings would not effect relief and that Hungary's delay of three years in criminal proceedings constituted an "unreasonably prolonged delay."¹²⁸

Ms. A.T., the author of the case study, survived repeated and serious domestic violence from her husband.¹²⁹ Hungarian civil proceedings had banned her husband from their joint property up to September 2003, when he was allowed to return.¹³⁰ From then on, Ms. A.T. stated that she suffered "constant fear" and that "her 'physical integrity, physical and mental health, and life' were at risk."¹³¹ The author awaited the result of a criminal case regarding her husband's battery and assault, but discovered there were no shelters in Hungary for both her and her children, one of whom had

124. HUMAN RIGHTS WATCH, *supra* note 104, at 15; *see also* *Aboriginal Leaders Welcome U.N. Scrutiny of Missing-Women Cases*, INDIAN COUNTRY TODAY MEDIA NETWORK (Dec. 15, 2011), <http://indiancountrytodaymedianetwork.com/2011/12/15/aboriginal-leaders-welcome-un-scrutiny-missing-women-cases-67937>.

125. *The Cedaw Inquiry*, FAFIA-AFAI, <http://www.fafia-afai.org/en/solidarity-campaign/the-cedaw-inquiry/> (last visited Jan. 1, 2015).

126. *Id.*

127. Rep. of the Comm. on the Elimination of Discrimination against Women Under Article 7, Paragraph 3, of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women, 32d Sess., Jan. 26, 2005, Communication No. 2/2003, *Ms. A.T. v. Hungary*, Annex III (2005) [hereinafter CEDAW Comm. on *Ms. A.T. v. Hungary*].

128. *Id.* ¶ 8.4.

129. *Id.* ¶¶ 2.1, 2.3.

130. FACIO, *supra* note 49, at 13-14.

131. *Id.* at 14 (quoting CEDAW Comm. on *Ms. A.T. v. Hungary*, *supra* note 127, ¶ 2.4).

severe brain damage.¹³² Additionally, Hungarian law does not provide for protection orders.¹³³

In her petition, the author focused on Hungary's violations of CEDAW Articles 2(a), (b), (e), 5(a), and 16 and its duty to take measures to protect her from human rights violations by her husband, a private actor.¹³⁴ She concentrated on Hungary's exacerbation of violence against her through the unduly long criminal proceedings, the fact that Hungary had failed to jail her husband and had permitted his return to their property, and the unavailability of protection orders under the law at that time.¹³⁵ The author not only requested compensation for her and her children, but also requested that the Committee act to remedy the systemic issue of Hungary's inadequate response to domestic violence.¹³⁶

The CEDAW Committee granted the author the interim measures she requested under Article 5(1) of the Optional Protocol: a safe living arrangement for her and her children and necessary financial aid.¹³⁷ In addition, Hungary had provided the author with an attorney for the Hungarian civil matter and initiated contact with child-welfare services.¹³⁸

Regarding the author's main claims, the Committee upheld those brought under Articles 2, 5, and 16.¹³⁹ It made special reference to General Recommendations 19 and 21, the former of which names gender-based violence as a type of discrimination,¹⁴⁰ and the latter of which obligated Hungary to protect the author via a restraining order against her husband, an order banning the husband from their property, or arrangements for the author and her children in a shelter.¹⁴¹

The Committee ruled that Hungary had not provided suitable remedies and protection to the author and had violated her rights to life and physical and mental integrity by prioritizing her husband's rights to property and privacy.¹⁴² It also noted the lack of legislation

132. *Id.*

133. *Id.*

134. *Id.* at 13-14.

135. *Id.* at 13-14.

136. *Id.* at 14.

137. *Id.* at 14-15.

138. *Id.* at 15.

139. CEDAW Comm. on Ms. A.T. v. Hungary, *supra* note 127, ¶¶ 9.3-9.4, 9.6.

140. *Id.* ¶ 9.4; FACIO, *supra* note 49, at 17-18.

141. FACIO, *supra* note 49, at 18.

142. CEDAW Comm. on Ms. A.T. v. Hungary, *supra* note 127, ¶ 9.2-9.3.

and protective measures regarding domestic violence and sexual harassment for women in Hungary.¹⁴³

The Committee issued a recommendation to Hungary that it exercise due diligence to respond adequately to domestic violence and to take further steps to

- (c) Take all necessary measures to ensure that the national strategy for the prevention and effective treatment of violence within the family is promptly implemented and evaluated;
- (d) Take all necessary measures to provide regular training on the Convention on the Elimination of All Forms of Discrimination against Women and the Optional Protocol thereto to judges, lawyers and law enforcement officials;
- (e) Implement expeditiously and without delay the Committee's concluding comments of August 2002 on the combined fourth and fifth periodic report of Hungary in respect of violence against women and girls, in particular the Committee's recommendation that a specific law be introduced prohibiting domestic violence against women, which would provide for protection and exclusion orders as well as support services, including shelters;
- (f) Investigate promptly, thoroughly, impartially and seriously all allegations of domestic violence and bring the offenders to justice in accordance with international standards;
- (g) Provide victims of domestic violence with safe and prompt access to justice, including free legal aid where necessary, in order to ensure them available, effective and sufficient remedies and rehabilitation;
- (h) Provide offenders with rehabilitation programmes¹⁴⁴

Ms. A.T. v. Hungary embodies a landmark for the CEDAW Committee's finding of state responsibility to prevent domestic violence committed by non-state actors.¹⁴⁵ The case is notable too for the CEDAW Committee's addressing the pervasive, society-wide nature of domestic violence.¹⁴⁶

CONCLUSION

VAWG is a systemic problem that transcends race, class, sexual orientation and presentation, disability, and other patriarchal power structures. It takes many forms, from physical and sexual violence to economic exploitation. Social and cultural practices and

143. *Id.* ¶ 9.3.

144. *Id.* ¶ 9.6.

145. FACIO, *supra* note 49, at 13.

146. *Id.*

stereotypes often reinforce VAWG. To make progress on VAWG mirror, in any way, progress made in the past forty years on women's social, economic, civil, political, and cultural issues, change must occur individually, community wide, and through governments and organizations.

CEDAW and its Optional Protocol provide a prominent global assembly through which States parties can be held accountable for their failings on behalf of women and girls. Despite its lack of sanctions, CEDAW and the Optional Protocol, through the work of women's NGOs, have supplied pressure for States parties to remedy CEDAW violations and slowly but surely alter cultural conceptions of women and their proper treatment. The complete actualization of women's human rights necessitates questioning "the structural inequalities and power imbalances that make continued violations inevitable."¹⁴⁷ It is the women's NGOs that dedicate themselves to the hard work of altering attitudes and beliefs that truly harbinger change. Utilizing the redress mechanisms available under CEDAW and advocating to eradicate VAWG are useful only insofar as CEDAW advances the feminist goal of uprooting VAWG. As Dianne Otto has remarked, "the largely undocumented histories of women's local resistances . . . over the centuries, are of critical importance to the project of reinventing strategies to achieve women's full humanity through the discourse of universal human rights, which may yet be possible."¹⁴⁸ We continue to watch for the possibility.

147. Christine Chinkin, Shelley Wright & Hilary Charlesworth, *Feminist Approaches to International Law: Reflections from Another Century*, in INTERNATIONAL LAW: MODERN FEMINIST APPROACHES 17, 26 (Doris Buss & Ambreena Manji eds., 2005).

148. Dianne Otto, *Disconcerting 'Masculinities': Reinventing the Gendered Subject(s) of International Human Rights Law*, in INTERNATIONAL LAW: MODERN FEMINIST APPROACHES, *supra* note 147, at 105, 107.

