

2-2020

#MeToo and the Pursuit of Women's International Human Rights

Benedetta Faedi Duramy

Follow this and additional works at: <https://digitalcommons.law.ggu.edu/pubs>



Part of the [Human Rights Law Commons](#), and the [International Law Commons](#)

Articles

#MeToo and the Pursuit of Women's International Human Rights

By BENEDETTA FAEDI DURAMY*

Introduction

IN THE PAST YEAR, high profile cases and the ensuing #MeToo movement have raised much attention on issues surrounding gender discrimination, violence against women, and sexual harassment in the workplace. In the United States, allegations of sexual assault and harassment spawned the deposition or resignation of prominent figures in the entertainment, media, dining, and business industries following the onset of the #MeToo social media movement.¹ In the rest of the world, many people also embraced the online crusade by sharing the hashtag millions of times or creating their own versions of it. Feminists and scholars have since attempted to keep pace with the sequence of incidents, grasp the reasoning for the present occurrence of such a reckoning with issues surrounding gender-based violence at this point in time, and envisage more inclusive processes for all women. Contrary to the widespread discussion that mostly focuses on domestic issues, this Article offers an international perspective on the challenges raised by #MeToo by surveying a sample of countries that

* Professor of Law & Associate Dean for Faculty Scholarship, Golden Gate University School of Law, J.S.D., Stanford Law School, L.L.M., London School of Economics, M.S. Political Science, University of Florence, L.L.B., University of Rome "La Sapienza" (*summa cum laude*). Many thanks for comments and suggestions to Deborah Rhode, Nienke Grossman, Rachel Van Cleave, Fiona McKenna, Hina Shah, Helen Chang, and participants in the Eleventh Feminist Legal Theory Conference on Applied Feminism and #MeToo, held at the University of Baltimore School of Law on April 11-12, 2019, and in the Panel on War Crimes Against Women & The #MeToo Movement, held at Golden Gate University School of Law on April 16, 2019.

1. Jeff Green, *#MeToo Snares More Than 400 High-Profile People*, BLOOMBERG (June 25, 2018, 7:45 AM), <https://www.bloomberg.com/news/articles/2018-06-25/-metoo-snares-more-than-400-high-profile-people-as-firings-rise> [<https://perma.cc/N52V-EXUT>].

resonated the most with the movement—Britain, India, and Sweden—and other countries that experienced a more conflicted reaction—Japan, France, and Italy.

This Article posits that #MeToo took hold at this particular moment in time as a response to the current political landscape that features nationalist and populist powers across the world, tapping into the rampant discontent following the financial and migrant crises as well as the long-standing fears of terrorism, globalization, and dilution of national identity. In addition to being somewhat politically motivated and heartened by the global outpouring of support at Women’s Marches worldwide, #MeToo also gained momentum because of the international fame of both accusers and abusers, the heightened effect of social media activism, and the subsequent rapid growth of public outrage over sexual abuse and harassment that managed to sway the underpinning social norms.

Despite such immediate impact, critiques have been raised about the movement’s ability to truly assuage the plight of unprivileged victims, include their experiences and voices in the conversation, and engender long-lasting change for all women.² In an effort to remedy these concerns, this Article advocates for a human rights-based approach to gender inequality and violence against women. Construing sexual abuse and harassment as human rights violations ensures that measures adopted by countries are compliant with the international legal framework, that States are responsible to exercise due diligence to prevent and respond to actions or omissions committed by both state agents and private individuals or entities, and that all women can meaningfully participate in decision-making processes. To coordinate the legal reforms proposed by some governments in the wake of #MeToo and herewith examined, this Article recommends following the guidelines for national action plans recently suggested by the U.N. Women.³ Moreover, a new treaty addressing violence and harassment in the workplace, currently under consideration by the International Labor Organization (“ILO”), is necessary to fill the relevant regulatory

2. See Angela Onwuachi-Willig, *What About #UsToo?: The Invisibility of Race in the #MeToo Movement*, 128 YALE L.J. F. 105, 106 (June 10, 2018).

3. U.N. Women is the United Nations organization dedicated to gender equality and women empowerment. See UN WOMEN, UN WOMEN ANNUAL REPORT 2017-2018 (2018), <https://www.unwomen.org/-/media/annual%20report/attachments/sections/library/un-women-annual-report-2017-2018-en.pdf?la=en&vs=2849> [https://perma.cc/W4FZ-NRJQ].

gap under international law and urge governments to improve or adopt specific legislations.⁴

This Article proceeds in three parts. Part I recaps some of the main incidents that triggered the #MeToo social media campaign in the United States. The discussion focuses on the global impact of the movement by surveying the countries mentioned above that have been most receptive and the others that showed a more reticent reaction. Part II explores why #MeToo blew up only recently at the domestic level, and what factors contributed to its international development. Finally, Part III recommends a holistic human rights-based approach to sexual assault and harassment to ensure that the #MeToo's impetus will not fade without having first attained long-lasting change for all women.

I. The #MeToo Phenomenon

A. The #MeToo Movement

In mid-October 2017, actress Alyssa Milano asked her Twitter followers to tweet the hashtag #MeToo if they had been sexually harassed or assaulted. The responses were overwhelming. Within twenty-four hours, the hashtag had been posted nearly half a million times.⁵ Some victims shared their stories of sexism, harassment, and assault in the workplace, while others reported incidents of gender-based violence that occurred outside the work setting. Milano's message—"If all the women who have been sexually harassed or assaulted wrote 'Me Too' as a status, we might give people a sense of the magnitude of the problem"⁶—was not initially intended to become a social movement, "a call of action or the beginning of a campaign, culminating in a series of protests and speeches and events. It [was] simply an attempt to get people to understand the prevalence of sexual harassment and assault in society. To get women, and men, to raise their hands."⁷ In other words, it was meant to unveil the pervasiveness of

4. Amy Lieberman, *Q&A: ILO Expert on New Workplace Harassment and Violence Treaty*, DEVEX (Sept. 10, 2018), <https://www.devex.com/news/q-a-ilo-expert-on-new-workplace-harassment-and-violence-treaty-93370> [<https://perma.cc/Q49Q-KSYB>].

5. Sophie Gilbert, *The Movement of #MeToo, How a Hashtag Got Its Power*, ATLANTIC (Oct. 16, 2017), <https://www.theatlantic.com/entertainment/archive/2017/10/the-movement-of-metoo/542979/> [<https://perma.cc/MJ8U-UQWK>].

6. Alyssa Milano (@Alyssa_Milano), TWITTER (Oct. 15, 2017, 1:21 PM), https://twitter.com/alyssa_milano/status/919659438700670976 [<https://perma.cc/2PUL-EREB>].

7. Gilbert, *supra* note 5.

the problem and encourage victims to feel connected to one another and to speak up.

Over a decade earlier, civil rights activist Tarana Burke founded a grassroots movement also named “Me Too” in Alabama in support of women of color living in disenfranchised neighborhoods who had been victims of sexual assault.⁸ The crusade was not styled as a social media campaign, but rather as a “catchphrase to be used from survivor to survivor to let folks know that they were not alone and that a movement for radical healing was happening and possible.”⁹ Burke’s outreach program sought to support survivors by creating connections among them, empowering their marginalized voices through empathy, and thus allowing their healing journey to begin.¹⁰ Burke promptly responded to the hashtag #MeToo by tweeting: “It’s beyond a hashtag. It’s the start of a larger conversation and a movement for radical community healing. Join us. #metoo.”¹¹ However, she later clarified that the goals and efforts of the two movements are inherently different.¹² Burke’s work specifically focuses on providing support to ordinary brown girls and women in marginalized communities who have been sexually abused and exploited, and whose stories are missing from the most recent social media discussions.¹³

Celebrity cases and high-profile incidents have recently flooded the press and social media platforms, revealing the ubiquity of sexual harassment and discrimination in the workplace and beyond and unmasking many notorious perpetrators. For example, in 2016, a sexual harassment scandal engulfed Fox News leading to the toppling of its chairman, Roger Ailes, after a former network anchor, Gretchen Carlson, sued him, which was followed by a cascade of sexual harassment

8. Abby Ohlheiser, *The Woman Behind ‘Me Too’ Knew the Power of the Phrase When She Created It—10 Years Ago*, WASH. POST (Oct. 19, 2017), <https://www.washingtonpost.com/news/the-intersect/wp/2017/10/19/the-woman-behind-me-too-knew-the-power-of-the-phrase-when-she-created-it-10-years-ago/> [https://perma.cc/YFK9-RBJ4].

9. Zahara Hill, *A Black Woman Created the “Me Too” Campaign Against Sexual Assault 10 Years Ago*, EBONY (Oct. 18, 2017), <https://www.ebony.com/news/black-woman-me-too-movement-tarana-burke-alyssa-milano/> [https://perma.cc/JJT4-C8T6].

10. Daisy Murray, *‘Empowerment Through Empathy’—We Spoke to Tarana Burke, the Woman Who Really Started The ‘Me Too’ Movement*, ELLE (Oct. 23, 2017), <https://www.elle.com/uk/life-and-culture/culture/news/a39429/empowerment-through-empathy-tarana-burke-me-too/> [https://perma.cc/R8TR-FPLS].

11. Ohlheiser, *supra* note 8.

12. Zenobia Jeffries Warfield, *Me Too Creator Tarana Burke Reminds Us This Is About Black and Brown Survivors*, YES! MAG. (Jan. 4, 2018), <https://www.yesmagazine.org/people-power/me-too-creator-tarana-burke-reminds-us-this-is-about-black-and-brown-survivors-20180104> [https://perma.cc/SP4J-JL73].

13. *Id.*

allegations from other women.¹⁴ The lawsuit was settled for \$20 million, and Ailes received a payout of \$40 million to exit the company.¹⁵ Those were not the first accusations against him. In the early 1990s while he was working at NBC, a female producer reported that he had offered to pay her an extra \$100 per week if she agreed to have sex with him whenever he wanted.¹⁶

In 2017, Fox News also announced the ouster of the network's top-rated host, Bill O'Reilly, after an investigation by The New York Times found that five women who made allegations of sexual harassment against him had received payouts totaling about \$13 million from either O'Reilly or the company.¹⁷ The investigation also revealed that another \$32 million sexual harassment settlement had been paid to former network contributor, Lis Wiehl.¹⁸

In early 2017, the United States Department of Defense was shaken after the revelation that hundreds of marines shared and posted naked photographs of female service members and veterans on the Facebook group Marines United, which has nearly 30,000 followers.¹⁹ Over 2500 inappropriate comments were made on the Facebook group page by service members stationed around the world and across military branches.²⁰ A similar incident previously occurred

14. Clyde Haberman, *Roger Ailes, Who Built Fox News into an Empire, Dies at 77*, N.Y. TIMES (May 18, 2017), <https://www.nytimes.com/2017/05/18/business/media/roger-ailes-dead.html> [https://perma.cc/3UP4-K52R].

15. Michael M. Grynbaum & John Koblin, *Fox Settles with Gretchen Carlson over Roger Ailes Sex Harassment Claims*, N.Y. TIMES (Sept. 6, 2016), <https://www.nytimes.com/2016/09/07/business/media/fox-news-roger-ailes-gretchen-carlson-sexual-harassment-lawsuit-settlement.html> [https://perma.cc/N3H9-DCMN].

16. Haberman, *supra* note 14.

17. Emily Steel & Michael S. Schmidt, *Bill O'Reilly Thrives at Fox News, Even as Harassment Settlements Add Up*, N.Y. TIMES (Apr. 1, 2017), <https://www.nytimes.com/2017/04/01/business/media/bill-oreilly-sexual-harassment-fox-news.html?module=inline> [https://perma.cc/G2R3-L9GC]; Emily Steel & Michael S. Schmidt, *More Trouble at Fox News: Ailes Faces New Sexual Claims and O'Reilly Loses Two Advertisers*, N.Y. TIMES (Apr. 3, 2017), <https://www.nytimes.com/2017/04/03/business/media/fox-news-roger-ailes-harassment-suit.html> [https://perma.cc/6R8U-UDDZ].

18. Emily Steel & Michael S. Schmidt, *Bill O'Reilly Settled New Harassment Claim, Then Fox Renewed His Contract*, N.Y. TIMES (Oct. 21, 2017), <https://www.nytimes.com/2017/10/21/business/media/bill-oreilly-sexual-harassment.html> [https://perma.cc/Z58T-457E]; Paul Farhi, *Bill O'Reilly Comes to Bill O'Reilly's Defense. And by the Way, He's Mad at God*, WASH. POST (Oct. 24, 2017), https://www.washingtonpost.com/lifestyle/style/bill-oreilly-swings-back-at-his-accusers-in-sexual-harassment-cases/2017/10/24/e8700246-b82b-11e7-a908-a3470754bbb9_story.html?utm_term=.8ca1c196140a [https://perma.cc/495R-APP5].

19. Thomas James Brennan, *Hundreds of Marines Investigated for Sharing Photos of Naked Colleagues*, REVEAL (Mar. 4, 2017), <https://www.revealnews.org/blog/hundreds-of-marines-investigated-for-sharing-photos-of-naked-colleagues/> [https://perma.cc/R7R3-CTNG].

20. *Id.*

in 2013, when some marines had been accused of racist and sexist social media misconduct.²¹

In 2017, a series of scandals also rocked the technology powerhouse Uber after former employees reported harassment and retaliation experienced at work. These reports led to the resignation of Uber's founder and CEO, Travis Kalanick, and the firing of over twenty senior managers.²² In 2018, a CNN investigation of police reports, federal court records, and county court databases for twenty major cities in the United States found that over 103 Uber drivers had been accused of sexually assaulting their passengers in the past four years, and at least thirty-one drivers had been convicted of sexual crimes.²³

In October 2017, reporters from The New York Times and The New Yorker exposed concealed sexual harassment and abuse allegations against Hollywood movie executive Harvey Weinstein spanning nearly three decades.²⁴ Interviews with current and former employees and colleagues, as well as emails and internal records, revealed that Weinstein had reached at least eight settlements to silence his victims' complaints.²⁵ The publication of the reports led to the resignation of four board members of the Weinstein company and the layoff of Weinstein himself.²⁶

A few weeks after the revelations about Weinstein, journalist Brett Anderson published a New York Times article detailing the outcome of his eight-month long investigation that uncovered multiple sexual harassment grievances at the Besh Restaurant Group, a New Orleans

21. *Id.*

22. Mike Isaac, *Uber Founder Travis Kalanick Resigns as C.E.O.*, N.Y. TIMES (June 21, 2017), <https://www.nytimes.com/2017/06/21/technology/uber-ceo-travis-kalanick.html> [<https://perma.cc/Q2UE-T8XR>].

23. Sara Ashley O'Brien et al., *CNN Investigation: 103 Uber Drivers Accused of Sexual Assault or Abuse*, CNN BUS. (Apr. 30, 2018), <https://money.cnn.com/2018/04/30/technology/uber-driver-sexual-assault/index.html> [<https://perma.cc/4CVF-H74W>]; Danielle Paquette, *Uber No Longer Requires Sexual Harassment Victims to Sign Confidentiality Agreements for Settlements*, WASH. POST (May 15, 2018), https://www.washingtonpost.com/news/wonk/wp/2018/05/15/uber-no-longer-requires-sexual-harassment-victims-to-sign-confidentiality-agreements-for-settlements-embargoed/?utm_term=.04e48a63cbdf [<https://perma.cc/82G7-MEGS>].

24. Jodi Kantor & Megan Twohey, *Harvey Weinstein Paid Off Sexual Harassment Accusers for Decades*, N.Y. TIMES (Oct. 5, 2017), <https://www.nytimes.com/2017/10/05/us/harvey-weinstein-harassment-allegations.html> [<https://perma.cc/9FXH-T6WC>].

25. *Id.*

26. Ronan Farrow, *From Aggressive Overtures to Sexual Assault: Harvey Weinstein's Accusers Tell Their Stories*, NEW YORKER (Oct. 23, 2018), <https://www.newyorker.com/news/news-desk/from-aggressive-overtures-to-sexual-assault-harvey-weinsteins-accusers-tell-their-stories> [<https://perma.cc/9KJ9-6XH9>].

dining empire.²⁷ In the months that followed, many other reports about high-profile abusers in the dining industry appeared in the press, exposing a “bro” culture in kitchens so profoundly embedded that “it has become second nature for many of the people who work there.”²⁸

In the wake of #MeToo, stories of gender bias and pay discrimination previously reported by the press regained momentum.²⁹ For instance, in her recent memoir, *Reset: My Fight for Inclusion and Lasting Change*, tech investor and former Reddit CEO Ellen Pao recounted her legal battle against her former employer, the venture capital firm Kleiner Perkins Caufield and Byers, for sex discrimination and retaliation that rocked Silicon Valley in 2012.³⁰ In her personal essay published by Fortune Magazine, tennis champion Serena Williams decried the steep gender pay gap African American women face across any industry and “the cycles of poverty, discrimination, and sexism [that] are much, much harder to break than the record for Grand Slam titles” for women of color.³¹ Finally in 2015, actress Jennifer Law-

27. Brett Anderson, *John Besh Restaurants Fostered Culture of Sexual Harassment*, 25 *Women Say*, NOLA.COM: TIMES-PICAYUNE (Oct. 21, 2017), https://www.nola.com/business/index.ssf/2017/10/john_besh_restaurants_fostered.html [<https://perma.cc/9EHR-GQRW>].

28. Jen Agg, *A Harvey Weinstein Moment for the Restaurant Industry?*, NEW YORKER (Oct. 26, 2017), <https://www.newyorker.com/culture/annals-of-gastronomy/a-harvey-weinstein-moment-for-the-restaurant-industry> [<https://perma.cc/HFB5-5ERC>]; Helen Rosner, *One Year of #MeToo: A Modest Proposal to Help Combat Sexual Harassment in the Restaurant Industry*, NEW YORKER (Oct. 10, 2018), <https://www.newyorker.com/culture/annals-of-gastronomy/one-year-of-metoo-a-modest-proposal-to-help-dismantle-the-restaurant-industrys-culture-of-sexual-harassment> [<https://perma.cc/Y363-8Z7U>]; see Julia Moskin & Kim Severson, *Ken Friedman, Power Restaurateur, Is Accused of Sexual Harassment*, N.Y. TIMES (Dec. 12, 2017), <https://www.nytimes.com/2017/12/12/dining/ken-friedman-sexual-harassment.html?action=click&module=relatedCoverage&pgtype=article®ion=footer> [<https://perma.cc/K3JW-T4TE>] (reporting that even at Michelin star restaurant, Spotted Pig, long-time servers were accustomed to sexual abuse and harassment).

29. See Lesley Wexler et al., *#MeToo, Time's Up, and Theories of Justice*, 2019 U. ILL. L. REV. 45 (2019) (“#MeToo opened the floodgates to a modern-day reckoning with sex discrimination in the workplace.”).

30. ELLEN PAO, *RESET: MY FIGHT FOR INCLUSION AND LASTING CHANGE*, 149–234 (2017); see also Audrey Dilling, *Sex Discrimination Trial Puts Silicon Valley Under the Microscope*, NPR (Mar. 17, 2015), <https://www.npr.org/2015/03/17/393347548/sex-discrimination-trial-puts-silicon-valley-under-the-microscope> [<https://perma.cc/2DMJ-PV3M>]; Mary Louise Kelly, *Silicon Valley's Ellen Pao Tackles Sex Discrimination, Workplace Diversity in Memoir*, NPR (Sept. 19, 2017), <https://www.npr.org/sections/alltechconsidered/2017/09/19/551810814/silicon-valley-s-ellen-pao-tackles-sex-discrimination-workplace-diversity-in-mem> [<https://perma.cc/2PED-5AS8>].

31. Serena Williams, *How Black Women Can Close the Pay Gap*, FORTUNE (July 31, 2017), <http://fortune.com/2017/07/31/serena-williams-black-women-equal-pay/> [<https://perma.cc/CZ3W-EL2F>].

rence wrote about the breach of security at Sony revealing that she had earned less than her male costars on the movie *American Hustle*.³²

B. The Global Impact of #MeToo

#MeToo has not just been a United States phenomenon. The viral campaign rapidly became global with the hashtag being posted on Facebook more than twelve million times in less than twenty-four hours by 4.7 million users around the world and tweeted nearly one million times within the first forty-eight hours.³³ According to Twitter and Facebook, within the first month, the hashtag was tweeted more than 2.3 million times across over eighty-five countries, and more than twenty-four million Facebook users shared or posted about it over seventy-seven million times.³⁴ A study conducted by the Pew Research Center found that the hashtag has been used more than nineteen million times on Twitter during the first year, amounting to an average of 55,319 tweets per day.³⁵ Although about 71% of #MeToo tweets were written in English, the study showed that multiple languages were used for the remaining 29% of the tweets, including about 7% tweets in Afrikaans, 4% in Somali, and 3% in Spanish.³⁶ According to an analysis of Google Trends Data, during the first year, the hashtag was searched on the internet in 195 countries, which means the search was performed in every country on earth.³⁷

The global impact of #MeToo has been widely recognized. On December 6, 2017, Time Magazine announced that its Person of the Year was the “Silence Breakers” of the #MeToo movement, those who fueled a worldwide reckoning of the endemic prevalence of sexual harassment by “giving voice to open secrets, . . . moving whisper net-

32. Jennifer Lawrence, *Why Do I Make Less Than My Male Co-Stars?*, LENNY (Oct. 13, 2015), <https://www.lennyletter.com/story/jennifer-lawrence-why-do-i-make-less-than-my-male-costars> [<https://perma.cc/7AL6-FUGH>].

33. *More than 12M “Me Too” Facebook Posts, Comments, Reactions in 24 Hours*, CBS NEWS (Oct. 17, 2017), <https://www.cbsnews.com/news/metoo-more-than-12-million-facebook-posts-comments-reactions-24-hours/> [<https://perma.cc/WX4B-56MB>].

34. Kara Fox & Jan Diehm, *#MeToo’s Global Moment: The Anatomy of a Viral Campaign*, CNN (Nov. 9, 2017), <https://www.cnn.com/2017/11/09/world/metoo-hashtag-global-movement/index.html> [<https://perma.cc/P2SS-CJ6K>].

35. Monica Anderson & Skye Toor, *How Social Media Users Have Discussed Sexual Harassment Since #MeToo Went Viral*, PEW RES. CTR. (Oct. 11, 2018), <http://www.pewresearch.org/fact-tank/2018/10/11/how-social-media-users-have-discussed-sexual-harassment-since-metoo-went-viral/> [<https://perma.cc/RMK8-GG9S>].

36. *Id.*

37. Malika Saada Saar, *Visualizing the #MeToo Movement Using Google Trends*, GOOGLE: SEARCH BLOG (Apr. 18, 2018), <https://www.blog.google/products/search/visualizing-metoo-movement-using-google-trends/> [<https://perma.cc/2FBN-743E>].

works onto social networks, . . . [and] pushing us all to stop accepting the unacceptable.”³⁸ In the aftermath of #MeToo, the Norwegian Nobel Institute awarded the 2018 Nobel Peace Prize to Congolese doctor Denis Mukwege and Iraqi human rights activist Nadia Murad for their work against sexual violence in conflict zones.³⁹ Despite its global and multifaceted dimension, #MeToo’s impact has varied greatly by country. The following analysis surveys both some of the countries where the movement resonated the most and others in which it has had a more limited influence.

1. Countries Most Impacted by #MeToo

Although the #MeToo movement has had its most significant impact so far in the United States, other countries have followed a similar path.

In 2017, the British Parliament was shaken by the sexual harassment scandal, dubbed *Pestminster* by the press, that led to the resignation of several politicians amidst *sex pest* allegations.⁴⁰ In early 2018, The Financial Times conducted an investigation that revealed a night of debauchery at the Presidents Club Charity Dinner, a men-only black tie annual event which gathered over 360 personalities from British business, politics, finance, and entertainment to raise money for laudable causes.⁴¹ Two people sent by The Financial Times to work undercover as hostesses reported that many hostesses were groped, sexually harassed, and invited to join the male event goers in private hotel bedrooms.⁴²

Although such men-only enclaves still exist in the United Kingdom after decades of slow but earnest progress on women’s rights,

38. Eun Kyung Kim, *The Silence Breakers Are TIME’s 2017 Person of the Year*, TODAY (Dec. 6, 2017), <https://www.today.com/news/silence-breakers-are-times-2017-person-year-t119689> [<https://perma.cc/AC9S-MU72>]; see Erik Ortiz, *Time’s Person of the Year Is ‘The Silence Breakers’ of #MeToo Movement*, NBC NEWS (Dec. 6, 2017), <https://www.nbcnews.com/storyline/sexual-misconduct/time-s-person-year-silence-breakers-metoo-movement-n826936> [<https://perma.cc/TP8T-JPCH>].

39. #MeToo: Nobel Peace Prize Goes to 2 Activists for Their Work Against Sexual Violence, FORTUNE (Oct. 5, 2018), <http://fortune.com/2018/10/05/inmetoo-nobel-peace-prize-sexual-violence/> [<https://perma.cc/2MMB-AJUM>].

40. Julia Rampen, *Britain’s #MeToo Moment Is Taking Down Some of the Most Powerful Men in the Country*, SLATE (Jan. 25, 2018), <https://slate.com/news-and-politics/2018/01/britains-metoo-movement-is-uncovering-a-culture-of-rampant-sexism-and-harassment-in-londons-corridors-of-power.html> [<https://perma.cc/SUL5-ZP6F>].

41. Madison Marriage, *Men Only: Inside the Charity Fundraiser Where Hostesses Are Put on Show*, FIN. TIMES (Jan. 23, 2018), <https://www.ft.com/content/075d679e-0033-11e8-9650-9c0ad2d7c5b5> [<https://perma.cc/39LN-UPE2>].

42. *Id.*

society has lately seemed to be finally ready to confront its pernicious “lad” culture that, similarly to the United States fraternity ones, has conventionally condoned harassing and abusive behaviors in the name of male bonding—akin to “boys will be boys.”⁴³ Indeed, according to a recent survey conducted by the Fawcett Society, the British public view of sexual harassment has experienced a significant shift since #MeToo.⁴⁴ The research showed that over 43% of British people have heard of the hashtag, about 53% reported that what is considered acceptable behavior has changed, and people that are aware of the movement are 1.5 times more likely to recognize such changing attitudes.⁴⁵ A larger impact has been registered in the eighteen to thirty-four age group—half of whom are now more likely to speak up against sexual harassment, including 58% of young men polled.⁴⁶

In India, in 2017, the legal academy began to totter after a law student posted on Facebook a list of over fifty professors who allegedly sexually harassed her fellow students.⁴⁷ The list was shared on the social platform more than 1000 times.⁴⁸ It included the names of the academics and their university affiliations, but it did not provide any details regarding the allegations or the victims.⁴⁹ The crowd-sourced list sparked divisions among feminists and scholars. Some claimed that such manner of naming and shaming is not only a violation of due process, but may also “delegitimize the long struggle against sexual harassment, and make our task as feminists more difficult.”⁵⁰ Others have, instead, defended the right of survivors to come forward and accuse their sexual harassers.⁵¹

In 2018, when actress Tanushree Dutta accused a veteran actor of sexual harassment on a movie set, an avalanche of similar allegations against prominent figures in the media and entertainment industries

43. *See id.*

44. *Majority of Young Men “More Likely to Challenge Sexual Harassment” Since #MeToo*, FAWCETT SOC’Y (Oct. 2, 2018), <https://www.fawcettsociety.org.uk/News/majority-of-young-men-more-likely-to-challenge-sexual-harassment-since-metoo> [<https://perma.cc/36TV-FCG6>].

45. *Id.*

46. *Id.*

47. Elizabeth Cassin & Ritu Prasad, *Student’s ‘Sexual Predator’ List Names Professors*, BBC NEWS (Nov. 6, 2017), <https://www.bbc.com/news/blogs-trending-41862615> [<https://perma.cc/LF8W-P6Z9>].

48. *Id.*

49. *Id.*

50. *Id.*

51. *Id.*

poured out.⁵² As a result, the resident editor of The Times of India resigned, the Phantom Films company dissolved, and the comedian Aziz Ansari's shows were cancelled.⁵³ A sexual harassment scandal also engulfed the country's political class with the resignation of the cabinet minister M.J. Akbar after he was accused of sexual misconduct by twenty-one women dating back to the time when he was a newspaper editor.⁵⁴ Soon after, the Indian government began considering proposals to improve laws and policies dealing with sexual harassment in the workplace.⁵⁵ Feminists have argued that both the press and the public had a more conflicted reaction during 2017 because the campaign was initiated by victims belonging to the Dalits, who are at the bottom of India's caste system and thus are more likely to face disbelief and prejudice.⁵⁶ By contrast, in 2018, the movement was headed by famous Bollywood actresses and women from upper castes.

In Sweden, #MeToo snowballed into a social phenomenon described by the press as the most impactful women's movement since Swedish women won the right to vote in a national election about one hundred years ago.⁵⁷ Sexual harassment stories flooded the media for months leading to the resignation of politicians, TV presenters, and

52. Vaishnavi Chandrashekhar, *#MeToo Reshapes India's Workplace*, U.S. NEWS (Nov. 12, 2018), <https://www.usnews.com/news/best-countries/articles/2018-11-12/metoo-reshapes-attitudes-in-india-about-sexual-harassment-in-the-workplace> [<https://perma.cc/UHP3-LR3X>]; see Vindu Goel et al., *After a Long Wait, India's #MeToo Movement Suddenly Takes Off*, N.Y. TIMES (Oct. 9, 2018), <https://www.nytimes.com/2018/10/09/world/asia/india-sexual-harassment-me-too-bollywood.html> [<https://perma.cc/UD8W-2R9S>].

53. Chandrashekhar, *supra* note 52; Goel et al., *supra* note 52; see Sanyukta Dharmadhikari, *KR Sreenivas Resigns as Times of India Resident Editor After Multiple "Me Too" Allegations*, NEWS MINUTE (Oct. 13, 2018), <https://www.thenewsminute.com/article/kr-sreenivas-resigns-times-india-resident-editor-after-multiple-me-too-allegations-89920> [<https://perma.cc/CYK3-U3R9>]; Nyay Bhushan, *Bollywood Director Vikas Bahl Accused of Sexual Misconduct, Phantom Films Dissolved*, HOLLYWOOD REP. (Oct. 8, 2018), <https://www.hollywoodreporter.com/news/vikas-bahl-accused-sexual-assault-phantom-films-dissolved-1150086> [<https://perma.cc/4D3A-HBLZ>].

54. Maria Abi-Habib & Vindu Goel, *A Top Indian Minister Resigns, but Can #MeToo Reform Government?*, N.Y. TIMES (Oct. 17, 2018), <https://www.nytimes.com/2018/10/17/world/asia/india-mj-akbar-resigns-metoo.html> [<https://perma.cc/6E7A-JCEE>].

55. Manoj Kumar, *India Looks to Tighten Sexual Harassment Laws: Government Officials*, U.S. NEWS (Oct. 18, 2018), <https://www.usnews.com/news/best-countries/articles/2018-10-18/india-looks-to-tighten-sexual-harassment-laws-government-officials> [<https://perma.cc/B63A-E6DJ>].

56. Raksha Kumar, *Why the "Me Too" Movement in India Is Succeeding at Last*, OPEN DEMOCRACY (Dec. 7, 2018), <https://www.opendemocracy.net/en/5050/me-too-india-succeeding-at-last/> [<https://perma.cc/486F-SJ6B>].

57. Andrea Booth & Kelsey Munro, *Why Is the #MeToo Movement Sending Shockwaves Through Sweden?*, SBS NEWS (Nov. 27, 2017), <https://www.sbs.com.au/news/why-is-the-me-too-movement-sending-shockwaves-through-sweden> [<https://perma.cc/7JRV-S8M4>].

newspaper columnists. The country's Queen Silvia and Crown Princess Victoria endorsed the campaign in an evening at the South Theatre in Stockholm, where over 210 actresses read hundreds of anonymous testimonies from women who experienced sexual harassment and abuse in the world of theatre.⁵⁸ In a joint statement, the performers of the event declared: "We will no longer be silent. We will ask the respondents to answer and let the judiciary do their job when there is reason. We will lay the shame where it belongs—with the perpetrator and the one who protects him."⁵⁹

Shortly after, the scandal reached the Swedish Academy, the prestigious jury that awards the Nobel Prize for Literature. In November 2017, the Swedish newspaper *Dagens Nyheter* published the accounts of eighteen women who had been allegedly harassed and assaulted over a period of more than twenty years by the photographer Jean-Claude Arnault, who was married to the academy member Katarina Frostenson.⁶⁰ Riven by public criticism and a string of academy members' resignations over allegations of sexual misconduct, the institution decided not to award the Nobel Prize for Literature in 2018.⁶¹ Around the same time, the stories of more than 1700 students who experienced sexual harassment and abuse from as early as primary school up to high school appeared in the newspaper *Dagens Nyheter* under the hashtag #tystiklassen, "silence in class."⁶² Students reported being raped at school, urinated on during swimming lessons, and groped by teachers and male classmates.⁶³

Numerous viral campaigns were organized by Swedish women working across multiple domains and industries: About 3000 women signed a petition against sexual harassment in the music business; more than 450 celebrities supported an initiative condemning sexual

58. Laura McCallen, *Queen Silvia and Crown Princess Victoria Show Support for #MeToo*, ROYAL CENT. (Nov. 21, 2017), <http://old.royalcentral.co.uk/europe/sweden/queen-silvia-and-crown-princess-victoria-show-support-for-metoo-92048> [<https://perma.cc/3ZSW-E6AH>].

59. *Id.*

60. Jon Henley & Alison Flood, *Nobel Prize in Literature 2018 Cancelled After Sexual Assault Scandal*, GUARDIAN (May 4, 2018), <https://www.theguardian.com/books/2018/may/04/nobel-prize-for-literature-2018-cancelled-after-sexual-assault-scandal> [<https://perma.cc/JD5L-E8TX>].

61. *Id.*; see Jon Henley, *Sexual Abuse Scandal Engulfs Nobel Literature Prize Body*, GUARDIAN (Apr. 13, 2018), <https://www.theguardian.com/world/2018/apr/12/sara-danius-resigns-swedish-academy-nobel-prizes> [<https://perma.cc/K7JR-53B9>].

62. *Over 1,700 Students Join 'MeToo' Protests, Alleging Harassment in Swedish Schools*, LOCAL (Nov. 23, 2017), <https://www.thelocal.se/20171123/over-1700-students-join-metoo-protests-alleging-harassment-in-swedish-schools> [<https://perma.cc/ZJY6-RKB8>].

63. *Id.*

abuse in the movie and theater industries called #tystnadtagning—meaning “lights, camera, action”; over 600 women in the opera industry backed their own campaign #ViSjungerUt—meaning “sing out”; at least 2000 women athletes rallied around the hashtag #timeout; more than 6000 women working in the justice system signed the statement #MedVilkenRätt—meaning “with what right?”; at least 1300 female politicians and civic employees, including Foreign Minister Margot Wallström, supported the campaign #IMaktensKorridorer—meaning “in the corridors of power”; and finally, thousands of female journalists endorsed the hashtag #Deadline to denounce sexual harassment in the journalism industry.⁶⁴ Swedish scholars have attributed such a favorable response to #MeToo to the country’s longstanding tradition of feminist and civil society activism in support of gender equality and the prevention of violence against women that not only bolstered the movement, but was also reinforced by it.⁶⁵

2. Countries More Ambivalent Towards #MeToo

Other countries have experienced a more complex response to the #MeToo movement. For example, in May 2017, when Japanese journalist Shiori Ito accused a prominent TV journalist with close ties to the country’s prime minister of raping her, the law enforcement dropped its investigation into the case, citing lack of evidence.⁶⁶ After Shiori Ito reported the aggression, she received death threats and decided to move to the United Kingdom.⁶⁷ Similarly, when a senior finance ministry bureaucrat resigned following allegations of sexual harassment perpetrated against a female reporter, “the Japanese media, rather than rallying to defend one of its own . . . branded the scandal as a *josei mondai*, a ‘woman problem.’”⁶⁸

64. Booth & Munro, *supra* note 57.

65. Signe Svallfors, *Why Sweden Was Ready for Metoo*, SOCIO(B)LOG (Jan. 19, 2018), <https://socioblog.su.se/2018/01/19/why-sweden-was-ready-for-metoo/> [<https://perma.cc/JTT2-ACUE>].

66. Justin McCurry, *Japan’s #MeToo: Senior Bureaucrat Resigns over Sexual Misconduct Allegations*, GUARDIAN (Apr. 19, 2018), <https://www.theguardian.com/world/2018/apr/19/japan-metoo-senior-bureaucrat-resigns-over-sexual-misconduct-allegations> [<https://perma.cc/7G78-XLK6>].

67. Ibbly Caputo, *In Japan, Sexual Harassment Isn’t a Crime. Women Who Say #MeToo Are Targets*, PRI (Nov. 8, 2018), <https://www.pri.org/stories/2018-11-08/japan-sexual-harassment-isn-t-crime-women-who-say-metoo-are-targets> [<https://perma.cc/5JCS-7TCS>].

68. Kana Inagaki & Leo Lewis, *Japan Pushes Back Against #MeToo Movement*, FIN. TIMES (May 3, 2018), <https://www.ft.com/content/d64bd404-4a08-11e8-8ee8-cae73aab7ccb> [<https://perma.cc/YHU9-KRM7>].

According to Japan's health ministry, about 30% of women receive unwanted sexual advances in the workplace.⁶⁹ Women working in the media and entertainment industry are particularly at risk. A recent survey uncovered 150 cases of sexual harassment perpetrated against thirty-five female reporters, with politicians, government officials, and police officers identified as the perpetrators in about 30% of the cases.⁷⁰ An investigation conducted by The Financial Times revealed that women working in broadcasting, newspapers, and news agencies are often reluctant to report incidents of sexual harassment because they fear retaliation or they believe they will be blamed for being the guilty party or for being unable to conform with a "put up or shut up" work environment.⁷¹ Against this culture of silence, a group of activists, including Shiori Ito, launched the hashtag #WeTooJapan to show solidarity with victims and "let [them] know they're not alone and that we listen and support, making it easier to speak up."⁷²

Commentators have attributed Japan's timid response to #MeToo to the dominant social environment that routinely disbelieves and blames victims of gender-based violence and harassment who dare to come forward.⁷³ The Ministry of Justice estimates that fewer than one in five cases of rape are ever reported to law enforcement, despite the fact one in three Japanese women are victims of gender-based violence, and almost all women will experience some form of sexual assault, groping, or molestation in public places at some point in their lives, according to the World Health Organization ("WHO").⁷⁴ In this environment, a movement based on survivors' resolution to denounce their abusers, like #MeToo, is unlikely to thrive. While in other coun-

69. *U.S. Concerned About Sexual Harassment in Japan: Report*, KYODO NEWS (Apr. 21, 2018), <https://english.kyodonews.net/news/2018/04/22387e07541a-us-concerned-about-sexual-harassment-in-japan-report.html> [<https://perma.cc/5NLF-X1VT>].

70. Justin McCurry, *Japan Sexual Harassment Survey Reveals 150 Allegations by Women in Media*, GUARDIAN (May 22, 2018), <https://www.theguardian.com/world/2018/may/22/japan-sexual-harassment-survey-reveals-150-allegations-by-women-in-media> [<https://perma.cc/RB2T-DBLW>].

71. Inagaki & Lewis, *supra* note 68.

72. Kurumi Mori & Shoko Oda, *#MeToo Becomes #WeToo in Victim-Blaming Japan*, BLOOMBERG (May 9, 2019), <https://www.bloomberg.com/news/articles/2018-05-09/-metoo-becomes-wetoo-in-victim-blaming-japan> [<https://perma.cc/8TSB-GGHN>].

73. Rob Fahey, *Japan Isn't Ready for a #MeToo Moment*, TOKYO REV. (May 24, 2018), <https://www.tokyoreview.net/2018/05/japan-isnt-ready-metoo-moment/> [<https://perma.cc/VL9L-XJWD>] [hereinafter Fahey, *Japan Isn't Ready*].

74. Rob Fahey, *The Myth of Japan's Bored Police*, TOKYO REV. (May 25, 2017), <https://www.tokyoreview.net/2017/08/myth-japans-bored-police/> [<https://perma.cc/XBM3-33K9>].

tries, “#MeToo stands on the shoulders of years of tireless work to educate men and women about consent and bodily autonomy, about power and privilege and mutual respect . . . [this] groundwork remains a half-finished project in Japan,” where victims reasonably fear that speaking up will likely damage their lives and their careers.⁷⁵

The #MeToo movement has also sparked divided reactions in France. In October 2017, the New York-based French journalist Sandra Muller launched the hashtag #BalanceTonPorc—meaning “rat out your pig”—inviting victims to release the names of their abusers online.⁷⁶ An editorial in the newspaper *Le Monde* described the testimonies as “so detailed and so numerous that it points to a suffocating silence around harassment” entrenched in the French culture.⁷⁷ Although the #BalanceTonPorc campaign inspired hundreds of thousands of tweets from women who allegedly had experienced sexual abuse or harassment across France’s cultural, political, and business sectors, very few perpetrators were actually named, and only a handful resigned from their positions.⁷⁸ A recent study published by the newspaper *Le Figaro* revealed that 53% of the French people, of whom 61% are women younger than thirty-five years old, consider sexual harassment a very important issue.⁷⁹ According to the survey, more than 53% of women and over 63% of young women have been victims of sexual harassment at least once in their life.⁸⁰ The research also found that, although the campaign #BalanceTonPorc is supported by 57% of French people, a significant part of the population (about 42%) is against it.⁸¹ In fact, one in two French men are concerned about it, and the majority of people older than sixty-five years old disapprove it.⁸²

75. Fahey, *Japan Isn't Ready*, *supra* note 73.

76. Rachel Donadio, *#BalanceTonPorc Is France's #MeToo*, ATLANTIC (Oct. 18, 2017), <https://www.theatlantic.com/international/archive/2017/10/the-weinstein-scandal-seen-from-france/543315/> [<https://perma.cc/CY2B-EKZB>].

77. Eleanor Beardsley, *Instead of #MeToo, French Women Say 'Out Your Pig'*, NPR (Nov. 3, 2017), <https://www.npr.org/sections/parallels/2017/11/03/561677686/instead-of-metoo-french-women-say-out-your-pig> [<https://perma.cc/P3N8-L3NJ>].

78. Saphora Smith, *France in the Age of #MeToo Grapples with Seduction, Harassment*, NBC NEWS (Jan. 29, 2018), <https://www.nbcnews.com/news/world/france-age-metoo-grapples-seduction-harassment-n840501> [<https://perma.cc/THL4-7CTC>].

79. *Sondage: plus d'une Française sur deux dit avoir été harcelée sexuellement*, LE FIGARO: SOCIÉTÉ (Oct. 19, 2017), <http://www.lefigaro.fr/actualite-france/2017/10/19/01016-2017-1019ARTFIG00355-sondage-plus-d-une-francaise-sur-deux-dit-avoir-ete-harcelee-sexuellement.php> [<https://perma.cc/5S3V-TG4D>].

80. *Id.*

81. *Id.*

82. *Id.*

In the wake of the Weinstein scandal, the country's President Emmanuel Macron discussed the opportunity of revoking Harvey Weinstein's Legion of Honor, arguing that French society is "sick with sexism," and it is necessary "to act now before it's too late."⁸³ Around the same time, actress Isabelle Adjani wrote an essay denouncing the inequality and sexual harassment women face in the movie industry.⁸⁴ She reminded readers that the French word *libertinage* contains the concept of *liberté*, "freedom," meaning that whenever women choose to be seductive they are not extending an invitation to be raped.⁸⁵ In her own words, she concluded: "Let these harassing gentlemen know that actresses, like the factory girls, farmers or engineers, shopkeepers or teachers, mothers or whores, are all free to fuck, free to abort. And free to speak out!"⁸⁶ While many French young women have embraced #MeToo as an opportunity to advance gender equality, others have perceived it as a threat to the French rules of seduction.⁸⁷

In early 2018, actress Catherine Deneuve, together with 100 other female personalities of academia and media, signed an open letter published by the newspaper *Le Monde* calling the #MeToo campaign a "witch-hunt" against men and deploring its "puritanical . . . wave of purification."⁸⁸ The authors complained that "what we are once again witnessing here is puritanism in the name of a so-called greater good, claiming to promote the liberation and protection of women, only to enslave them to a status of eternal victim and reduce them to defenseless preys of male chauvinist demons."⁸⁹ The letter further pointed out that there is an important difference between rape, which is a

83. Harvey Weinstein was awarded the Legion of Honor after the movie *The Artist*, by the French director Michel Hazanavicius, who won the Academy Award for best picture and best director in 2011. See Donadio, *supra* note 76; see also Smith, *supra* note 78.

84. Isabelle Adjani sur l'affaire Weinstein: "En France, c'est autrement sordide", LE JOURNAL DU DIMANCHE (Oct. 14, 2017), <https://www.lejdd.fr/Societe/affaire-weinstein-le-coup-de-coler-disabelle-adjani-dans-le-jdd-3464312> [<https://perma.cc/APP8-X29S>].

85. *Id.*

86. *Id.*

87. See Catherine Deneuve Says 'Flirting Is Not a Crime', Criticises #MeToo Movement, EURONEWS (Oct. 1, 2018), <https://www.euronews.com/2018/01/10/catherine-deneuve-says-flirting-is-not-a-crime-criticises-metoo-movement> [<https://perma.cc/ZS35-V6B3>].

88. Agence France-Presse in Paris, *Catherine Deneuve Says Men Should Be Free to Hit On Women*, GUARDIAN (Jan. 9, 2018), <https://www.theguardian.com/film/2018/jan/09/catherine-deneuve-men-should-be-free-hit-on-women-harvey-weinstein-scandal> [<https://perma.cc/UP3F-PFBN>].

89. Elena Berton, *Why the French Are Balking at the #MeToo Movement*, USA TODAY (Feb. 7, 2018), <https://www.usatoday.com/story/news/world/2018/02/07/why-french-balking-metoo-movement/303648002/> [<https://perma.cc/9H7X-BKW6>].

crime, and persistent or clumsy flirting, which is not, and nor is galantry a macho assault.⁹⁰ The signatories claimed in their own words:

As women, we do not recognize ourselves in this feminism which, beyond the denunciation of abuses of power, takes on the face of a hatred of men and of sexuality. We believe that the freedom to say no to a sexual proposition is not without the freedom to bother. And we consider that one must be able to reply to this freedom to bother in other ways than by locking ourselves in the role of prey. For those of us who have chosen to have children, we believe that it makes more sense to raise our daughters so that they are informed and aware enough to be able to live life to the fullest without being intimidated or made to feel guilty. The accidents that can affect a woman's body do not necessarily affect her dignity and should not, however hard they may be, necessarily turn her into a perpetual victim. Because we are not reduced to our body. Our inner freedom is inviolable. And this freedom that we cherish is not without risks and responsibilities.⁹¹

In response, feminist Caroline De Haas wrote a letter co-signed by thirty other women and published by France Info arguing that there is a real problem of violence against women and gender inequality in France, where over 200 rapes, or attempted rapes, are committed daily, but only thirty of them are reported to the authorities.⁹² French activists maintained that “French food exists, French cheese exists, French wine exists, French nice dinner in Paris with candles exists, the Eiffel Tower exists—but French seduction [in the form of sexual harassment] does not.”⁹³

In neighboring Italy, actress Asia Argento was one of the first women to report having been sexually assaulted by Harvey Weinstein in a French hotel during the 1997 Cannes Film Festival when she was twenty-one years old.⁹⁴ While in the United States, her accusation among many others led to the layoff of the Hollywood producer from the company he co-founded, in Italy, the reaction was much different. The conservative publication *Libero* raised doubts about the truthful-

90. Agence France-Presse in Paris, *supra* note 88.

91. Catherine Deneuve Says 'Flirting Is Not a Crime', Criticises #MeToo Movement, *supra* note 87.

92. Smith, *supra* note 78; see *Plus de 260 viols ou tentatives par jour en France, mais seulement une trentaine de plaintes*, FRANCEINFO (Oct. 6, 2016), https://www.francetvinfo.fr/so-ciete/plus-de-260-affaires-de-viol-par-jour-en-france-mais-seulement-une-trentaine-de-plaintes_1858743.html [<https://perma.cc/W9RG-SBE2>].

93. Smith, *supra* note 78.

94. Travis M. Andrews, 'In 1997, I Was Raped by Harvey Weinstein Here': Asia Argento Gives Powerful Speech at Cannes, WASH. POST (May 20, 2018), https://www.washingtonpost.com/news/arts-and-entertainment/wp/2018/05/20/in-1997-i-was-raped-by-harvey-weinstein-here-asia-argento-gives-powerful-speech-at-cannes/?utm_term=.39148d214e67 [<https://perma.cc/72R7-Y3JD>].

ness of the actress's allegations of rape: "First these women give it away Then, [twenty] years later, they repent and denounce the alleged rapist. And if they gave it away in exchange for a part in a movie . . . [t]hat's a form of prostitution."⁹⁵

Female commentators were similarly unsympathetic. Feminist author Selvaggia Lucarelli characterized the encounter between Asia Argento and Harvey Weinstein as consensual and added that it is not "legitimate" to report the alleged actions twenty years later.⁹⁶ Journalist Natalia Aspesi defined Argento's allegations as a "late lament" and found irritating

[t]he unrealistic, almost enchanted representation of these encounters. The monster on one side, the sacrificial lamb on the other. As I read, Weinstein did not give normal business appointments in the office with a desk to divide ambitions and intentions. He did not talk about scripts. He asked for massages. And if you ask for a massage and I massage you, then it's hard to be surprised at the evolution of events.⁹⁷

In the midst of the polemics, Asia Argento decided to move to Germany.⁹⁸ In November 2017, film director and producer Fausto Brizzi was accused of sexual harassment by ten women, resulting in the Warner Bros. Entertainment company removing his name from all promotional materials for his upcoming movie and pausing any future plans to work with him.⁹⁹ The press, though, mostly gave voice to his supporters.¹⁰⁰

Although numerous Italian victims came together to share their experiences online under the hashtag #quellavoltache—meaning "that time when"—only a few harassers were publicly named, and no major figures in the business, media, or political world were removed from their appointments.¹⁰¹ The hesitant response to #MeToo was also acknowledged by Laura Boldrini, the president of Italy's Cham-

95. Sylvia Poggioli, *In Italy, #MeToo Falters Amid Public Scorn*, NPR (Jan. 18, 2018), <https://www.npr.org/sections/parallels/2018/01/18/578562334/in-italy-metoo-falters-amid-public-scorn> [https://perma.cc/3DZM-9TMC] (internal quotations omitted).

96. Kenzie Bryant, *Asia Argento Escapes to Germany After Onslaught of Victim-Blaming in Her Native Italy*, VANITY FAIR (Oct. 20, 2017), <https://www.vanityfair.com/style/2017/10/asia-argento-harvey-weinstein-italian-backlash> [https://perma.cc/V2D4-2NXJ].

97. *Id.*

98. *Id.*

99. Nick Vivarelli, *Warner Bros. Axes Italian Director from Promotional Materials Following Sexual Misconduct Allegations*, VARIETY (Nov. 29, 2017), <https://variety.com/2017/film/global/warner-bros-removes-italian-director-from-promotional-materials-following-sexual-misconduct-allegations-1202624422/> [https://perma.cc/7849-R5EQ].

100. Poggioli, *supra* note 95.

101. *Id.*

ber of Deputies, who held a women-only conference to discuss sexual harassment and violence against women at the end of 2017.¹⁰² Bol-drini noted that the movement did not have the same effect in Italy as it did elsewhere not because “[i]n our country there are no harassers,” as she joked sarcastically, but rather because victims fear the repercussions of speaking up.¹⁰³

Italy’s ambivalence towards sexual harassment and gender inequality is apparent in the expected comeback of the country’s former Prime Minister Silvio Berlusconi, who was forced to resign in 2011 after a conviction for tax fraud and multiple charges for his role in the so-called bunga-bunga sex parties with underage women.¹⁰⁴ Some scholars have linked Italy’s reticent reaction to #MeToo to the societal misconception that unwelcome sexual advances are a direct effect of “the beauty trade-off.”¹⁰⁵ This misconception equates women’s beauty with their complicit fatuity and normalizes the sexual-economic exchange between attractive women and powerful men, or even better the unbalanced relationship between gender and status.¹⁰⁶ Other commentators have argued that Italy’s resistance to #MeToo also reflects a snobbish attitude towards the more puritanical American society where “[t]here is no compromising,” whereas “Italians love to live in the gray zones of life.”¹⁰⁷

II. Why Now?

A pressing question for contemporary feminism is why the #MeToo movement erupted in mid-October 2017 rather than several years earlier, when other high-profile cases appeared on media cover-

102. Jason Horowitz, *In Italy, #MeToo Is More Like ‘Meh’*, N.Y. TIMES (Dec. 16, 2017), <https://www.nytimes.com/2017/12/16/world/europe/italy-sexual-harassment.html> [<https://perma.cc/ZV64-HKC>].

103. *Id.*

104. *Id.*; see Daniel Boffey, *Silvio Berlusconi Says He Intends to Stand for European Parliament*, GUARDIAN (Jan. 17, 2019), <https://www.theguardian.com/world/2019/jan/17/silvio-berlusconi-intends-stand-european-parliament-billionaire-former-italian-prime-minister-tax-fraud> [<https://perma.cc/ED9R-6R7J>]; Elisabetta Povoledo, *Berlusconi Scandal Could Threaten Government*, N.Y. TIMES (Nov. 1, 2010), <https://www.nytimes.com/2010/11/02/world/europe/02italy.html?module=inline> [<https://perma.cc/EF9H-EJMK>].

105. Flavia Amabile, *Dalle veline a Asia Argento: perché in Italia #MeToo è stato accolto con scetticismo*, LA STAMPA (Sept. 3, 2018), <https://www.lastampa.it/2018/09/03/societa/dalle-veline-a-asia-argento-perch-in-italia-metoo-stato-accolto-con-scetticismo-e6zrQgbmaR8mmcuYjMeZ4K/pagina.html> [<https://perma.cc/4VD9-C5XY>]; see Danielle Hipkins, *Whoreocracy: Show Girls, the Beauty Trade-Off, and Mainstream Oppositional Discourse in Contemporary Italy*, 66 ITALIAN STUD. 314, 418 (2011).

106. Amabile, *supra* note 105; see also Hipkins, *supra* note 105, at 418.

107. Poggioli, *supra* note 95.

age. For example, in 2011, former French finance minister and head of the International Monetary Fund (“IMF”) Dominique Strauss-Kahn was accused of having sexually assaulted Nafissatou Diallo, a former housekeeper at the Sofitel hotel in Manhattan, while she was cleaning his room.¹⁰⁸ The allegations led to a criminal investigation against him, his resignation from the IMF, and the end of any realistic chance for him to run for the French presidency against the incumbent president Nicolas Sarkozy.¹⁰⁹ In 2015, nearly fifty women ranging in age from early twenties to eighty years old, including top models, alongside waitresses, journalists, and actresses, came forward to accuse showman Bill Cosby of rape or sexual assault.¹¹⁰

In 2016, former assistant professor of finance at Columbia Business School Enrichetta Ravina filed a \$30 million lawsuit against Columbia University and Geert Bekaert, a tenured finance professor and her former mentor. She alleged that Bekaert had sexually harassed her, and that the university had failed to properly investigate her claims, creating a hostile work environment that ultimately led to her denial of tenure.¹¹¹ A federal jury recently found Bekaert liable for retaliating against the Ravina and awarded her \$1.25 million in compensatory and punitive damages.¹¹² The following analysis attempts to comprehend what prompted the #MeToo movement to burst into the spotlight at this specific point in time, both domestically and internationally.

108. Matt Williams, *Dominique Strauss-Kahn Settles Sexual Assault Case with Hotel Maid*, *GUARDIAN* (Dec. 12, 2012), <https://www.theguardian.com/world/2012/dec/10/dominique-strauss-kahn-case-settled> [<https://perma.cc/D5TM-GDCL>].

109. *Id.*

110. Noreen Malone, *‘I’m No Longer Afraid’: 35 Women Tell Their Stories About Being Assaulted by Bill Cosby, and the Culture that Wouldn’t Listen*, *CUT* (July 26, 2015), <https://www.thecut.com/2015/07/bill-cosbys-accusers-speak-out.html> [<https://perma.cc/YVD9-S8ED>].

111. Rick Rojas, *Columbia Professor Files Sexual Harassment Suit Against University*, *N.Y. TIMES* (Mar. 23, 2016), <https://www.nytimes.com/2016/03/24/nyregion/columbia-professor-files-sexual-harassment-suit-against-university.html> [<https://perma.cc/BH6T-PSRN>]; see also Emma Buzbee, *Lawsuit Claims Columbia Refused to Stop Business School Professor’s Harassment, Fired Accuser*, *COLUM. SPECTATOR* (July 13, 2018), <https://www.columbiaspectator.com/news/2018/07/13/lawsuit-claims-columbia-refused-to-stop-business-school-professors-harassment-fired-accuser/> [<https://perma.cc/FDE6-ZQCR>].

112. Karen Xia, *Business School Professor, Columbia Found Liable in Former Professor’s Sexual Harassment Suit*, *COLUM. SPECTATOR* (July 26, 2018), <https://www.columbiaspectator.com/news/2018/07/26/business-school-professor-columbia-found-liable-in-former-professors-sexual-harassment-suit/> [<https://perma.cc/42M9-LGCX>].

A. The Women's March

In October 2016, during the United States presidential election, The Washington Post released the so-called "Access Hollywood" tape recording of Republican nominee Donald Trump bragging about grabbing women's intimate private parts back in 2005.¹¹³ The tape recording prompted at least twenty-three women to publicly accuse Donald Trump of having sexually harassed or assaulted them since the 1970s.¹¹⁴ Many American women were outraged. In the November 2017 elections, 54% of women supported the Democratic nominee Hilary Clinton, compared to the 42% of women who voted for Trump; and, in particular, 94% of African-American women and 68% of Hispanic women voted for Clinton.¹¹⁵ Although Trump won the majority of white female voters (about 53%), gaining 62% of non-college educated white women but losing 51% of college-educated white women to Clinton, still 73% of all women who supported Trump reported being "bothered to some extent by his treatment of women."¹¹⁶ Trump dismissed all the allegations as "fabricated" by the media and his political opponents to hurt his campaign.¹¹⁷ After his election, the White House released the following statement:

These false claims, totally disputed in most cases by eyewitness accounts, were addressed at length during last year's campaign, and the American people voiced their judgment by delivering a decisive victory. The timing and absurdity of these false claims speaks

113. David A. Fahrenthold, *Trump Recorded Having Extremely Lewd Conversation About Women in 2005*, WASH. POST (Oct. 8, 2016), <https://www.washingtonpost.com/> [https://perma.cc/URR4-R9JQ].

114. Eliza Relman, *The 23 Women Who Have Accused Trump of Sexual Misconduct*, BUS. INSIDER (Feb. 25, 2019), <https://www.businessinsider.com/women-accused-trump-sexual-misconduct-list-2017-12> [https://perma.cc/HF3Q-JDP7]; see also Clark Mindock, *Trump's Sexual Assault Allegations: The Full List of Women Who Have Accused the President*, INDEP. (Feb. 25, 2019), <https://www.independent.co.uk/news/world/americas/us-politics/trump-sexual-assault-allegation-alva-johnson-claims-women-how-many-accused-kiss-a8796851.html> [https://perma.cc/4Q9L-XB4F].

115. Clare Foran, *Women Aren't Responsible for Hillary Clinton's Defeat*, ATLANTIC (Nov. 13, 2016), <https://www.theatlantic.com/politics/archive/2016/11/hillary-clinton-white-women-vote/507422/> [https://perma.cc/T7CW-DZFM]; see also Barbara Stark, *Mr. Trump's Contribution to Women's Human Rights*, 24 ILSA J. INT'L & COMP. L. 317, 317-26 (2018).

116. Foran, *supra* note 115; Stark, *supra* note 115; see also Susan Chira, *Since When Is Being a Woman a Liberal Cause?*, N.Y. TIMES (Feb. 11, 2017), <https://www.nytimes.com/2017/02/11/sunday-review/since-when-is-being-a-woman-a-liberal-cause.html> [https://perma.cc/F3W2-B654].

117. Relman, *supra* note 114.

volumes and the publicity tour that has begun only further confirms the political motives behind them.¹¹⁸

Despite Trump's refutations, a survey conducted in December 2017 by Quinnipiac University found that 59% of female voters believed that the president should have resigned because of the sexual misconduct allegations against him.¹¹⁹

For millions of American women, Trump's victory was a reawakening moment. On January 21, 2017, the date after his inauguration, between 470,000 to 680,000 people gathered in Washington, D.C. to join the largest protest in American history—the Women's March.¹²⁰ An estimated 3.6 million to 4.6 million people demonstrated in nearly 550 cities and towns across the country, including 400,000 participants in New York, Trump's hometown, 250,000 participants in Chicago, and 175,000 participants in Boston.¹²¹ This resistance did not end with the Women's March. In Chicago, women between the ages of sixty and eighty years old started organizing monthly meetings to support the election of more women in public office, promote reforms addressing gun violence, and secure decent housing, healthcare, and retirement benefits for all.¹²² Every second Sunday since the election, women across the country have been gathering in more than 100 Solidarity Sunday activist group meetings "to build communities and encourage people to get in touch with local groups and let people know they are not alone in the feelings they are

118. Samantha Cooney, *These Are the Women Who Have Accused President Trump of Sexual Misconduct*, TIME (Dec. 12, 2017), <http://time.com/5058646/donald-trump-accusers/> [<https://perma.cc/375X-D82G>].

119. *December 19, 2017 - U.S. Voter Economic Outlook Hits All-Time High, Quinnipiac University National Poll Finds; but Voters Disapprove of Trump's Handling of Economy*, QUINNIPIAC U. (Dec. 19, 2017), <https://poll.qu.edu/national/release-detail?ReleaseID=2509> [<https://perma.cc/G8GQ-NGTZ>].

120. Jenna Wortham, *Who Didn't Go to the Women's March Matters More Than Who Did*, N.Y. TIMES (Jan. 24, 2017), <https://www.nytimes.com/2017/01/24/magazine/who-didnt-go-to-the-womens-march-matters-more-than-who-did.html> [<https://perma.cc/2FXZ-M6FE>]; see also Kaveh Waddell, *The Exhausting Work of Tallying America's Largest Protest*, ATLANTIC (Jan. 23, 2017), <https://www.theatlantic.com/technology/archive/2017/01/womens-march-protest-count/514166/> [<https://perma.cc/8UM4-VGHU>].

121. Wortham, *supra* note 120; Waddell, *supra* note 120; see Emma G. Fitzsimmons, *In Trump's Hometown, a Clear Message of Defiance from Women*, N.Y. TIMES (Jan. 21, 2017), <https://www.nytimes.com/2017/01/21/nyregion/womens-march-donald-trump-manhattan.html> [<https://perma.cc/N226-JWU2>]; Anemona Hartocollis & Yamiche Alcindor, *Women's March Highlights as Huge Crowds Protest Trump: 'We're Not Going Away'*, N.Y. TIMES (Jan. 21, 2017), <https://www.nytimes.com/2017/01/21/us/womens-march.html> [<https://perma.cc/6EV6-WKKX>].

122. Martha Holstein, Opinion, *Ways to Resist Trump*, N.Y. TIMES (Apr. 13, 2017), <https://www.nytimes.com/2017/04/13/opinion/ways-to-resist-trump.html> [<https://perma.cc/VR63-5AB4>].

having.”¹²³ The initiative originally started as a Facebook group set up by three mothers in Alameda county,¹²⁴ but by early 2017, it had already reached 12,000 members, mostly women, meeting in twenty-seven different states.¹²⁵

Donald Trump’s election not only rekindled women’s activism, but it also prompted them “to stop accepting the unacceptable”¹²⁶ and make a promise to themselves and their daughters that, although Trump’s “offensive behavior did not block his path to the presidency . . . [and h]e may have gotten away with it, . . . women were no longer going to let that boss, that mentor, that colleague get away with it, too.”¹²⁷ According to author Jaclyn Friedman, “There is no doubt that having an accused sexual predator in the White House is hanging over this People feel like they can’t do anything about that right now, but at least they can do something about this.”¹²⁸ In the weeks after the election, sexual assault survivors flooded counseling centers and support groups across the country, finally ready to assuage the reminiscence of their trauma revived by the events occurred during the presidential campaign and to unite in a collective outcry for justice and restitution.¹²⁹ In other words, Trump’s impunity triggered women to finally speak up and say #MeToo.

The New Yorker journalist Ronan Farrow, who helped uncover the sexual harassment allegations against Harvey Weinstein, wrote

123. Adam Gabbatt, *Solidarity Sundays: Women Resist Trump with Monthly Activism Meetups*, GUARDIAN (Mar. 31, 2017), <https://www.theguardian.com/us-news/2017/mar/31/trump-resistance-movement-solidarity-sundays-meetup> [<https://perma.cc/9KPE-G5J7>].

124. Ronda Kaysen, *Home Is Where the Resistance Is*, N.Y. TIMES (Feb. 17, 2017), <https://www.nytimes.com/2017/02/17/realestate/home-politics-resistance.html> [<https://perma.cc/M826-PHL2>].

125. *Id.*

126. Kim, *supra* note 38.

127. *Id.* See Sarah Leonard, *From the Women’s March to #MeToo, Building Feminist Solidarity in the Age of Trump*, NATION (Nov. 30, 2017), <https://www.thenation.com/article/sex-and-solidarity/> [<https://perma.cc/2F39-RW85>].

128. *Id.* See also Sarah Leonard, *From the Women’s March to #MeToo, Building Feminist Solidarity in the Age of Trump*, NATION (Nov. 30, 2017), <https://www.thenation.com/article/sex-and-solidarity/> [<https://perma.cc/2F39-RW85>].

129. Ashwini Tambe, *Reckoning with the Silences of #MeToo*, 44 FEMINIST STUD. 197, 198 (2018); see also Rebecca Nelson, *The Psychological Toll of a President Trump*, GQ (Dec. 29, 2016), <https://www.gq.com/story/the-psychological-toll-of-a-president-trump> [<https://perma.cc/62GS-DVRQ>]; Soumya Karlamangla, *Why Therapists Are Having Such a Hard Time Talking About Trump*, L.A. TIMES (Feb. 24, 2017), <https://www.latimes.com/local/california/la-me-ln-trump-therapists-20170223-story.html> [<https://perma.cc/HYY2-7JAM>]; Ben Allen, *Therapists Report Rise in Mental Trauma After Trump Victory*, TRANSFORMING HEALTH (Nov. 11, 2016), <http://www.transforminghealth.org/stories/2016/11/therapists-report.php> [<https://perma.cc/VXY9-9V6L>].

that the producer's behavior was an "open secret" in Hollywood and beyond for decades, but any previous attempt to report the story faded away.¹³⁰ Victims feared that their careers may be "crushed" while witnesses were paid for their silence.¹³¹ But after the election, women began to speak likely for the reason that they had "recently felt increasingly emboldened to talk about their experiences because of the way the world has changed regarding issues of sex and power. Their disclosures follow[ed] in the wake of stories alleging sexual misconduct by public figures, including Donald Trump . . ." ¹³² Similarly, the investigative reporters of The New York Times who broke both the Bill O'Reilly and the Harvey Weinstein stories claimed that the impunity accorded to Trump had a snowball effect by enraging and empowering victims to come forward.¹³³

Women's outrage and resistance were further alimented by Judge Brett Kavanaugh's confirmation to the United States Supreme Court, despite being accused of having sexually assaulted at least two women during his freshman year of high school.¹³⁴ In support of one of the alleged victims, Professor of Psychology Christine Blasey Ford bravely testified before the Senate Judiciary Committee, and hundreds of women descended on Capitol Hill with the catchphrase "We Believe" scribbled on the palms of their hands.¹³⁵ While at political rallies ahead of the mid-term elections, President Trump mimicked Ford's inability to remember some details of the alleged assault—"How did you get there? 'I don't remember.' Where is the place? 'I don't know.' What neighborhood was it in? 'I don't know.' Where's the house? 'I don't know.'" ¹³⁶—the hashtag #WhyIDidntReport blasted on social

130. Farrow, *supra* note 26.

131. *Id.*

132. *Id.*

133. Brent Lang, *How New York Times Reporters Broke Hollywood's Biggest Sexual Harassment Story*, VARIETY (Dec. 2017), <https://variety.com/2017/biz/features/new-york-times-harvey-weinstein-report-megan-twohey-jodi-kantor-1202637948/> [<https://perma.cc/AT5P-KX8T>].

134. See generally Tom McCarthy, *Q&A: Brett Kavanaugh's Controversial Confirmation Battle Explained*, GUARDIAN (Oct. 5, 2018), <https://www.theguardian.com/us-news/2018/oct/05/kavanaugh-confirmation-battle-explainer> [<https://perma.cc/T9NC-F6TS>]; see also James Roche, *I Was Brett Kavanaugh's College Roommate*, SLATE (Oct. 3, 2018), <https://slate.com/news-and-politics/2018/10/brett-kavanaugh-college-roommate-jamie-roche.html> [<https://perma.cc/9EA5-HZTD>].

135. Haley Sweetland Edwards, *Why Americans Are Still Grappling with Christine Blasey Ford's Legacy*, TIME (Dec. 11, 2018), <http://time.com/5476021/christine-blasey-ford-legacy/> [<https://perma.cc/PU88-WSRT>]; see also Georgina Rannard, *Kavanaugh Hearing: A Moment of Reckoning for American Women*, BBC NEWS (Sept. 28, 2018), <https://www.bbc.com/news/world-us-canada-45673858> [<https://perma.cc/YT8U-3346>].

136. McCarthy, *supra* note 134.

media, emboldening survivors of sexual assaults to both speak up and question the impartiality of American's highest institutions.¹³⁷

B. International Outrage

The Women's March was not just a domestic protest. On the same day, international marches took place in over 100 cities around the world, gathering an estimated three to five million people wearing pink "pussy" hats and brandishing placards reading "Women's Rights Are Not Up for Grabs," "Our rights aren't up for grabs and neither are we," "Resistance is fertile," and "Girls just want to have fun-damental rights."¹³⁸ Since then, many more rallies have followed worldwide. In London, for example, during Trump's first official visit to Britain as president, an estimated 80,000 people demonstrated not only against his sexist treatment of women, but also against his policies on immigration and climate change.¹³⁹ A sixty-seven-year-old female demonstrator declared: "Trump represents everything I hate: racism, bigot, misogynist, xenophobe. As a mother of daughters, I want to show that he can't treat women like he does."¹⁴⁰ Aisha Ali-Khan, one of the organizers of the London Women's March, reiterated: "It's not just that he made comments about women, his policies have been so divisive. We want to make a stand but also unite as many people as we can."¹⁴¹

International Women's Marches should not only be interpreted as an outraged response to Trump's treatment of women and political stance, but rather, more generally as a mass public opposition to the other administrations and recent political events that are similarly posing a serious threat to fundamental freedoms and rights as well as to the future of many democracies across the world. Indeed, several

137. Edwards, *supra* note 135; see also Sheryl Gay Stolberg, *Kavanaugh Is Sworn In After Close Confirmation Vote in Senate*, N.Y. TIMES (Oct. 6, 2018), <https://www.nytimes.com/2018/10/06/us/politics/brett-kavanaugh-supreme-court.html> [<https://perma.cc/SVF7-XHHQ>].

138. Wortham, *supra* note 120; see Waddell, *supra* note 120; Chira, *supra* note 116; Jon Sharman, *The Best Women's March Signs from Around the World as Feminists Protest Donald Trump*, INDEP. (Jan. 22, 2017), <https://www.independent.co.uk/news/world/americas/womens-march-best-signs-pictures-around-the-world-donald-trump-protest-feminism-a7539871.html> [<https://perma.cc/782L-6CRW>].

139. Lin Taylor, *London Protesters Unite Against Trump for Women's Rights, Climate and Refugees*, REUTERS (July 13, 2018), <https://www.reuters.com/article/us-usa-trump-britain-women/london-protesters-unite-against-trump-for-womens-rights-climate-and-refugees-id-USKBN1K32B5> [<https://perma.cc/JK74-UBD5>].

140. *Id.*

141. *Id.*

countries have recently shifted from forms of universal civic nationalism, which is a proponent of progressive values, including freedom, tolerance, equality, and human rights, to ethnic nationalism, which is characterized by sexism, xenophobia, and distrust of minorities. In rich democracies, this new form of nationalism has become a “potent vote winner,” whereas in dictatorship regimes, it has been used to divert citizens from their fundamental freedoms and rights.¹⁴² In the last decade, economic crises, inequality, demographic changes, fears of terrorism, and perceived corruption of governments have been alighting resentment as well as nationalist and populist claims among people around the world.¹⁴³ Building on these general sentiments, Trump has promised to erect a wall on the Mexican border, Britain has voted to leave the European Union, far-right coalitions have gained power in Italy, Austria, Hungary, Poland, Bulgaria, and Slovakia, and radical parties have grown in popularity in Germany, France, the Netherlands, Greece, Sweden, and Denmark.¹⁴⁴

In response to this shift in political powers and administrations which endangers fundamental individual rights, activist groups, feminists, celebrities, and ordinary people alike have mobilized in the streets and on social media to protest against austerity, the rise of populism, violence, and inequality, ultimately engendering this historical moment of social change and reckoning over sexual harassment, gender-based violence, and discrimination, among other issues.¹⁴⁵ In other words, although some international rallies may have been initially organized in the wake of the American crusade, the majority of them have since evolved to embrace the “core message . . . that women’s rights are more important than Mr. Trump.”¹⁴⁶

142. *League of Nationalists*, ECONOMIST (Nov. 19, 2016), <https://www.economist.com/news/international/21710276-all-around-world-nationalists-are-gaining-ground-why-league-nationalists> [<https://perma.cc/R95T-UYBC>].

143. *Id.*

144. See Gideon Rachman, *Donald Trump Leads a Global Revival of Nationalism*, FIN. TIMES (June 25, 2018), <https://www.ft.com/content/59a37a38-7857-11e8-8e67-1e1a0846c475>; see also Cain Burdeau, *Far-Right Parties on the March Across Europe*, COURTHOUSE NEWS SERV. (Nov. 8, 2018), <https://www.courthousenews.com/far-right-parties-building-strength-across-europe/> [<https://perma.cc/2MVH-R6LU>]; *Europe and Nationalism: A Country-by-Country Guide*, BBC NEWS (Sept. 10, 2018), <https://www.bbc.com/news/world-europe-36130006> [<https://perma.cc/6F64-XSGQ>].

145. See Nosheen Iqbal, *Women Around the World March Against Austerity and Violence*, GUARDIAN (Jan. 19, 2019), <https://www.theguardian.com/world/2019/jan/19/womens-march-london-against-austerity-protesters-worldwide> [<https://perma.cc/Y23H-8DRS>].

146. Elisabetta Povoledo et al., *Women’s Marches Around the World Reflect Worry over Violence and Populism*, N.Y. TIMES (Jan. 19, 2019), <https://www.nytimes.com/2019/01/19/>

A lawyer, activist, and one of the organizers of the London Women's March recently declared: "Today is about improving the living and working conditions of women On the ground and in the data, it is proven that austerity is disproportionately affecting women, especially vulnerable women."¹⁴⁷ In Rome, people also paraded against the new populist government and the rampant sexual harassment and violence affecting women.¹⁴⁸ "This was a country that used to assist women who were victims of human trafficking, and exploitation. Now, we are erecting walls and closing ports to ships that rescue migrants at sea," said the president of an Italian association of women's centers and shelters for victims of gender-based violence.¹⁴⁹

In addition to being somewhat politically motivated, the current #MeToo movement likely exploded because both the accusers and the victims were white famous actors who no longer feared being discredited and "crushed."¹⁵⁰ "When you have Angelina Jolie and Gwyneth Paltrow in the same sentence, well, people take note," sociologist Michael Kimmel pointed out.¹⁵¹ According to a recent Twitter analysis, "it wasn't until powerful and influential celebrities like Alyssa Milano and Ashley Judd shared their own stories on social media that the movement truly took hold."¹⁵² #MeToo also likely blew up because some of the abusers were the top leaders of western countries, like the United States and Italy, who were able to gain and maintain power despite their sexist and misogynous behaviors. But "[c]ertainly the endlessly expanding power of social media," blasting the hashtags millions of times around the world and facilitating communities to rally around their cause, amplified women's anger and voices beyond borders and localities.¹⁵³

world/europe/womens-march-europe.html?login=email&auth=login-email [https://perma.cc/2L68-V5JH].

147. See Iqbal, *supra* note 145.

148. See Povoledo et al., *supra* note 146.

149. *Id.*

150. Farrow, *supra* note 26.

151. Jessica Bennett, *The 'Click' Moment: How the Weinstein Scandal Unleashed a Tsunami*, N.Y. TIMES (Nov. 5, 2017), <https://www.nytimes.com/2017/11/05/us/sexual-harrasment-weinstein-trump.html> [https://perma.cc/F39T-AWDP].

152. Abby Ohlheiser, *How #MeToo Really Was Different, According to Data*, WASH. POST (Jan. 22, 2018), <https://www.washingtonpost.com/news/the-intersect/wp/2018/01/22/how-metoo-really-was-different-according-to-data/> [https://perma.cc/KR6U-YJMD] (study conducted by Crimson Hexagon, a social media analytics firm, in collaboration with George Washington University's Graduate School of Political Management's PEORIA research project).

153. Bennett, *supra* note 151.

The use of social media by feminists and activist groups is a relatively new phenomenon. Initially utilized by individuals as an online platform to access preferred contents and share their ideas, social media has recently evolved into a tool that provides news, general information, and visibility to important social issues and events to a global audience.¹⁵⁴ Social networks, like Facebook and Twitter, not only enable people to connect and exchange narratives and personal experiences, but also to build and mobilize virtual communities around their activist causes. Professor Clay Shirky explained that “as the communication landscape gets denser, more complex, more participatory, the networked population is gaining greater access to information, more opportunities to engage in public speech, and an enhanced ability to undertake collective action.”¹⁵⁵ An example of this new phenomenon of social media activism is the photography blog project Humans of New York, started in 2010 by photographer Brandon Stanton to share portraits and captions of ordinary people living in New York City.¹⁵⁶ Over the past few years, the blog gained twenty million followers on social media and expanded to also compile pictures and narratives of people living around the world.¹⁵⁷ Following its popularity, the project launched two crowdsourcing online campaigns that managed to raise more than \$3.8 million to support pediatric cancer research and over \$1 million to fund summer programs for a disadvantaged middle school in Brooklyn.¹⁵⁸

According to recent research studies, social media activism develops in four stages: (1) triggering event, (2) media response, (3) viral

154. Katie Thomson, *Social Media Activism and the #MeToo Movement*, MEDIUM (June 12, 2018), <https://medium.com/@kmthomson.11/social-media-activism-and-the-metoo-movement-166f452d7fd2> [<https://perma.cc/5XZL-U4E4>].

155. Clay Shirky, *The Political Power of Social Media*, FOREIGN AFF. (Jan./Feb. 2011), <https://www.foreignaffairs.com/articles/2010-12-20/political-power-social-media> [<https://perma.cc/V6VL-NBXT>]; see generally Sarah Joseph, *Social Media, Political Change, and Human Rights*, 35 B.C. INT'L & COMP. L. REV. 145, (2012) (explaining the role of social media in the Arab Spring).

156. Brandon Stanton, *About Humans of New York*, HUMANS OF N.Y., <http://www.humansofnewyork.com/about> [<https://perma.cc/GR9F-N334>].

157. *Id.*

158. Stacey B. Steinberg, *#Advocacy: Social Media Activism's Power to Transform Law*, 105 KY. L.J. 413, 427 (2016); see also Eun Kyung Kim, “Humans of New York” Project Raises \$3.8 Million to Fight Pediatric Cancer in Just 3 Weeks, TODAY (May 24, 2016), <https://www.today.com/health/humans-new-york-project-raises-3-8-million-fight-pediatric-t94501> [<https://perma.cc/YCQ7-82CT>]; Emanuella Grinberg & Lisa Respers France, *Boy's 'Humans of New York' Image Helps Raise More than \$1 Million*, CNN (Jan. 29, 2015), <https://www.cnn.com/2015/01/24/living/feat-humans-of-new-york-harvard-fundraiser/index.html> [<https://perma.cc/SD4Q-JRQ5>].

organization, and (4) physical response.¹⁵⁹ The movement starts with a triggering event that challenges social norms and provokes a sustained reaction.¹⁶⁰ In response, both traditional and social media provide widespread coverage of the inciting incident, which may lead to the establishment of a collective group supporting a common interest, also known as a viral organization.¹⁶¹ If the viral organization is active enough to take the protest from the online platforms to the offline world, the movement is likely to generate social change.¹⁶² Alternatively, the campaign will probably subside.¹⁶³

#MeToo is a successful example of social media activism. After the Harvey Weinstein scandal unhinged the social and cultural norms that underlie sexual harassment and violence and earned international media coverage, a virtual organization of survivors flooded social media with stories of harassment and abuse in response to Milano's initial tweet. At first, users joined the conversation through Twitter, a fast-paced platform that widely disseminates the message and calls for people's instant viral reactions.¹⁶⁴ But later, survivors turned to Facebook to tell their personal stories, expand the discussion, and begin "a movement for radical healing" and collective action.¹⁶⁵ The social media campaign rapidly translated into offline mass protests around the world. According to a recent Twitter research analysis comparing the volume of tweets for #MeToo with the virality of previous survivor hashtags, like #YesAllWomen, #WhatWereYouWearing, #YouOKSis, #SurvivorPrivilege, and #WhyWomenDontReport, #MeToo far exceeded all others, resembling more prominent political or advocacy hashtags, like #BLM or Black Lives Matter, rather than other survivor conversations.¹⁶⁶

#MeToo's global impact was also spurred by the intensity and fast growth of public outrage over sexual harassment and abuse. When the hashtag went viral after the revelations about Harvey Weinstein and a

159. Thomson, *supra* note 154, at 5; see also Rodrigo Sandoval-Almazan & J. Ramon Gil-Garcia, *Towards Cyberactivism 2.0? Understanding the Use of Social Media and Other Information Technologies for Political Activism and Social Movements*, 31 *GOV'T INFO. Q.* 365, 369 (2014).

160. Sandoval-Almazan & Gil-Garcia, *supra* note 159, at 369.

161. *Id.*

162. *Id.* at 369–70.

163. *Id.*

164. Thomson, *supra* note 154, at 7; see Steinberg, *supra* note 158, at 429–31; Katie Rogers & Daniel Victor, *Twitter at 10: 'A Window into Other Lives'*, *N.Y. TIMES* (Mar. 21, 2016), <https://www.nytimes.com/interactive/2016/03/22/business/media/twitter-at-10.html> [<https://perma.cc/5XZL-U4E4>].

165. Hill, *supra* note 9.

166. Ohlheiser, *supra* note 152.

wide range of public figures, social norms underpinning sexual misconduct began to crumble.¹⁶⁷ As Professor Cass Sunstein explained, “when norms start to collapse or to be revised, people are unleashed, in the sense that they *feel free to reveal what they believe and prefer, to disclose their experiences, and to talk and act as they wish*. If they are outraged, they can disclose that.”¹⁶⁸ Although victims of sexual harassment and abuse may have always felt enraged and hurt, until sexism and misogyny became socially unacceptable behaviors, they probably forwent battling against them, reckoning that nothing would change their existing situation.¹⁶⁹ After all, social norms are “sustained by the feelings of embarrassment, anxiety, guilt, and shame that a person suffers at the prospect of violating them.”¹⁷⁰ However, once norms weaken or change, people may also revise their preferences and beliefs and finally express their real discomfort and sense of outrage. If a group embraces the same sentiments, like the virtual organization of survivors did in response to #MeToo, outrage can grow to the point of becoming an extraordinary force able to resonate worldwide and, eventually, generate new norms, laws, and social change.

III. #MeToo and Women’s International Human Rights

Given the American media coverage of #MeToo and its main spokespersons, many have called into question whether it has primarily been a United States white women’s movement,¹⁷¹ arguing that, despite the fact that women of color and low-wage worker women disproportionately face sexual harassment and abuse, their voices have been sidelined or excluded from the conversation.¹⁷² As Ann Marie

167. Cass R. Sunstein, *Growing Outrage*, 3 BEHAV. PUB. POL’Y 1, 2 (2018) (italics in original).

168. *Id.* (italics in original).

169. *Id.* at 11.

170. *Id.* at 3–4; see also Jon Elster, *Rationality, Emotions, and Social Norms*, 98 SYNTHESE 21, 24 (1994).

171. Tambe, *supra* note 129, at 199.

172. Onwuachi-Willig, *supra* note 2, at 107. Charisse Jones, *When Will MeToo become WeToo? Some Say Voices of Black Women, Working Class Left Out*, USA TODAY (Oct. 5, 2018), <https://www.usatoday.com/story/money/2018/10/05/metoo-movement-lacks-diversity-blacks-working-class-sexual-harassment/1443105002/> [https://perma.cc/X2RZ-SKK9]; see also Susan Cheng, *Asian-American Women in Hollywood Say It’s Twice as Hard for Them to Say #MeToo*, BUZZFEED NEWS (Feb. 24, 2018), <https://www.buzzfeednews.com/article/susancheng/what-metoo-means-for-asian-american-women-in-hollywood> [https://perma.cc/X2RZ-SKK9]; Gillian B. White, *The Glaring Blind Spot of the “Me Too” Movement*, ATLANTIC (Nov. 22, 2017), <https://www.theatlantic.com/entertainment/archive/2017/11/the-glaring-blind-spot-of-the-me-too-movement/546458/> [https://perma.cc/BUZ3-DS3P].

Lipinski, curator of the Nieman Foundation for Journalism at Harvard, stated:

For all those women working night shifts in hospitals or stocking things in grocery stores or working in a lot of industries where there is more anonymity and not the same level of public scrutiny or, in many cases, fame, it must be pretty frustrating to feel that your complaints are not being taken with similar seriousness [of those made by the protagonists of the high-profile cases].¹⁷³

This raises the legitimate question whether, and to what extent, the #MeToo movement will ultimately yield true change for all women because “unless feminists (and the media, and the national audience) start doing a better job of highlighting and listening to the voices of people who have been doubly marginalized, such as women of color and those of lower socioeconomic status, there will be important limits on what can be accomplished.”¹⁷⁴ To be sure, the international response to the campaign and the prevalence of gender-based violence worldwide show that sexual harassment and abuse are not only an American, white, affluent, and educated women’s issue, but rather the opposite.

Gender-based violence is the most pervasive human rights violation affecting over 35% of all women during their lifetime.¹⁷⁵ Data collected at the regional levels in Asia revealed the majority of women have experienced some sort of sexual harassment: 57% of women in Bangladesh, 77% in Cambodia, 79% in India, and 87% in Vietnam.¹⁷⁶ In the Middle East and North Africa, 37% of women have been victims of some form of violence in their lifetime, and, in particular, 99% of women in Egypt have experienced sexual harassment.¹⁷⁷ In West and sub-Saharan Africa, WHO reported that 50% of women in Tanzania and 71% in Ethiopia are victims of domestic violence; in South Africa, 80% of women have suffered some form of abuse in the past year, and only 12% feel safe from street harassment in the neighborhood where

173. Christina Pazzanese & Colleen Walsh, *The Women’s Revolt: Why Now, and Where To*, HARV. GAZETTE (Dec. 21, 2017), <https://news.harvard.edu/gazette/story/2017/12/metoo-surge-could-change-society-in-pivotal-ways-harvard-analysts-say/> [<https://perma.cc/6H8D-QYUF>].

174. *Id.*

175. *Violence Against Women: A ‘Global Health Problem of Epidemic Proportions’*, WORLD HEALTH ORG. (Nov. 29, 2017), <https://www.who.int/news-room/fact-sheets/detail/violence-against-women> [<https://perma.cc/3SGB-Y4QU>].

176. Meera Senthilingam, *Sexual Harassment: How It Stands Around the Globe*, CNN (Nov. 29, 2017), <https://www.cnn.com/2017/11/25/health/sexual-harassment-violence-abuse-global-levels/index.html> [<https://perma.cc/4BA9-429K>].

177. *Id.*

they live; and finally, one in three women in both Zimbabwe and Rwanda are victims of intimate partner violence.¹⁷⁸

In North America, one in four women are sexually assaulted during their lifetime; and, particularly in the United States, 65% of women have experienced street harassment.¹⁷⁹ According to a survey conducted by the European Union Agency for Fundamental Rights, sexual abuse has been reported in all twenty-eight member states participating in the study, with Denmark reporting the highest rate at 52% of women affected, and the United Kingdom reporting 64% of women having experienced sexual harassment in public places.¹⁸⁰ In Latin America, a study conducted by Actionaid found that 86% of Brazilian women have been victims of sexual harassment or violence in public; and in Mexico, 96% of women have experienced some form of violence in public places.¹⁸¹ Finally, in Australia and the Pacific, 17% of Australian women are victims of domestic violence, while 87% have experienced verbal or physical sexual harassment, and 40% feel unsafe walking in their own neighborhoods at night; in Fiji, 64% of women are victims of domestic violence, and in Papua New Guinea, 77% have experienced some form of sexual harassment on public transportation.¹⁸²

Although movements like #MeToo can win people's hearts and minds with all their momentum, engendering actual change for all women can hardly be achieved without a human rights-based approach to gender inequality and violence against women. Reframing sexual harassment and sexual abuse as human rights violations rectifies the societal misconception that these are simply inappropriate and unwelcome behaviors rather than criminal offenses. Given the prevalence of gender-based violence worldwide, a human-rights based approach also ensures that the measures adopted by individual States to provide protection and accountability are inclusive, comprehensive, and in compliance with the international legal framework. This allows for the development of a coordinated plan among countries to address such a global issue in a more effective manner. Moreover, interpreting sexual harassment and abuse as human rights violations entails that States must be held accountable if they fail to exercise due diligence to prevent and respond to actions or omissions committed

178. *Id.*

179. *Id.*

180. *Id.*

181. *Id.*

182. *Id.*

by State and non-State actors that result in the infringement of women's rights. Finally, using a human rights-based approach ensures that all women's voices can be heard, and women can fully participate in designing effective strategies and solutions for change. The following analysis examines the international legal framework, both at the international and regional levels, to prevent and protect women from gender-based violence as well as relevant State positive obligations. Finally, it provides insights on promising avenues for action going forward.

A. International Legal Framework

1. International Human Rights Instruments

The first international human rights instrument that mentioned gender discrimination was the 1948 Universal Declaration of Human Rights ("UDHR"), which provided that *everyone* is entitled to all the rights and freedoms without distinction of any kind, including *sex*, among other grounds.¹⁸³ Although the UDHR nominally included women, former United States vice presidential candidate Geraldine Ferraro explained that for a long time,

the icon of human rights abuse has been a man behind bars, tortured for speaking his mind. Abuse unique to women has been dismissed—as traditional practice, as too common to worry about, as less important than other things. These are family problems, men say, and the family lies beyond international jurisdiction.¹⁸⁴

Influenced by the UDHR, the Convention on Discrimination (Employment and Occupation) (No. 111), adopted at the International Labour Conference in 1958, provided that *discrimination* includes any distinction, exclusion, or preference made on the basis of *sex*, among other prohibited grounds, that has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation.¹⁸⁵

The first international legal instrument focusing on gender equality and recognizing women as potential victims of unique human rights violations was the Convention on the Elimination of All Forms of Discrimination Against Women ("CEDAW"), adopted by the United

183. G.A. Res. 217 (III) A, Universal Declaration of Human Rights, Art. 2 (Dec. 10, 1948).

184. Geraldine Ferraro, *Human Rights for Women*, N.Y. TIMES (June 10, 1993), <https://www.nytimes.com/1993/06/10/opinion/human-rights-for-women.html> [https://perma.cc/454Y-RU3G].

185. International Labour Organization Res. 111, Convention Concerning Discrimination in Respect of Employment and Occupation, art. 1 (June 25, 1958).

Nations General Assembly in 1979.¹⁸⁶ CEDAW defined discrimination against women as any "distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women . . . of human rights and fundamental freedoms in any field."¹⁸⁷ States Parties to CEDAW are required to adopt appropriate legislative and other measures to modify or abolish existing laws, customs, and practices that constitute discrimination against women in any areas of the political, public, economic, and social life of the country.¹⁸⁸

CEDAW's silence about gender-based violence has been remedied over time by a series of general recommendations, issued by the CEDAW Committee, that have ensured a dynamic interpretation of the treaty beyond the discrimination framework and have clarified States Parties' obligations for its application. The first one, General Recommendation No.12, adopted in 1989, acknowledged States Parties' obligation to "protect women against violence of any kind occurring within the family, at the workplace, or in any other area of social life."¹⁸⁹ General Recommendation No.19 of 1992 expanded the definition of discrimination against women to include any practice of violence directed against a woman because she is a woman, or violence that affects women disproportionately as well as that impairs or nullifies the enjoyment by women of human rights and fundamental freedoms.¹⁹⁰ Among the gender-specific violations, General Recommendation No.19 included sexual harassment in the workplace, defined as an unwelcome sexually-determined behavior that provides a woman with reasonable ground to believe that her objection would disadvantage her in connection with her employment or that creates a hostile working environment.¹⁹¹

General Recommendation No. 19 emphasized that State responsibility is not only restricted to discriminatory actions carried out by or on behalf of Governments, but it also involves any private violations that States may have failed to exercise due diligence to prevent, inves-

186. G.A. Res. 34/180, Convention on the Elimination of All Forms of Discrimination Against Women (Dec. 18, 1979).

187. *Id.* art. 1, at 2.

188. *Id.* arts. 2-5, 7-13, at 2-5.

189. Comm. on the Elimination of Discrimination Against Women, *General Recommendation No. 12: Violence Against Women*, U.N. Doc. A/44/38 (1989).

190. Comm. on the Elimination of Discrimination Against Women, *General Recommendation No. 19: Violence Against Women*, General Comments, ¶¶ 6-7, U.N. Doc. A/47/38 (1992).

191. *Id.* art. 11, ¶ 18.

tigate, punish, and remedy.¹⁹² Traditionally, the concept of State responsibility was confined to acts of gender-based violence that may be imputed to State actors, but it eventually evolved to also include States' omissions or failures to take appropriate measures to protect women's rights.¹⁹³ This means that in addition to responding to violations committed by their own agents, States must also fulfill positive obligations to prevent acts of violence against women by private individuals, to protect the victims, to investigate and prosecute the incidents of violence, to punish the perpetrators, and to provide adequate redress to the survivors. Therefore, States can be held accountable for acts of gender-based violence committed by private actors because, "although the state does not actually commit the primary abuse, its failure to prosecute the abuse amounts to complicity in it."¹⁹⁴

The Declaration on the Elimination of Violence against Women ("the Declaration"), adopted by the United Nations General Assembly in 1993, echoed some provisions contained in General recommendation No.19, but it also provided a more comprehensive definition of *violence against women* encompassing any form of physical, sexual, and psychological violence, whether occurring in public or in private, that is perpetrated or condoned by the State.¹⁹⁵ The Declaration also incorporated the concept of State responsibility to use due diligence in preventing, investigating, and punishing acts of gender-based violence, whether committed by State actors or by private individuals.¹⁹⁶

The standard of due diligence was first proposed by the Inter-American Court of Human Rights that, in the three significant cases *Velásquez-Rodríguez v. Honduras*,¹⁹⁷ *Garbi and Corrales v. Honduras*,¹⁹⁸ and *Cruz v. Honduras*,¹⁹⁹ held that the Government of Honduras was responsible for a series of forced disappearances executed between 1981 and 1984 by members of the Honduran military who were acting

192. *Id.* General Comments, ¶ 9.

193. Dorothy Q. Thomas & Michele E. Beasley, *Domestic Violence as a Human Rights Issue*, 15 HUM. RTS. Q. 36, 41 (1993).

194. *Id.*

195. G.A. Res. 48/104, Declaration on the Elimination of Violence Against Women, art. 2 (Dec. 20, 1993).

196. *Id.* art. 4(c), at 2.

197. *Velásquez-Rodríguez v. Honduras*, Merits, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 4, ¶ 172 (July 29, 1988).

198. *Garbi and Corrales v. Honduras*, Merits, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 6, ¶ 3 (Mar. 15, 1989).

199. *Cruz v. Honduras*, Merits, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 5, ¶¶ 77(a)(i), 30(e) (Jan. 20, 1989).

as private individuals.²⁰⁰ In particular, in *Velasquez-Rodriguez v. Honduras* of 1988, the court explained:

[A]n illegal act which violates human rights and which is initially not directly imputable to a State (for example, because it is the act of a private person or because the person responsible has not been identified) can lead to international responsibility of the State, not because of an act itself, but because of the lack of due diligence to prevent the violation or to respond to it as required by the [American] Convention [on Human Rights].²⁰¹

The obligation to exercise due diligence has generally been considered to be an obligation of conduct rather than one of result, meaning that States must show that they have adopted appropriate measures at their disposal to address both individual acts and structural causes of gender-based violence so as to prevent future violations and punish eventual perpetrators.²⁰²

In 1999, the United Nations Special Rapporteur on violence against women suggested that, in assessing State responsibility to act with due diligence, international legal bodies should consider the following factors: (1) whether the State is party to human rights treaties, including CEDAW; (2) if there is a constitutional authority securing gender equality and prohibiting gender-based violence; (3) if national legislation and/or administrative sanctions provide adequate remedies for victims; (4) whether executive policies or plans of action addressing violence against women have been adopted; (5) how the criminal justice system and law enforcement systems are responding to cases of gender-based violence; (6) whether police officers and health professionals assisting victims are sensitive to issues of violence against women; (7) whether survivors receive support services such as shelters, legal and psychological counseling, specialized assistance, and rehabilitation provided either by the Government or by non-governmental organizations; (8) whether appropriate measures in the field of education and the media have been taken to raise awareness of gender-based violence and discrimination; and finally, (9) whether data and statistics have been collected to show the magnitude of the problem in the country.²⁰³

200. *Id.*; *Garbi and Corrales*, Inter-Am. Ct. H.R. (ser. C) No. 6; *Velasquez-Rodriguez*, Inter-Am. Ct. H.R. (ser. C) No. 4.

201. *Velasquez-Rodriguez*, Inter-Am. Ct. H.R. (ser. C) No. 4, ¶ 172.

202. Riccardo Pisillo-Mazzeschi, *The Due Diligence Rule and the Nature of the International Responsibility of States*, 35 GERMAN Y.B. INT'L L. 9, 30 (1992).

203. Radhika Coomaraswamy, *Rep. of the Special Rapporteur on Violence Against Women, Its Causes and Consequences, submitted in accordance with Comm'n on Human Rights resolution 1995/85*, ¶ 25, U.N. Doc. E/CN. 4/1999/68 (Mar. 10, 1999).

In 2006, the succeeding mandate holder argued that the principle of non-discrimination requires States “to use the same level of commitment in relation to prevention, investigation, punishment and provision of remedies for violence against women as they do with regards to other forms of violence.”²⁰⁴ In 2011, the following United Nations Special Rapporteur on violence against women further elaborated that State responsibility to act with due diligence is both

a systemic-level responsibility, i.e. the responsibility of States to create good and effective systems and structures that address the root causes and consequences of violence against women; and also an individual-level responsibility, i.e., the responsibility of States to provide each victim with effective measures of prevention, protection, punishment and reparation.²⁰⁵

Additional interpretive guidance on State responsibility was provided by General Recommendation No.28, issued by the CEDAW Committee in 2010, setting forth that States Parties must address all aspects of their legal obligations to respect, protect, and fulfill women’s rights to nondiscrimination and to the enjoyment of equality.²⁰⁶ The obligation to respect requires States parties to refrain from adopting any measures, including laws, policies, regulations, programs, and administrative procedures, that may result directly or indirectly in preventing the equal enjoyment by women of their civil, political, economic, social, and cultural rights.²⁰⁷ The obligation to protect requires States to protect women from any acts of discrimination and gender-based violence committed by private actors and to strive to eliminate practices that perpetuate the notion of inferiority or superiority of either of the sexes and of stereotyped roles for men and women.²⁰⁸ Finally, the obligation to fulfill requires that States Parties ensure that women and men enjoy equal rights *de jure* and *de facto* by designing public policies, programs, and institutional frameworks

204. Yakin Ertürk, *Report of the Special Rapporteur on Violence Against Women, Its Causes and Consequences*, ¶ 35, U.N. Doc. E/CN.4 /2006/61 (Jan. 20, 2006).

205. Rashida Manjoo, *State Responsibility to Act with Due Diligence in the Elimination of Violence Against Women*, INT’L HUM. RTS. L. REV. 240, 240–65 (2013); see also Rashida Manjoo, *Rep. of the Special Rapporteur on Violence Against Women, Its Causes and Consequences*, U.N. Doc. A/HRC/17/26 (May 2, 2011).

206. Comm. on the Elimination of Discrimination Against Women, General Rec. No. 28 on the Core Obligations of States Parties Under Article 2 of the Convention on the Elimination of All Forms of Discrimination Against Women, ¶ 9, U.N. Doc. CEDAW/C/CG/28 (Dec. 16, 2010).

207. *Id.* ¶ 9, at 4.

208. *Id.*

that can fulfill the specific needs of women and lead to the full development of their potential on an equal basis with men.²⁰⁹

In 2017, General Recommendation No.35, updating General Recommendation No.19, stated that over the past twenty-five years, the prohibition of gender-based violence has evolved into a principle of customary law amounting to one of the binding primary sources of international law.²¹⁰ This means that States that have not ratified CEDAW but consider themselves bound to apply international customary law (for instance, the United States) are also under the obligation to prohibit violence against women.²¹¹ General Recommendation No.35 acknowledged that not only the “austerity measures” following recent economic and financial crises in many countries have weakened State responses to gender-based violence, but also the contraction of democratic spaces and the consequent deterioration of the rule of law have contributed to the pervasiveness of violence against women and to a culture of impunity.²¹²

In terms of State responsibility, General Recommendation No.35 provides that States Parties bear an immediate overarching obligation to pursue, by all appropriate means and without delay, a policy of eliminating gender discrimination and gender-based violence.²¹³ This means, in practice, that governments must undertake deliberate, concrete, and targeted measures, making the most efficient use of available resources to move as expeditiously and effectively as possible towards the full realization of women’s rights and fundamental freedoms. Hence, all States parties, irrespective of economic, cultural, religious, or any other grounds, are under an immediate obligation to make best effort, without delay, to ensure the protection of women from any form of discrimination and violence.²¹⁴ Failure to comply with such obligations triggers State responsibility for acts or omissions perpetrated by both the State party or its actors and non-State actors.²¹⁵

209. *Id.*

210. Comm. on the Elimination of Discrimination Against Women, Gen. Rec. No. 35 on Gender-Based Violence Against Women, Updating Gen. Rec. No. 19, ¶ 2, U.N. Doc. CEDAW/C/GC/35 (July 26, 2017) [hereinafter Gen. Rec. No. 35].

211. See generally Michelle M. Kundmueller, *Application of Customary International Law in U.S. Courts: Custom, Convention, or Pseudo-Legislation*, 28 J. LEGIS. 359 (2002) (arguing that nations should follow customary international law even if it is in conflict with the nation’s laws).

212. Gen. Rec. No. 35, *supra* note 210, ¶ 7, at 3.

213. *Id.* ¶ 21, at 7.

214. *Id.*

215. *Id.*

General Recommendation No.35 provides a thorough description of the standards for the attribution of State responsibility. In accordance with CEDAW, States Parties and their organs and agents are expected to refrain from engaging in any act or practice of direct or indirect discrimination against women.²¹⁶ Besides ensuring that current laws, policies, programs, and procedures are not discriminatory, States Parties must provide effective and accessible legal services for victims of violations committed by State agents.²¹⁷ State responsibility extends to: the prevention of any acts or omissions by State actors through specific training and the adoption, implementation, and monitoring of legal provisions, administrative regulations, and codes of conduct; the investigation, prosecution, and application of appropriate legal or disciplinary remedies; and finally, the provision of adequate redress for victims of gender-based violence or of any failure, negligence, or omission on the part of public authorities.²¹⁸

Under the due diligence obligation for acts or omissions of non-State actors, States Parties are required to adopt and implement diverse measures to tackle gender-based violence, including specific laws, policies, programs, and institutions that operate effectively in practice and are supported by all State agents and law enforcement.²¹⁹ Failure to take all appropriate measures to prevent acts of gender-based violence of which public authorities are or should be aware of the risk thereof, or failure to investigate, prosecute, and punish perpetrators and provide reparations to victims, fundamentally condones the perpetration of violence against women and constitutes human rights violations.²²⁰ At the legislative level, States must adopt legislation in compliance with CEDAW that prohibits gender-based violence, treats survivors as right holders, contains age-sensitive and gender-sensitive provisions, and ensures effective legal protection, sanctions against perpetrators, and reparations for the victims.²²¹ Any existing norms of religious, customary, indigenous, and community justice systems that constitute discrimination against women or that promote or justify gender-based violence or perpetuate a culture of impunity must be repealed.²²²

216. *Id.* ¶ 22, at 7.

217. *Id.*

218. *Id.* ¶ 23, at 7.

219. *Id.* ¶ 24(b), at 8.

220. *Id.*

221. *Id.* ¶ 26(a), at 8–9.

222. *Id.* ¶ 26(a), at 9.

At the executive level, States Parties must adopt and adequately provide budgetary resources for diverse institutional measures, including the design of specific public policies, the development and implementation of monitoring mechanisms, and the establishment and support of competent national tribunals.²²³ Governments are required to provide accessible, affordable, and adequate services to protect women from gender-based violence, prevent its reoccurrence, and ensure funding for reparations to all victims.²²⁴ Institutional practices and individual law enforcement conduct that constitute and tolerate gender-based violence or result in a lack of a response or a negligent response to such violence must be effectively investigated, eliminated, and sanctioned.²²⁵ Finally, at the judicial level, States Parties' judicial bodies should refrain from engaging in any act or practice of gender-based violence, strictly apply all criminal laws punishing violence against women, and ensure that all applicable legal procedures are impartial and fair.²²⁶

To monitor States Parties' implementation and enforcement, CEDAW provides for their regular submission of reports to the Secretary General of the United Nations, for consideration by the CEDAW Committee, discussing the progress achieved, the challenges faced, and the measures adopted to fulfill the obligations under the treaty.²²⁷ After the examination of the reports, the CEDAW Committee issues Concluding Observations to steer a constructive dialogue with States Parties and to recommend areas of improvement for women's rights. For example, under its Concluding Observations on Japan's periodic reports released in 2016, the CEDAW Committee recommended the State to adopt specific laws prohibiting and adequately sanctioning sexual harassment in the workplace, to ensure victims' access to justice recourse, and to conduct regular labor inspections aimed at enforcing compliance with employment laws and codes of conduct on sexual harassment.²²⁸ In the most recent Concluding Observations on Sweden's periodic reports, given the high

223. *Id.* ¶ 26(b), at 9.

224. *Id.*

225. *Id.*

226. *Id.* ¶ 26(c), at 9.

227. CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN NEW YORK, U.N. Human Rights Office of the High Commissioner (Dec. 18, 1979) ¶ 18.

228. *See* Comm. on the Elimination of All Forms of Discrimination Against Women, Concluding Observations on the Combined Seventh and Eighth Periodic Reports of Japan, ¶ 35, UN. Doc. CEDAW/C/JPN/CO/7-8 (Mar. 10, 2016).

number of Swedish girls experiencing discrimination and sexual harassment in schools, the CEDAW Committee suggested the implementation of a zero-tolerance policy on violence and harassment in all schools that must include counselling services, awareness-raising efforts, effective reporting mechanisms, and gender-sensitive education on sexuality and women's human rights within school curricula.²²⁹ Finally, in the latest Concluding Observation on France's periodic reports, the CEDAW Committee advocated for a thorough investigation on the root causes of the low reporting and conviction rates in cases of gender-based violence against women and for a careful evaluation of the response of law enforcement and judiciary to complaints of sexual crimes.²³⁰

To strengthen the enforcement mechanism, a communication procedure was established under the Optional Protocol to CEDAW ("Optional Protocol"), adopted in 1999 as a separate treaty.²³¹ States Parties to the Optional Protocol recognize the competence of the CEDAW Committee to consider complaints from individuals or a group of individuals within their jurisdiction alleging violations of their rights under CEDAW and to provide views and recommendations thereon.²³² For instance, in *N.S.F. v. The United Kingdom of Great Britain and Northern Ireland*²³³ of 2005, the CEDAW Committee considered the communication of a Pakistani woman, living in the United Kingdom with her two children, who was seeking asylum to escape domestic violence in her home country.²³⁴ Mindful of the struggles faced by victims of gender-based violence, the CEDAW Committee recommended the author apply to the High Court of the United Kingdom for a judicial review of the refusal to grant her discretionary leave to remain in the country on humanitarian grounds and requested the State party not to deport the woman and her children until the case

229. See Comm. on the Elimination of All Forms of Discrimination Against Women, Concluding Observations on the Combined Eighth and Ninth Periodic Reports of Sweden, ¶¶ 32–33, CEDAW/C/SWE/CO/8-9 (Mar. 10, 2016).

230. See Comm. on the Elimination of All Forms of Discrimination Against Women, Concluding Observations on the Combined Seventh and Eighth Periodic Reports of France, ¶ 21, CEDAW/C/FRE/CO/7-8 (July 25, 2016).

231. G.A. Res. 54/4, at 3–5 (Oct. 15, 1999).

232. See *id.* at 6.

233. *N.S.F. v. United Kingdom*, CEDAW Comm., Commc'n No. 10/2005, U.N. Doc. CEDAW/C/38/D10/2005 (June 12, 2007).

234. Comm. on the Elimination of All Forms of Discrimination Against Women, Decision of the Comm. on the Elimination of Discrimination Against Women Under the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination Against Women (Thirty-Eighth Session), Commc'n No. 10/2005, at 2, U.N. Doc. CEDAW/C/38/D/10/2005 (June 12, 2007).

had been decided.²³⁵ Although a relatively modest number of cases have been considered so far, the communication procedure is an opportunity to provide victims with specific redress against States' violations, to allow the CEDAW Committee to recommend more effective remedies at the national level, and to develop a robust international women's human rights jurisprudence.²³⁶

2. Regional Human Rights Instruments

Binding legal instruments focused on gender-based violence have also been adopted by regional human rights bodies. The Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women ("Convention of Belem Do Para"), approved by the Organization of American States ("OAS") in 1994, sets forth that violence against women "shall be understood to include physical, sexual and psychological violence . . . that is perpetrated or condoned by the state or its agents regardless of where it occurs."²³⁷ The Convention of Belem Do Para not only imposes a negative duty on States to refrain from violating women's rights, but also a positive obligation to prevent, investigate, and punish any acts of such violence as well as to provide adequate redress.²³⁸ States Parties can be found liable for acts or omissions committed by both their own agents and private actors.²³⁹ The Convention of Belem Do Para was the first specific human rights instrument to incorporate the obligation to apply due diligence to prevent, punish, and eradicate gender-based violence among the duties of States Parties.²⁴⁰ Other obligations include the adoption of legal and administrative measures that can effectively address gender-specific forms of violence, like harassment, and can establish fair and effective legal procedures for victims, including timely hearings and access to restitution, reparations, or other just remedies.²⁴¹

Similar to CEDAW, the Convention Belem Do Para requires States parties to submit their national reports to the Inter-American Commission of Women describing the measures adopted to prevent

235. *Id.* § 7.3, at 7–8.

236. The jurisprudence of the CEDAW Committee is available at <https://www.ohchr.org/en/hrbodies/cedaw/pages/jurisprudence.aspx> [<https://perma.cc/CG37-DSGD>].

237. Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women "Convention of Belém do Pará", art. 2, June 9, 1994, 33 I.L.M. 1534.

238. *Id.* art. 7.

239. *Id.* art. 3.

240. *Id.* art. 7.

241. *Id.*

and prohibit gender-based violence and to assist the victims, the challenges encountered in applying such measures, and the contributing factors to violence against women.²⁴² The Convention Belem Do Para also provides any person, group of persons, or any nongovernmental organization with the right to lodge petitions with the Inter-American Commission on Human Rights alleging violations of their rights under the treaty by a State Party.²⁴³ For instance, in *Jessica Lenahan (Gonzales) v. United States*,²⁴⁴ the Inter-American Commission on Human Rights found that the United States had violated the due diligence obligation to protect the applicant and her daughters from repetitive acts of domestic violence and to enforce a mandatory protective order against the applicant's former husband, who eventually murdered the children.²⁴⁵ In addition to awarding full reparations to the applicant, the Inter-American Commission on Human Rights recommended the State to adopt multifaceted legislation at both the federal and state levels, or alternatively to reform existing legislation, making mandatory the enforcement of protection orders and other precautionary measures to protect women from imminent acts of violence, and to create effective implementation mechanisms.²⁴⁶

In the European region, the 2011 Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence ("Istanbul Convention") provides a comprehensive list of gender-specific violations, including sexual harassment, defined as "any form of unwanted verbal, non-verbal or physical conduct of a sexual nature with the purpose or effect of violating the dignity of a person, in particular when creating an intimidating, hostile, degrading, humiliating or offensive environment."²⁴⁷ In terms of State responsibility, the Istanbul Convention provides that State actors should refrain from engaging in any form of gender-based violence and

242. *Id.* art. 10.

243. *Id.* art. 12. The jurisprudence of the Inter-American Commission on Human Rights is available at <http://www.oas.org/en/iachr/decisions/merits.asp> [<https://perma.cc/X6BQ-JQCR>].

244. *Jessica Lenahan (Gonzales) v. United States*, Case 12.626, Inter-Am. Comm'n H.R., Report No. 80/11, ¶¶ 170, 177, 199 (2011).

245. *Id.* at 2, ¶ 5; see also Benedetta Faedi Duramy, *Judicial Developments in the Application of International Law to Domestic Violence*, 21 AM. U. J. GENDER SOC. POL'Y & L. 413, 414 (2012).

246. Inter-American Commission on Human Rights, *supra* note 244, at 56, ¶ 215(4)60; Duramy, *supra* note 245, at 427–28.

247. COUNCIL OF EUROPE, CONVENTION ON PREVENTION AND COMBATTING VIOLENCE AGAINST WOMEN AND DOMESTIC VIOLENCE, art. 40 (2011), <https://www.coe.int/en/web/conventions/full-list/-/conventions/rms/090000168008482e> [<https://perma.cc/JCG6-389A>].

should take the necessary legislative and other measures to exercise due diligence to prevent, investigate, punish, and provide reparation for acts of violence committed by non-State actors.²⁴⁸ The obligation to ensure civil law remedies allows victims to seek justice and compensation against both the perpetrator and State authorities that have failed in their duty to diligently take preventive and protective measures.²⁴⁹

The implementation of the Istanbul Convention by States Parties is monitored by the independent Group of Experts on Action Against Violence Against Women and Domestic Violence (“GREVIO”),²⁵⁰ which is responsible for evaluating national reports and recommending legislative and other measures to give effect to the provisions of the treaty.²⁵¹ For example, in assessing Sweden’s level of compliance, GREVIO identified a number of priority issues requiring further action by State authorities, including, *inter alia*: ensuring higher degrees of awareness and cultural sensitivity towards the specific situation of minority women who experience gender-based violence among local and regional authorities and social services; enhancing the coordination and cooperation on individual cases among all relevant actors within and across local authorities, government agencies, the public health sector, and women’s specialist support services; and finally, reinforcing the capacity of law enforcement in order to reduce the back-log of investigations into domestic violence and rape cases and to ensure a prompt and appropriate response in all cases of violence against women.²⁵²

Finally, in the African continent, the Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa (“Maputo Protocol”), adopted by the Assembly of the African Union in 2003, defines *violence against women* as any act or threat thereof that causes or could cause women physical, sexual, psychological, and economic harm.²⁵³ The Maputo Protocol imposes a series of

248. *Id.* art. 5, §§ 1–2.

249. *Id.* art. 29, §§ 1–2.

250. *Id.* art. 66, § 1.

251. *Id.* art. 68.

252. COUNCIL OF EUROPE, GREVIO BASELINE EVALUATION REPORT SWEDEN (2019), <https://rm.coe.int/grevio-inf-2018-15-eng-final/168091e686> [<https://perma.cc/CZG8-WVGM>]. The provisional timetable for the first (baseline) evaluation procedure (2016–2023) by GREVIO is available at <https://www.coe.int/en/web/istanbul-convention/timetable> [<https://perma.cc/7EED-R6GP>].

253. AFRICAN UNION, PROTOCOL TO THE AFRICAN CHARTER ON HUMAN AND PEOPLE’S RIGHTS ON THE RIGHTS OF WOMEN IN AFRICA, art. 1 (2003), <https://www.refworld.org/docid/3f4b139d4.html> [<https://perma.cc/G5GM-GU77>].

positive obligations on States, including: the elimination of gender discrimination through appropriate legislative, institutional, and regulatory measures; the prohibition of all forms of gender-based violence, including sexual assault and harassment occurring in private or public, through the enactment and enforcement of specific laws; and finally, the prevention, punishment, and eradication of all forms of violence against women as well as the provision of effective reparations for victims through the adoption of any necessary measures.²⁵⁴ To monitor the implementation of the Maputo Protocol at the national level, States parties must submit periodic reports indicating any legislative and other efforts undertaken for the full realization of the women's rights therein recognized.²⁵⁵

B. Going Forward

The #MeToo movement has had a transformative effect on the discussion surrounding sexual assault and sexual harassment, but whether it will yield true change for all women across the world and make a lasting impact on related laws greatly depends on what follows next. Despite the pervasiveness of such violations, many countries still have inadequate or nonexistent legislation protecting women from gender-based violence and discrimination. For instance, according to Amnesty International, in the European Union, where nine million women have been raped since the age of fifteen, only eight of the thirty-one countries that belong to the European Economic Area and Switzerland have criminal laws defining rape as non-consensual sex rather than defining rape on the basis of physical force or threat thereof, presence of duress, or victim's inability to defend herself.²⁵⁶ According to the UCLA WORLD Policy Analysis Center's report, more the one-third of the world's countries, about sixty-eight countries, do not have any laws prohibiting sexual harassment in the workplace, hence leaving nearly 235 million working women without such protection.²⁵⁷

254. *Id.* arts. 2–4, at 4–6.

255. *Id.* art. 26(1), at 21.

256. Anna Bøluš, *Sex Without Consent Is Rape. So Why Do Only Eight European Countries Recognise This?*, AMNESTY INT'L (Apr. 23, 2018), <https://www.amnesty.org/en/latest/campaigns/2018/04/eu-sex-without-consent-is-rape/> [<https://perma.cc/A9FB-MFCW>].

257. Carla Denly, *Nearly 235 Million Women Worldwide Lack Legal Protections from Sexual Harassment at Work*, UCLA FIELDING SCH. PUB. HEALTH (Oct. 26, 2017), <https://ph.ucla.edu/news/press-release/2017/oct/nearly-235-million-women-worldwide-lack-legal-protections-sexual> [<https://perma.cc/C5JG-VG8S>].

In the wake of #MeToo, some States began contemplating changes in their current legal framework on gender-based violence. In the United Kingdom, for example, where more than three million women have experienced some form of sexual assault since the age of sixteen,²⁵⁸ the government has promised to look into improving regulations around nondisclosure agreements that companies often misuse to prevent victims from discussing allegations of sexual harassment and assault in return for a financial payout.²⁵⁹ In India, following the 2012 New Delhi gang rape incident,²⁶⁰ more stringent laws on sexual assault were adopted, including the 2013 Sexual Harassment of Women at Workplace (“Prevention, Prohibition and Redressal”) Act, providing that companies with more than ten employees must establish internal committees to handle sexual harassment complaints.²⁶¹ However, data from 2015, released by the Federation of Indian Chamber of Commerce and Industry, revealed that 36% of Indian companies and 25% of multinational companies operating in the country failed to create such committees.²⁶² Similarly, a survey conducted by the Fraud Investigation and Dispute Services in 2015 found that 40% of companies surveyed had not adequately trained their committee members.²⁶³ In response to the

258. Alan Travis, *One in Five Women Have Been Sexually Assaulted, Analysis Finds*, GUARDIAN (Feb. 8, 2018), <https://www.theguardian.com/uk-news/2018/feb/08/sexual-assault-women-crime-survey-england-wales-ons-police-figures> [<https://perma.cc/S4D7-WPCH>]; see Edmund Heaphy, *Don't Expect #MeToo to Spell the End of British "Lad Culture"*, QUARTZ (Sept. 23, 2018), <https://qz.com/1398932/dont-expect-metoo-to-spell-the-end-of-british-lad-culture/> [<https://perma.cc/4DHC-8WRN>].

259. Amie Tsang, *A #MeToo Story in Britain Prompts Debate over Privacy Laws*, N.Y. TIMES (Oct. 26, 2018), <https://www.nytimes.com/2018/10/26/world/europe/philip-green-nondisclosure-agreements.html> [<https://perma.cc/3UNY-AFWE>]; see also Robert Mendick & Gordon Rayner, *Non-Disclosure Agreements: Everything You Need To Know About NDAs (and Their Misuse)*, TELEGRAPH (Oct. 25, 2018), <https://www.telegraph.co.uk/news/0/non-disclosure-agreements-everything-need-know-ndas-misuse/> [<https://perma.cc/YB6H-NNTE>].

260. Nirbhaya was a twenty-three-year-old woman who was gang raped for hours on a bus in New Delhi on her way home from the movie theatre in December 2012. Shortly thereafter, she passed away in the hospital. *Ram Singh & Ors. vs. State of Nct of Delhi* (2013). See also *Women Protest in India Following Deadly Gang Rape*, U.S. NEWS (Jan. 3, 2013), <https://www.usnews.com/photos/women-protest-in-india-following-deadly-gang-rape> [<https://perma.cc/D2AE-3FCC>].

261. Rituparna Bhattacharyya, *#Metoo Movement: An Awareness Campaign*, 3 INT'L J. INNOVATION, CREATIVITY & CHANGE 1, 6–7, (2018); see also Chandrashekhar, *supra* note 52.

262. *Id.*

263. FRAUD INVESTIGATION & DISPUTE SERVS., REFLECTIONS ON THE STATE OF WOMEN SAFETY AT THE WORKPLACE IN INDIA (2015), <http://ficci.in/spdocument/20875/Reflections%20on%20the%20state%20of%20women%20safety%20at%20the%20workplace%20in%20India.pdf> [<https://perma.cc/MN3Z-46ZX>]; see also Chandrashekhar, *supra* note 52.

great popularity of #MeToo, currently supported by over 64% of Indian people, according to a recent survey, the central government formed a group of ministers to reassess the existing legal framework on sexual harassment in the workplace and ensure its effective application.²⁶⁴ It also launched an electronic grievance system called “She Box” to encourage and facilitate victims to file their complaints.²⁶⁵

In Sweden, where #MeToo gained momentum also by virtue of the country's robust civil society that has long advocated for gender equality and prevention of violence against women, as previously mentioned, the government in 2014 had already appointed a task force to work on improving the existing legislation on sexual consent.²⁶⁶ Responding to a growing awareness on gender-based violence sparked both by the #MeToo movement and a rising number of sexual assault cases, the current government in 2017 introduced a new bill in Parliament to change the present legislation on sexual violence.²⁶⁷ In particular, under the new law, victims must only prove their lack of consent, contrary to the physical force or threat thereof, presence of duress, or their inability to defend themselves required under the previous regulation.²⁶⁸ In support of the bill, Swedish Prime Minister, Stefan Lofven, declared: “It should be obvious. Sex should be voluntary. If it is not voluntary, then it is illegal If you are unsure, then refrain.”²⁶⁹

On the other hand, in Japan, one of the countries that had a more ambivalent reaction to #MeToo, as previously discussed, a report recently compiled by the Ministry of Health, Labor and Welfare's subcommittee, which had originally been tasked by the government to address sexual harassment in the workplace, ultimately proved to be

264. Bhawna Singh, *Men in India Eager to Share Their #MeToo Story*, YOUGov (Oct. 26, 2018), <https://in.yougov.com/en-hi/news/2018/10/26/men-india-eager-share-their-metoo-story/> [<https://perma.cc/QE45-MSDX>]; see generally Chandrashekhar, *supra* note 52.

265. *Too Little Too Late? Indian Government Reacts to #Metoo by Forming a Panel to Review Sexual Harassment Laws*, BUS. INSIDER (Oct. 25, 2018), <https://www.businessinsider.in/too-little-too-late-indian-government-reacts-to-metoo-by-forming-a-panel-to-review-sexual-harassment-laws/articleshow/66347468.cms> [<https://perma.cc/N794-9EE2>]. See generally Kumar, *supra* note 55.

266. Svallfors, *supra* note 65.

267. Booth & Munro, *supra* note 57.

268. Rick Noack, *Sweden Proposes Tough Sexual Assault Law*, WASH. POST (Dec. 20, 2017), <https://www.washingtonpost.com/news/worldviews/wp/2017/12/20/amid-metoo-movement-and-fear-of-immigrants-sweden-proposes-tough-sexual-assault-law/> [<https://perma.cc/BV2L-3LVE>].

269. *Id.*

disappointing.²⁷⁰ The document, while containing proposals for reforms of labor and women's empowerment laws, failed to recognize sexual harassment as a criminal offense, conceding to the demands of the business community supposedly concerned with facing a greater risk of litigation.²⁷¹ Contrary to the labor unions' initial request to explicitly prohibit sexual harassment, the report ended up merely recommending that any form of harassment should not be tolerated and that private companies should adopt preventive measures.²⁷² But as the chair of a labor union that defends women's rights in the workplace Kaori Sato commented: "What many victims want is formal recognition that they have been sexually harassed, apologies from the perpetrators and prevention of such acts. It is regrettable that their voices were not taken into account."²⁷³

Reflecting on the findings of a 2017 Labor Ministry survey of about 3600 companies, showing that only 39.4% of them had set up a grievance mechanism ten years after the government had made it mandatory, Shito Naito, a researcher at the administrative agency Japan Institute for Labor Policy and Training, noted: "It is evident that the current system of relief is insufficient It is necessary to have a human rights protection body that can rapidly determine whether sexual harassment has occurred and can order relief measures sought by victims."²⁷⁴

In France, albeit an equivocal reaction to the #MeToo movement, alarming figures on the prevalence of gender-based violence prompted the adoption in August 2018 of a new law stepping up the fight against sexual and sexist violence.²⁷⁵ Recent data showed that every year 220,000 French women are victims of sexual assault and

270. See *Japanese Government Panel Criticized over Watered-Down Sexual Harassment Countermeasures*, JAPAN TIMES (Feb. 10, 2019), <https://www.japantimes.co.jp/news/2019/02/10/national/politics-diplomacy/japanese-government-panel-criticized-watered-sexual-harassment-countermeasures/#.XKLphihKg2y> [<https://perma.cc/KQ96-ZM8G>]; As *Gov't Panel Discusses Power, Sexual Harassment, System Loopholes Need Checks*, MAINICHI (Oct. 28, 2018), <https://mainichi.jp/english/articles/20181028/p2a/00m/0na/005000c> [<https://perma.cc/EF76-UA4Z>].

271. *Japanese Government Panel Criticized over Watered-Down Sexual Harassment Countermeasures*, *supra* note 270; As *Gov't Panel Discusses Power, Sexual Harassment, System Loopholes Need Checks*, *supra* note 270.

272. *Japanese Government Panel Criticized over Watered-Down Sexual Harassment Countermeasures*, *supra* note 270.

273. *Id.*

274. *Id.*

275. Loi 2018-703 du 3 août 2018 renforçant la lutte contre les violences sexuelles et sexistes [Law 2018-703 of August 3, 2018 Reinforcing the Fight Against Sexual and Gender-Based Violence], Journal Officiel de la République Française [J.O.] [Official Gazette of

84,000 of rape, but only 2% of the perpetrators are convicted.²⁷⁶ According to a 2014 French government poll, one in five women have experienced harassment at work, but 30% of them have not shared their stories.²⁷⁷ Finally, in 2016, a study conducted by the French polling firm IFOP found that only sixty-five out of 1048 cases of sexual harassment had been prosecuted and led to criminal conviction.²⁷⁸

The new law extended the statute of limitations for sexual offenses against minors and explicitly prohibited street harassment, called sexual contempt, defining street harassment as the act of imposing on a person remarks or a behavior with a sexual or a sexist connotation that impairs one's dignity because of their degrading or humiliating nature, or that create an intimidating, hostile, or offensive situation.²⁷⁹ Marlene Schiappa, France's gender equality minister who proposed to put forward new bill, explained:

The point is that the whole society has to redefine what it will accept and what it will not We know very well at what point we start feeling intimidated, unsafe, or harassed in the street [But if] street harassment is not defined in the law . . . we can't make a complaint.²⁸⁰

In order to reach cyber harassment, the new law provided that sexual harassment also occurs when comments or behaviors are imposed on the same victim by multiple persons, in a concerted manner, or at the instigation of one of them—even though each of them may not act in a repetitive way, but successively with the knowledge that their comments and behaviors are being repeated.²⁸¹

France], Aug. 5, 2018, No. 0179 [hereinafter Reinforcing the Fight Against Sexual and Gender-Based Violence].

276. Sarah Wildman, *France's "Me Too" Campaign May Come with Legislation*, Vox (Oct. 18, 2017), <https://www.vox.com/world/2017/10/18/16490818/france-me-too-weinstein-sexual-harassment> [<https://perma.cc/X7DC-U9N8>]; Luisa Nannipieri, *L'impatto di #metoo in Francia? Radicale*, RADIO POPOLARE (Mar. 8, 2018), <https://www.radiopopolare.it/2018/03/limpatto-di-metoo-in-francia-radiale/> [<https://perma.cc/BUE9-6AZK>].

277. Wildman, *supra* note 276.

278. *Id.*

279. Under the French provision:

Constitue un outrage sexiste le fait, hors les cas prévus aux articles 222-13, 222-32, 222-33 et 222-33-2-2, d'imposer à une personne tout propos ou comportement à connotation sexuelle ou sexiste qui soit porte atteinte à sa dignité en raison de son caractère dégradant ou humiliant, soit crée à son encontre une situation intimidante, hostile ou offensante.

Reinforcing the Fight Against Sexual and Gender-Based Violence, *supra* note 275. See L. Camille Hebert, *Dignity and Discrimination in Sexual Harassment Law: A French Case Study*, 25 WASH. & LEE J. CIV. RTS. & SOC. JUST. 3, 23 (2018).

280. Wildman, *supra* note 276 (stating that this bill would police behaviors that make women feel "intimated, unsafe, or harassed in the street").

281. Under the French provision:

To coordinate States' response efforts, the U.N. Women, the United Nations entity devoted to gender equality and empowerment of women, had already exhorted countries to design national action plans against gender-based violence in 2012 with the adoption of a handbook with specific guidelines.²⁸² The handbook recommends a holistic human rights-based approach to violence against women not only to provide a strong and coherent framework to governments and civil society for cooperative effort, but also to situate the individual States' initiatives within the broader context of regional and international work in order to eliminate violence against women, thereby strengthening the potential for partnerships and cooperation among countries.²⁸³ Designing such national action plans in compliance with the international human rights framework also ensures that States bear the positive obligation under international law to protect women's right to live free from violence. In other words, the national action plans become "an articulation of Governments' accountability to women themselves, to all their citizens and to the international community."²⁸⁴

In practice, the U.N. Women recommended that States' action plans on violence against women should acknowledge that gender-based violence is a human rights violation, define it in compliance with international norms, and address it according to positive obligations under relevant human rights treaties. Mindful that violence against women is a form of discrimination and a manifestation of historically unequal power relations between men and women, States must: recognize the different and intersecting forms of gender-based violence; examine the current data and research on their root causes, nature, prevalence, and impact as well as identify gaps for future work; and finally, tailor strategies and actions that address the intersectionality of violence against women with other discriminatory factors, such as race, religion, political or other opinion, national or social origin,

(1) Lorsque ces propos ou comportements sont imposés à une même victime par plusieurs personnes, de manière concertée ou à l'instigation de l'une d'elles, alors même que chacune de ces personnes n'a pas agi de façon répétée; (2) Lorsque ces propos ou comportements sont imposés à une même victime, successivement, par plusieurs personnes qui, même en l'absence de concertation, savent que ces propos ou comportements caractérisent une répétition.

Reinforcing the Fight Against Sexual and Gender-Based Violence, *supra* note 275. See also Hebert, *supra* note 279, at 23.

282. See U.N. WOMEN, *supra* note 3.

283. *Id.*

284. *Id.* at 10–11.

property, marital status, sexual orientation, HIV/AIDS status, migrant or refugee status, age, and disability.²⁸⁵

To ensure the formulation and effective implementation of a coherent, comprehensive, inclusive, and sustained program of activity, the national action plans on violence against women should: include cross-cutting measures to establish and improve the capacity of governance structures; ensure the participation of a civil society representing victims' perspectives and advocating for their interests and needs; strengthen legal and policy interventions; build a coordinated strategy for the primary prevention of violence against women and for police action and judicial response; and improve evidence through the regular collection, communication, and analysis of comprehensive statistical and qualitative data on the nature, prevalence, and impact of all forms of gender-based violence.²⁸⁶ Finally, to provide for the periodic and comprehensive evaluation of implementation progress, national action plans should also include: clearly defined indicators and targets, institutional monitoring mechanisms, meaningful participation of civil society and other stakeholders including survivors, assessment of best practices and systems, and regular and accountable reporting procedures.²⁸⁷

Along with the adoption and effective implementation of national action plans on violence against women by all States, other important measures focused on sexual harassment have been recently considered by the ILO.²⁸⁸ The United Nations agency is proposing a new legally binding treaty to create a global set of standards for violence and harassment in the workplace and to protect all workers from such violations. As explained by Manuela Tomei, director of the ILO's conditions of work and equality department, to date "there is no international treaty that deals with the issue of violence and harassment in the world of work, so this is really filling a regulatory gap" in addition to conveying a strong political message that such conducts are unacceptable and against the law.²⁸⁹

The ILO had previously defined sexual harassment as a sex-based behavior that is unwelcome and offensive to its recipient, which can take the following two forms:

285. *Id.* at 10–15. See also Caroline Bettinger-Lopez, *Developing a National Plan of Action on Violence Against Women and Gender Violence: A Human Rights Approach*, in *THE POLITICIZATION OF SAFETY* 362, 362 (ed. Jane K. Stoeber, 2019).

286. *Id.* at 16–30.

287. *Id.* at 69–73.

288. Lieberman, *supra* note 4.

289. *Id.*

- 1) Quid Pro Quo, when a job benefit—such as a pay rise, a promotion, or even continued employment—is made conditional on the victim acceding to demands to engage in some form of sexual behaviour; or;
- 2) Hostile working environment in which the conduct creates conditions that are intimidating or humiliating for the victim.²⁹⁰

However, as argued by Manuela Tomei in a recent interview, “[t]he fact that there is no international treaty explains why [there is] . . . such a diversity of terminology and why, in some cases, one word is used to refer to different situations, and vice versa.”²⁹¹ The new convention is intended to remedy such uncertainty in the understanding of what constitutes sexual harassment in the workplace and to ensure a shared common strategy to address it.²⁹² Moreover, the treaty would ensure that prevention of and adequate response to sexual harassment and violence is not a discretionary effort of individual companies or countries, but rather a positive obligation under international law for all signatory parties. This means that States will not only be required to take all appropriate measures to fulfill their commitments and be accountable for relevant failures, but will also be expected to report back to ILO on progress and challenges in the development and implementation phases of the new treaty.

Conclusion

#MeToo has marked the beginning of a potentially transformative moment for societies across the world. Built on decades of legislative and collective efforts against gender discrimination and violence against women, the movement, driven by social media, has succeeded in providing short-term relief to many victims forsaken by justice.²⁹³ In spite of its achievements in repairing flaws and holes in the law temporarily and increasing awareness of gender-based violence, the long-lasting impact and pervasive cultural change of encompassing all women’s voices, regardless of their race, national origins, or social, economic, and educational backgrounds, cannot be accomplished if #MeToo fails to also become a human rights movement. Indeed, no matter how powerful it might have been so far as the first mass cam-

290. ILO, *SEXUAL HARASSMENT AT WORK*, (2017), https://www.ilo.org/wcmsp5/groups/public/—ed_norm/—declaration/documents/publication/wcms_decl_fs_96_en.pdf [<https://perma.cc/6ZQQ-XAL4>].

291. Lieberman, *supra* note 4.

292. *Id.*

293. Catharine A. MacKinnon, *Where #MeToo Came From, and Where It’s Going*, ATLANTIC (Mar. 24, 2019), <https://www.theatlantic.com/ideas/archive/2019/03/catharine-mackinnon-what-metoo-has-changed/585313/> [<https://perma.cc/PS8E-28CC>].

paign against sexual abuse, #MeToo is not an end in itself, but rather a call to action for governments to adopt or reform existing laws and to approve inclusive processes that can transform social norms underpinning gender-based violence.

In contrast to those who have criticized and warned against the inadequacies, costs, and disadvantages of employing the human rights rhetoric to pursue social justice,²⁹⁴ this Article supports the proposition that “[t]he legal breakthrough that defined sexual harassment as sex discrimination, a human-rights violation, was a crucial precondition for #MeToo.”²⁹⁵ It also contends that only a holistic human rights-based approach to violence against women can ensure that all States are accountable to respect, protect, and fulfill women’s rights, can establish a strong and coherent framework to governments and civil society for cooperative effort, and can include all women’s perspectives and needs in decision-making processes. Given the current backlash against liberty, tolerance, and parity in the world, a human rights-based approach to gender-based violence is even more necessary to secure that all past efforts have not been fruitless and that #MeToo’s momentum does not fade before significant change is made.

294. See generally DAVID KENNEDY, *THE DARK SIDES OF VIRTUE: REASSESSING INTERNATIONAL HUMANITARIANISM* (2004) (arguing that international humanitarianism has hidden dark sides).

295. MacKinnon, *supra* note 293.

