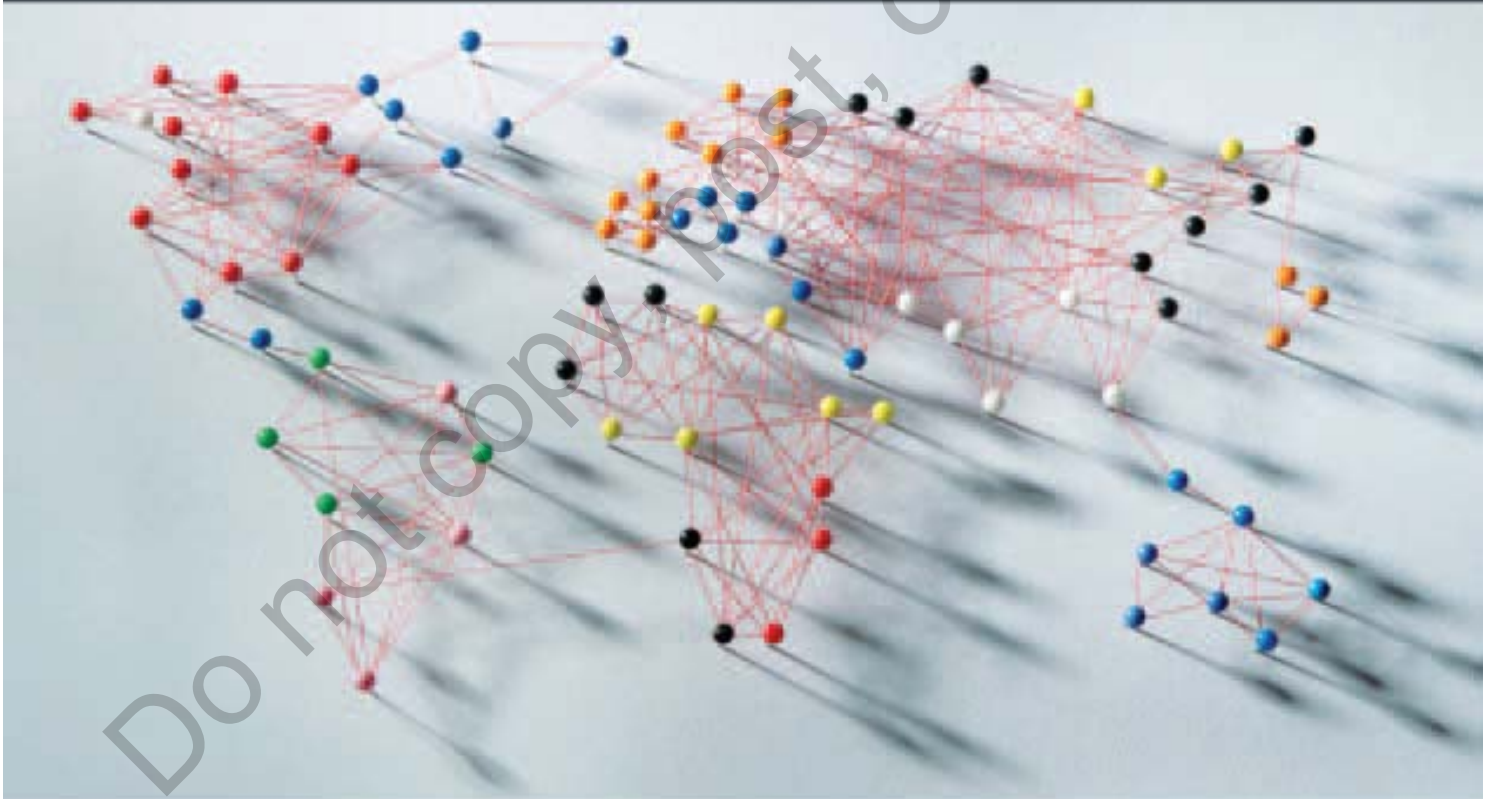


Comparative, International, and Global Justice

PERSPECTIVES FROM CRIMINOLOGY AND CRIMINAL JUSTICE



Cyndi Banks
James Baker

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VIOLENCE AGAINST WOMEN

Globally, research has revealed that violence against women is a universal, systemic phenomenon that takes many forms, including

- violence against women within the family (including domestic violence, harmful traditional practices such as female circumcision, marital rape, and honor crimes);
- violence against women in the community (including femicide, sexual violence by non-partners, sexual harassment and trafficking, and honor crimes);
- violence against women authorized and condoned by the state (including women in custody suffering violence, allowing domestic violence to be perpetrated on women through inadequate laws or poor implementation of laws, and forms of forced sterilization); and
- violence against women in armed conflict (including unlawful killings, torture and other cruel, inhuman, or degrading treatment or punishment, abductions, maiming and mutilation, forced recruitment of women combatants, rape, sexual slavery, sexual exploitation, arbitrary detention, forced prostitution). (United Nations 2006, 40–44)

These categories of violence are considered to be violence against women because these kinds of violence are experienced by women at least partly because they are women. In this chapter we focus on domestic violence, honor crimes, and violence against women in armed conflict, specifically examining rape.

Over the past twenty-five years, the approach of the international community to violence against women, as expressed through the United Nations, has changed from a focus on crime control and criminal justice to one based on human rights (Connors 2005, 22). For this reason, the UN Secretary-General's report *In-Depth Study of All Forms of Violence Against Women* (United Nations 2006) states that violence against women has been recognized internationally as a form of discrimination and therefore as a violation of human rights.

Within the human rights framework, the specific causes of such violence are to be found in systemic gender-based discrimination against women and other forms of subordination. Violence against women “is a manifestation of

the historically unequal power relations between women and men reflected in both public and private life.²¹ The identification of violence against women as a violation of human rights means that states have an obligation to address the causes of such violence and to prevent and respond to it (United Nations 2006). The association between violence against women and human rights has enabled women and the women's movement to make considerable advances in combating such violence. Nevertheless, domestic violence continues to be experienced by women worldwide.

All societies and cultures, countries and regions experience violence against women in a multitude of different forms shaped by factors that include race, economic status, ethnicity, class, age, sexual orientation, disability, nationality, religion, and culture (United Nations 2006). All studies have concluded that no one cause adequately accounts for violence against women. Such violence is the outcome of the convergence of a number of factors existing within power inequalities.

The scope of this chapter is limited to domestic violence (DV), honor crimes, and violence against women in armed conflict. Human trafficking, including the trafficking of women and girls is discussed in Chapter 11, and female circumcision, termed a harmful traditional practice in international rights discourse, is covered in Chapter 14.

Radical changes have occurred over a single generation in the fields of domestic violence and violence against women in armed conflict. These are reflected in changes in states' domestic laws and policies, in the internationalization of both topics through international Conventions and Declarations, and through the jurisprudence of international tribunals. As well, activists, feminists, and nongovernmental organizations (NGOs) have pursued multiple modes of advocacy on both topics. Strategies have been developed by activists and governments to overcome the challenges that remain in implementing change and in modes of responding to these forms of violence.

This chapter discusses the nature and incidence of domestic violence internationally and more specifically in a number of countries where research studies have revealed forms of domestic violence in the cultural and social context. Case studies of DV in Ghana, Russia, and Nicaragua are presented. What are the international responsibilities of states in the case of domestic violence, and what has been the response of states to international obligations that define and prohibit this

violence? We examine the development of an international framework of action on this issue, looking critically at the women-specific international agreements that prohibit forms of violence. We ask what mechanisms exist that might enable women to challenge states who refuse to act against domestic violence.

In many cultures, traditional gender roles and attitudes toward violence against women and domestic violence have not radically changed. A set of norms, established by custom and tradition, continues to sanction harmful practices against women and the discriminatory treatment of women. International instruments to which nearly all states have subscribed require that action be taken to eliminate harmful traditional practices and discrimination. How do countries manage the tension between traditional domestic practices and their international obligations?

Honor crimes, also known as honor killings, take place in countries where women are expected to conform to a set of behavioral norms designed to protect the honor of the family. When a woman is perceived to have violated these norms, such as by an act of adultery or sometimes by merely being seen in the company of a man who is not a relative, she can be punished by her husband, by a family member, or by the community. Punishment can include her murder. What is the context in which such crimes occur? How do the courts of a country react to such crimes—are they excused or punished like any other murder?

The field of violence against women in armed conflict has been marked by new jurisprudence from international tribunals that has examined the association between rape, torture, and crimes against humanity and how the law has developed in response to the widespread rape of women in situations of armed conflict, such as the conflict in the former Yugoslavia. New rules and norms have emerged from judgments about armed conflicts that have dramatically empowered women in such situations. This chapter charts these developments and looks to the future.

VIOLENCE AGAINST WOMEN AND DOMESTIC VIOLENCE: DEFINITIONS AND EXPLANATIONS

According to the World Health Organization (WHO; 2013), the term *violence against women*

comprises “many forms of violence, including violence by an intimate partner (intimate partner violence) and rape/sexual assault and other forms of sexual violence perpetrated by someone other than a partner (non-partner sexual violence), as well as female genital mutilation, honour killings and the trafficking of women.”

The term *intimate partner violence* (IPV) is often used interchangeably with the term *domestic violence*. It is explained by the WHO as referring to “any behavior within an intimate relationship that causes physical, psychological or sexual harm to those in the relationship.” This behavior can include acts of physical violence, sexual violence, emotional (psychological) abuse, and controlling behaviors. This term emerged in the late 1990s to correct the image of battering as limited to couples living together and heterosexuals. Formerly, in the 1970s the term *wife battering* was used but because it stresses physical violence tends to obscure other forms of violence such as psychological violence. The terms also refer only to married women and therefore fail to address violence in intimate relationships that do not constitute marriage (Ferraro 2006, 15; Walklate 1995, 88).

In this chapter we use the term *domestic violence* (DV) because it reflects the history and usage of the concept over time and because it is well established in criminology usage. It had become prominent by the 1980s and is used in the laws of many countries. While there exist many definitions of the term *domestic violence*, that which appears in the Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence, 2011 is used as the basis for the discussion of domestic violence in this chapter. It defines *domestic violence* as “all acts of physical, sexual, psychological or economic violence that occur within the family or domestic unit or between former or current spouses or partners, whether or not the perpetrator shares or has shared the same residence with the victim” (Article 3).

While the movement against violence against women has focused largely on physical as opposed to psychological and other forms of violence, women find the latter to be more damaging.² Physical violence is subject to legal interventions, but men who “denigrate their wives’ appearance, performance and abilities, flaunt marital infidelity, monitor and control their wives’ actions, and scare them with aggressive driving, angry verbal outbursts, or other frightening behaviors are

rarely subject to criminal sanctions” (Ferraro 2006, 16). In the United Kingdom, the Home Office published a Consultation Document in August 2014 titled *Strengthening the Law on Domestic Abuse* with the aim of offering better protection to victims. It asks whether there should be a change in the law by creating a specific offense that criminalizes coercive and controlling behavior in intimate relationships.

Research has shown that DV is “pervasive globally and that it is a major contributing factor to women’s ill-health” such as chronic pain, injury, suicide, depression, and a greater risk of adverse reproductive outcomes (WHO 2013, 36). It is also a risk factor for HIV infection. Women’s fear of crime has been found to be a key outcome of their experience of DV (Silvestri and Crowther-Dowey 2008, 86). Domestic violence knows no class, race, or cultural boundaries and is still largely kept private and dealt with as an internal affair within families. Although women and girls are not the only victims of DV, they overwhelmingly represent the majority of victims of this type of violence. Studies indicate that worldwide between 20 percent and 50 percent of women experience DV and that acts of DV are regularly accompanied by sexual coercion and take place within a context characterized by extreme jealousy and attempts to dominate and control women (Ellsberg, Winkvist, Pena, and Stenlund 2001, 547). The WHO found that overall, 35 percent of women worldwide have experienced either physical and/or sexual intimate partner violence or non-partner sexual violence and that most of this violence is intimate partner violence. Thus, worldwide almost one-third of all women who have been in a relationship have experienced physical and/or sexual violence by their intimate partner: in some regions of the world, 38 percent of women have experienced intimate partner violence (WHO 2013, 2). There are four main sources of conflict that lead to DV:

- men’s possessiveness and jealousy;
- men’s expectations about women’s domestic work;
- men’s belief in their right to punish “their” woman for perceived wrongdoing; and
- men believing they need to use violence to exercise or sustain their position of authority over a woman. (Dobash and Dobash 1992, 4)

Research in the United States and elsewhere indicates that the majority of DV survivors leave the perpetrator of the abuse, often after having attempted to overcome the violence through actions such as temporary separation, seeking outside interventions, and using self-defense. A woman's options in responding to DV are often constrained by circumstances such as community attitudes, availability of local resources to assist, and access to financial help. Thus, the specific circumstances of the woman must always be taken into account in trying to understand her response to acts of DV (Ellsberg et al. 2001, 547–48).

Why do women remain in abusive relationships? Women worldwide give similar reasons for remaining in abusive relationships. These reasons include “fear of reprisals, shame and self-blame, economic and emotional dependence on the abuser, concern for the children, lack of support from family and friends, and the hope that ‘he will change’” (Ellsberg et al. 2001, 548). Even when women do seek assistance, they often face institutional and personal barriers based on attitudes and perceptions about DV generally, and in some countries, on customs and traditions that condone a level of DV as a cultural norm. Feminist scholars regard the home as an unsafe place for women because it is structured and controlled by men, but women are aware of the dangers of the home and devise coping strategies to survive violence. Accordingly, remaining in an abusive relationship speaks to women's knowledge of the men in their lives (Walklate 1995, 91).

What have studies revealed about attitudes toward DV? Multiple factors affect attitudes toward DV against women, but gender and culture are powerful influences. Gender and culture intersect as cultural contexts weave together norms and gender relations that shape attitudes to violence. Other influences not discussed here include individual factors (the experience of witnessing violence, age, and development), organizational factors (sports, universities, religions), community factors (peer groups and informal social relations, religion), and societal factors (media, social movements, laws, criminal justice policies; Flood and Pease 2009, 137).

Attitudes toward DV are important because they influence and shape the perpetration of the violence, institutional and individual responses to it, and responses to it by the victim and others (Flood and Pease 2009, 125). Attitudes are formed by a wide range of social processes and

translate into a causal relationship to the perpetration of DV. Thus, men with traditional, misogynistic gender-role attitudes are more likely to engage in DV and to accept its use. Conversely, those who hold egalitarian gender attitudes will have less tolerance of DV. Men who sustain sexist, patriarchal, and/or sexually hostile attitudes are more likely to be associated with DV (p. 126). In other words, norms about gender and sexuality shape judgments on violence against women. Traditional and long-standing social and gender norms and beliefs, embedded in legal systems, legitimize the following norms and beliefs through, if necessary, using DV:

- In order to maintain the dominant role in households, men may have to physically discipline women.
- Men have uncontrollable sexual urges that must be satisfied when they so choose.
- Women are deceiving and malicious.
- Marriage gives a man the right to assume consent to sexual relations.
- Female victims of DV who are verbally aggressive or act in ways that are perceived to inspire their husband's jealousy should be judged more harshly.

A gender gap has been found to exist in violence against women: men are more likely than women to agree with beliefs supporting violence against women, perceive a smaller number of behaviors as violent, blame and fail to empathize with the victim, minimize the harm resulting from a violent assault, and regard violence against women as less serious (Flood and Pease 2009, 127). This gap, however, has been closing, and this is best shown in the United States where, since the 1970s, there has been “a dramatic and widespread liberalization of gender role attitudes” (p. 129).

The cultural context within which violence against women occurs is an important factor in attitudes toward DV. Attitudes vary across cultural groups and from one nation to another. For example, one U.S. study found that Southeast Asian respondents were more supportive of the use of violence and of male privilege than East Asian respondents (Flood and Pease 2009, 130). As the discussion of honor crimes (see “Violence Against Women: Honor Crimes,” later in this chapter) indicates, key elements in so-called

honor cultures include traditional attitudes to gender, a firm belief in male dominance, norms of female chastity, and the centrality of the role of the family. Accordingly, in such cultures, both men and women are more tolerant of men's violence toward women (p. 130).

However, attitudes shaped within one culture toward DV are dynamic and may change as people move from a more violence-prone cultural context to a less violent, more supportive one. Conversely, some immigrant groups may import their cultural norms into a new cultural context as occurs with honor crimes. Of course, within a culture, changes can also occur because cultures are not frozen in time or immutable

(Flood and Pease 2009, 130). In a number of traditional cultures such as the !Kung of Botswana, physical aggression and “any form of harsh treatment more severe than an occasional scolding” were strongly discouraged. Previously a hunter-gatherer society, the !Kung have now settled, but elements of their former way of life (e.g., living in close proximity to one's kin and living mostly out of doors in full view of others) continue to offer women protection from possible abuse by their husbands (Draper 1999, 58, 61–63).

Box 13.1 presents case studies of two contrasting cultures from the developing country of Papua New Guinea that reveal opposite attitudes to DV.

BOX 13.1 Wife Beating in Kaliai, Papua New Guinea

The Lusi-Kaliai people of the West New Britain Province, Papua New Guinea, say that wife-beating is common and village women (there are five villages) expect to be beaten by their husbands sometime during their marriage. Women strike their children and fight with their co-wives, and adults laugh with approval when older children hit those who are younger. In the past, marriages were between people of the same or neighboring villages, and wives lived only two or three hours from their natal families. Nowadays, wives may live days away from their families as young educated partners choose their partner from friends in high school or from another town they have visited. Domestic violence does not usually result in serious injury because onlookers intervene to prevent this from happening. Both men and women believe a husband is entitled to hit his wife for cause, for example, if she flirts with men, commits adultery, draws blood in punishing the children, fails to perform her domestic obligations, publicly shames or insults her husband, or fights with co-wives.

While both men and women agree that domestic violence is customary, there are clear limits that situationally define the level of abuse that is considered acceptable. The parameters surrounding abuse levels include the wife's perceived offense and the willingness of her kin to give her support. A woman's kin will usually intervene where the beating is prolonged, if the husband publicly exposes her genitals, kicks her like a dog, draws blood, or hits her with a weapon larger than a small stick. Women do not often fight back for fear of more violence or public shaming, but they may return to their relatives who may or may not accept them because leaving the marriage means returning the bride wealth they received on marriage. An abused woman may also make sorcery against her husband by collecting his hair or cigarette butts and using them in the sorcery to cause illness.

SOURCE: Counts 1999, 73.

Wape Men Don't Beat Their Wives

The Wape people live in the Sandaun Province of Papua New Guinea in a mountainous tropical forest environment where they live by slash and burn horticulture. The Wape number about ten thousand and live in villages. There are several factors that render Wape society less prone to domestic violence. In their society, emotions are to be kept under control, especially those that might result in violence. Accordingly, children who become aggressive toward others are left

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alone, and being aggressive in public brings only embarrassment. The Wape have been socialized toward nonviolence through fear of supernatural retribution by their ancestors if they do not control their anger. They believe that on death, the spirit returns to clan lands in the forest and is a frequent visitor to the village, where the spirit takes care of its descendants by sending illness and bad luck to enemies of the family.

As well as the power of the ancestors, the Wape tend to minimize gender differences. While they recognize the gender division of labor, they do not follow many of the gender rules found in many Papua New Guinea societies. For example, their boys and girls play together, menstruating mothers and daughters are not secluded in menstrual huts to avoid polluting the male but stay at home with their husbands and continue to eat food prepared by the wife, and boys are not secluded from their mothers and sisters for initiation into manhood. A critical factor in the absence of domestic violence is that the women produce most of the food. Typically the Wape consume sago and boiled greens, a diet sometimes supplemented with a little meat, but due to the prevalence of shotguns, the local game has all but been totally depleted. Consequently, a husband has become dependent on his wife for food. A diet of sago is deficient in protein and calories, and the Wape region suffers from poor soils. Thus, the nature of the diet may be a contributing factor in the domestic peace found among the Wape.

When a woman believes she is being abused, she will immediately move in with her relatives, stay for a week or more, and then return with them to her house. The husband may not seek to have her return. Women develop strong bonds. When a husband and wife begin to shout at each other, women in the village, a few carrying sticks, will go to the house until the wife comes outside to join them. Shaming is an important element in domestic violence. When domestic violence does occur, it may cause a wife to attempt suicide to shame her husband for humiliating or shaming her through anger or violence.

SOURCE: Mitchell 1999, 100.

Measuring Domestic Violence

The Conflict Tactics Scale (CTS) and Revised CTS are commonly used internationally to measure both lifetime and twelve months' prevalence of violence. The CTS lists behaviors used in resolving conflicts ranging from "discussed the issue calmly" to "used a knife or gun," and respondents are asked which of the specified behaviors they used (Ferraro 2006, 18). There are eighteen items that are intended to assess how interpersonal conflict was handled. One item is "verbal aggression" (from insults and swearing to throwing, smashing, hitting, or kicking something). It therefore measures both physical and psychological acts of violence but not attitudes toward violence (Straus, Hamby, Boney-McCoy, and Sugarman 1996, 283).

The CTS has been criticized on a number of grounds, some of which were addressed by the Revised version, but the introduction to the CTS is said to be problematic. Respondents are

introduced to the CTS as a survey document and informed that the items on the scales constitute a list of ways of "settling differences." This seems, to many, to be an inappropriate formulation because while some will consider violent experiences to be ways of settling differences, others will not. Thus, acts of aggression by men to women are often not preceded by any argument or disagreement that amounts to a precipitating factor (Dobash and Dobash 1998, 28).

Another issue with surveys generally on DV is the tendency in cross-cultural research to assume that concepts and meanings are universal. Consequently, a survey that has been developed in the United States and applied there is unproblematically translated into another language, administered in other countries, and then used to make "cross-cultural comparisons." A better approach is to first ask intended respondents for their definitions of what in the West is termed *domestic violence* because many countries do not have a term in local languages that describes

abuse as applied by English speakers to this form of aggression. Accurate and adequate translation and discovering the correct local terms for the subject of the survey are therefore critical issues in research among different cultures (Malley-Morrison 2004, 11). More generally, as noted by Madeline Fernández (2006, 258), specific cultural beliefs should be considered key elements in designing and implementing strategies to combat DV.

Theories Concerning Domestic Violence

In attempting to explain DV, numerous theories have been advanced, many of which see the roots of this violence in *patriarchy*, “a system of social structures and practices in which men dominate, oppress and exploit women” (quoted in Ferraro 2006, 78). In the traditional ideology of patriarchy, men are the providers and heads of households while women provide emotional support and domestic services, but the exact nature of patriarchy differs depending on culture and context (p, 79). Patriarchy as a system of domination and oppression has been embedded in social and cultural norms and in global and local economies and institutionalized in the law and in political structures. It is rooted in public discourse and thinking and while it limits women’s choices, it does not render women helpless or without power as the history and development of the women’s movement clearly shows (United Nations 2006).

Patriarchy is shaped by its history in a particular place and functions in different ways. It is a product of colonialism, armed conflict, and migration and is influenced by race, culture, ethnicity, class, and other factors. It is crucial, therefore, in any analysis of violence against women to contextualize women’s experience of such violence to not only reveal the absence of women’s power but also to make explicit how women exercise agency and control over their lives even in an environment of subordination. The relationship between violence against women and patriarchy was expressed in a decision of the South African Constitutional Court in 1999. The Court said that the Constitution of South Africa required the state to provide protection from DV and that “to the extent that it is systemic, pervasive and overwhelmingly gender-specific, domestic violence

both reflects and reinforces patriarchal domination, and does so in a particularly brutal form” (quoted in United Nations 2006, 30).

There is no single unified feminist perspective on DV, but the approach of all feminist research is to address the question “Why do men beat their wives?” (Bograd 1988, 13). Feminist approaches to DV may apply various principles.

- *Radical feminist principles* argue that gender-based violence can only be completely eliminated following a fundamental reorganization of international and state structures of power. Only by restructuring legal systems to include women’s concerns and interests will gender equality be achieved and violence against women eliminated (MacKinnon 1987, 40). Radical feminism is criticized for presuming that all men exercise the same power and control over their own lives as they have over women. Of all the feminist positions, radical feminism has been the most vocal on gender and violence (Walklate 1995, 40, 95).
- *Liberal feminist principles* work for political and civil equality within the existing social order and advocate for changes in the law that will bring about equality of rights and equal opportunity (Walklate 1995, 38). Liberal feminists are criticized for simply seeking to move toward the male standard (Dobash and Dobash 1992, 24).
- *Cultural feminist principles* apply a psychological approach and argue that women have their own moral perceptions and their own ways of thinking and believing. Much cultural feminism has developed out of the work of Carol Gilligan. Cultural feminists, also known as psychoanalytic feminists, have been criticized for concentrating exclusively on the workings of the psyche and ignoring societal factors such as race and class (Tong 1989, 157–172).
- *Postmodern feminist principles* criticize attempts to produce a “grand narrative” or to find universal truths and instead focus on identity and multiple viewpoints. They argue that knowledge is always partial and that the subject does not exist but rather is produced through discourse. They examine the multiple and shifting dimensions of women’s oppression

and reject the notion that it can be reduced to a single or universal set of factors (Kapur 2005, 103–4; Tong 1989, 222).

- *Third-world feminist principles* criticize what they regard as an overemphasis on gender to the detriment of other salient factors, such as race, diversity among women, colonialism, and the effects of globalism on women's economic status, lack of wealth, and the feminization of poverty (Mohanty 1988, 61).

Social learning theory, also known as *the cycle of violence*, argues, for example, that boys who witness the use of violence by one parent against another may come to believe that violence is an effective instrumental strategy (Flood and Pease 2009, 131). Studies of the effect on girls of witnessing such violence are inconclusive, however. In a wider sense, the association between witnessing violence by adults may also reflect the generational learning of such norms within a local community (p. 131). The individualistic focus of the cycle of violence model has been criticized for pathologizing behaviors within families and ignoring social, cultural, and economic factors. It suggests that behavior can be controlled and predicted so that DV can be eliminated without altering the basic social structures that support DV. Thus, "it does not draw public or scholarly attention to the multiple, intersecting factors that shape experiences within families and the behavior of youth" (Ferraro 2006, 112, 116). Attributing acts of DV solely to individual psychological factors overlooks the broader impact of systemic inequality and the social context of power relations (United Nations 2006, 29).

Studies of risk factors for DV have found that of forty-two markers of risk in female victims, only one, having witnessed violence between parents in childhood, was consistently correlated with being a victim of a male partner's violence³ (Heise 1998, 266). Other risk factors, including alcohol use, income, and education, were not found to be consistently related. Thus, for males, only two experiences have been identified as especially predictive of future spousal abuse: witnessing DV as a child and experiencing physical or sexual abuse as a child (but the effect is less strong in this case; p. 267). While it is not clear how being a witness to violence in childhood translates into abuse behavior in adulthood, social learning theory indicates that understanding the

instrumentality of violence as a means of achieving one's desires is a relevant factor (p. 268).

Sociological approaches to DV are not concerned with individual psychological factors but contend that social structural factors result in DV. Thus researchers might focus on class, education, race, or religion and through empirical studies examine how the family responds to the dynamics of society and how violence becomes a response to structural and social impacts. Studies may be quantitative, based largely on survey data,⁴ or qualitative where researchers will try to fully contextualize women's experience of DV (Bograd 1988, 18–19).

Heise (1998, 262) has put forward an *ecological approach* that proposes an "integrated, ecological framework for understanding the origins of gender-based violence." This conceives violence as "a multifaceted phenomenon grounded in an interplay among personal, situational, and sociocultural factors." It is argued that theories relying on a single factor that depend on individual or social/political explanations ignore the multiple levels involved in gender abuse. Feminists have been reluctant to take into account factors other than patriarchy in theorizing the causes of DV, but their disregard of social and individual factors has not explained why some men beat women and others do not, even when all men are impacted by cultures that assert male superiority and affirm their right to control women. While male dominance must be the cornerstone to any theory of DV, life experience suggests it cannot stand as the single explanatory factor.

The ecological approach builds on research on child abuse and neglect that have been applied to battering by a number of theorists (Heise 1998, 264). The ecological framework comprises four levels of analysis: (1) personal history factors, (2) the microsystem (the immediate context of the violence, often the family or intimate relationship), (3) the exosystem (comprising institutions and social structures such as the working environment, the neighborhood, social networks), (4) the macrosystem (the cultural perspective). Other theorists have identified a further level of analysis, the mesosystem, meaning the interplay between the aspects of a person's social environment, such as between family and extended family or group of peers, as well as linkages with institutions such as police, courts, and social services (p. 264).

Theoretical frameworks that attempt to explain domestic violence continue to be developed and

refined, and almost all argue that DV cannot be explained by a single cause. Rather, multiple intersecting factors are implicated in DV. This means that single interventions and responses to DV, such as treating it only as an issue of criminal conduct, are unlikely to be successful.

Violence Against Women: International Advocacy

In this section we look at how international advocacy placed violence against women on the international agenda and how ultimately, sustained efforts by academics and NGOs caused violence against women to be defined as a violation of women's human rights.

In the 1970s the issue of DV was little discussed in academia, there were no shelters for abused women, and police policies mandated they did not arrest men who assaulted their wives. Between 1939 and 1969 the *Journal of Marriage and the Family* contained not a single article on DV (Ferraro 2006, 19). Marital violence was considered a private matter. In the United Kingdom and the United States, advocacy on behalf of "battered women" resulted in the creation of shelters and refuges. In the United States, class action lawsuits played a major part in raising public awareness of the issue of DV and in securing police cooperation to mandatory arrests of perpetrators of abuse (Dobash and Dobash 1992, 76, 165–66). In 1976 a group of Western women organized the International Tribunal on Crimes Against Women in Belgium, gathering more than two thousand women from more than forty states. The meeting was planned to be a counterreaction to the 1975 UN Women's Conference in Mexico City. The Tribunal wanted to hear testimonies from women victims of violence. The Tribunal's outcomes included the formation of international networks of activists and the beginning of national initiatives on gender violence. Testimonies from women revealed that while violence against women differed across regions and states, it was nevertheless universal. Women blamed patriarchal structures⁵ and traditions for the violence against them. Following this event, women continued to organize their own events separate from established structures because they had little confidence in the efficacy of the UN Conference, which they considered politicized (Joachim 2003, 254–56).

In 1985 at the third UN Women's Conference in Nairobi, Kenya, governments were ready to identify violence against women as an obstacle to gender equality and as a priority issue in the coming decade. By 1985 women had learned how to exert political force and pressure and were able also to move beyond their geographical and political divergences in common cause. Violence against women "brought women to their strongest point of common experience" (Charlotte Bunch⁶ interview 1995, quoted in Joachim 2003, 256).

In December 1986 UN agencies organized a meeting of experts in Vienna on "Violence in the Family with Special Emphasis on Women." Experts in sociology, criminology, and law agreed to provide, for the first time, data on the causes and consequences of violence against women and strategies to counteract it. Statistical and other data and case studies, including from developing countries, revealed that violence had significant long-term effects on women, children, and societies. At this time the issue was clouded by the notion that the family unit was a private and sacred domain and victims remained silent because of guilt, shame, loyalty, or fear of repercussions. At this time there was a perception that DV was a "societal ill" and both the victim and the perpetrator were abnormal. The outcome of this thinking was to offer therapeutic or welfare solutions stressing mediation as a way to restore the harmony of the family unit. The expert group called instead for the intervention of the criminal justice system and for DV to be treated as any other crime. The experts believed that, apart from its practical effect, the prosecution of the perpetrator would send a message to all that violence was unacceptable and that the perpetrator would be held accountable. This view was a radical departure from previous therapy and welfare approaches and strategies (Joachim 2003, 257). The technical knowledge of the experts gave legitimacy to the strategy of criminalization, and following this meeting the UN commissioned the first comprehensive survey on *Violence Against Women in the Family* (Joachim 2003, 258).

In 1992 the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) Committee (see discussion of CEDAW, later in this chapter) adopted Recommendation 19 on Violence Against Women stating that violence against women constitutes a form of discrimination against women and that it reflects and perpetuates their subordination to men and calling upon states to eliminate violence in all spheres.

The 1993 World Conference on Human Rights in Vienna was the next major opportunity for the issue to be discussed. Prominent women's groups organized meetings prior to the Conference and formulated a broad definition of violence against women that included acts of violence (physical, emotional, or psychological) in the public and private spheres that are used against women because of their gender or sexual orientation. At this time a division between women's rights and human rights was maintained within the United Nations. It was argued this was justified because, unlike human rights violations, women's rights violations occurred exclusively in the domestic domain where the state had no right to intervene.

The claim that women's rights were also human rights was advanced in technical terms by Charlotte Bunch's article titled "Women's Rights as Human Rights," published in *Human Rights Quarterly* in 1990. Other activities by activist groups tried to show a linkage because it constituted a powerful frame for further international action and resonated with cultural groups worldwide. Attempts were made to present the issue to the media; for example, women staged an eighteen-hour Tribunal at the Conference and provided kits to the media. By this time the two leading human rights international NGOs, Human Rights Watch and Amnesty International, had established Women's Human Rights Programs and begun to investigate violations of women's rights perpetrated or condoned by states and their agencies. Women's groups lobbied states hard at the Conference, camping on corridors, offering improved drafts of texts, and generally planning their lobbying to ensure it would be effective (Joachim 2003, 259).

The 1993 World Conference on Human Rights in Vienna recognized that violence against women constitutes a severe violation of rights, whether it is perpetrated publicly or privately. The Conference called for the development of international, regional, and national programs to eliminate violence and discrimination against women. Shortly after the Conference ended, the UN General Assembly adopted the Declaration on the Elimination of All Forms of Violence Against Women, which condemns "any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivations of liberty, whether occurring

in public or private life." A special rapporteur on violence against women was also appointed to investigate the causes and consequences of the issue (Joachim 2003, 260).

The Fourth World Conference on Women in Beijing, 1995, declared that violence against women interferes with the enjoyment of women's human rights and fundamental freedoms. The platform for action required that states condemn violence against women and adopt policies to eliminate it. At the Conference the issue of violence against women emerged as a key item on the policy agenda for the international women movement and for international development (Hemmett 2004, 819).

This section has described the development trajectory of the notion of violence against women (VAW), beginning with its recognition as an international issue starting in the 1970s and concluding with its acceptance as a violation of women's human rights in 1993. The success of the campaign for the internationalization of violence against women was largely attributable to the linkage of women's rights and human rights that brought together two groups of social activists in a dynamic social movement: feminists and human rights activists from the academy and feminist advocates from NGOs. The following section explains and assesses progress made on the implementation of international action to combat violence against women.

Violence Against Women: International Action

The international advocacy against violence against women described in this section led to concrete international steps intended to combat such violence worldwide. In the next section, we examine in more detail particular international instruments that have established international norms concerning violence against women, including DV.

WOMEN'S RIGHTS AS HUMAN RIGHTS

Perhaps the most fundamental of strategies to end violence against women was arguing that women's rights were human rights (Ulrich 2000, 629). Historically, states and not persons were the subject of international law, and consequently

international human rights mandates were directed at the conduct of states. However, it is clear that states commit violence against women. For example, in Peru, military personnel systematically assaulted females, and in El Salvador, judges regularly dismissed prosecutions for rape on the basis that the rape victim provoked the crime (p. 636). If the traditional scope of international law is set aside, women can be protected against violence through international instruments. What are these international instruments, and what norms do they set?

The Universal Declaration of Human Rights 1948

This provides the norm or standard by which states are to judge the civil, political, cultural, economic, and social rights of their citizens, that is, their human rights. The Declaration does not expressly confer rights on women and uses the term *man* generically. It contains no actual protections for women and depicts them as wives and mothers through constant references to the family. Accordingly it reflects a masculinist conception of human rights protection, and women's rights were not addressed substantively until 1979 with the finalization of CEDAW.

Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)

CEDAW specifies that women's rights are human rights and aims at ending discrimination against women. The capacity of the CEDAW, as an international instrument, to eliminate violence against women through enforcement action against states is limited. While Article 17 sets up a monitoring and enforcement mechanism in the form of a Committee on the Elimination of Discrimination Against Women, it has limited effectiveness. Member-states are required to submit reports to the Committee within one year of ratification, and every four years afterward, on the progress and performance of their efforts to end discrimination. However, because CEDAW meets infrequently, there is always a large backlog of reports (Ulrich 2000, 644).

It was not until 1992 that CEDAW issued Recommendation No. 19 on Violence Against Women, stating that violence against women constitutes

a form of discrimination against women, that it reflects and perpetuates their subordination to men, and calling upon states to eliminate violence in all spheres. It also articulates a standard of due diligence that states should apply in protecting women effectively from such violence: "Under general international law and specific human rights covenants, states may also be responsible for private acts if they fail to act with due diligence to prevent violation of rights, or to investigate and punish acts of violence, and for providing compensation." This duty has been enunciated also by the Inter-American Commission on Human Rights in *Maria da Penha Maia Fernandes v. Brazil*, in which the Commission found that the failure of the state to prosecute and punish a DV perpetrator more than fifteen years after the start of an investigation was a violation of the state's international commitments and an indication that the state condoned such violence (United Nations 2006, 76).

Optional Protocol to the Convention on the Elimination of Discrimination Against Women

In 1999, an Optional Protocol to the Convention on the Elimination of Discrimination Against Women was adopted. It entered into force in December 2000. Following the model of other human rights instruments, the Protocol grants the right to individuals and groups to communicate directly to the Committee on the Elimination of Discrimination Against Women, where they claim to be victims of violations of any of the rights contained in the CEDAW. Domestic remedies must first be exhausted by the claimants except in cases where domestic remedies will be unreasonably prolonged or unlikely to bring effective relief (Article 4).

The state concerned in the claim has six months to submit written explanations, after which the Committee is to examine communications in closed session and then transmit its views to the parties. Within six months of receiving its view, the state party is to submit a response to the Committee with information on any action taken. Where there is evidence of "grave and systematic" violations of the CEDAW by a state, the Committee has the power to designate its members to conduct an inquiry, which can include a visit to the state, with the state's consent (Article

8). States have the right to opt out of Article 8 when ratifying the Protocol: as of August 2014, only six states had done so. A total of 105 states had ratified the Optional Protocol as of August 2014 (the United States and Nicaragua have not ratified, but Ghana and Russia have ratified).

Declaration on the Elimination of Violence Against Women 1993 (DEVAW)

DEVAW makes significant advances in the international campaign against violence against women. It recognizes that gender-based violence is the outcome of “historically unequal power relations between men and women, which has led to domination over and discrimination against women by men.” DEVAW rejects the notion that culture and tradition should permit violence against women and provides that states may be accountable for failing to protect their female citizens from violence. Nevertheless, it also qualifies the universality of human rights by insisting that “the significance of national and regional particularities and various historical, cultural and religious backgrounds must be borne in mind.”

The Fourth World Conference on Women’s Platform for Action, Beijing 1995⁷

This Conference formulated a comprehensive set of measures to combat violence against women. There are three strategic objectives:

- Adopt integrated measures to prevent and eliminate violence against women.
- Study the causes and consequences of that violence and the effectiveness of preventive measures.
- Eliminate trafficking in women and assist victims of violence resulting from prostitution and trafficking.

Each strategic objective is accompanied by a list of “Actions to Be Taken” comprising an effective agenda for change. The Actions in relation to violence against women are summarized as follows:

- Governments are to be responsible for policy and operational measures, including the development of a national policy on domestic violence. These measures would include strengthening and expanding domestic laws, preferably by enacting a separate law on domestic violence; creating and funding training programs on violence against women for judges, prosecutors, police, and medical and immigration officials; and designing a set of measures to sanction police and other state agents who engage in violence against women. Also, governments are to ensure that due diligence is exercised to investigate and prosecute cases of violence against women.
- Governments are expected to provide for victims of violence, to design training programs aimed at preventing violence, and to set up counseling and allied services for victims. All levels of government are required to provide shelters and support for victims and to conduct awareness campaigns so that victims know where assistance is available to them. Also, governments must adopt measures to modify the social and cultural patterns of conduct of men and women and to eliminate prejudices, customary practices, and all other practices based on the idea of the inferiority or superiority of either of the sexes and on stereotyped roles for men and women. Adequate resources must be provided for all these measures.
- Governments must conduct research, collect data, and compile statistics on the causes and consequences of violence; disseminate research studies; and provide support for women’s NGOs who are recognized as important actors in policy implementation.
- Governments must establish a state office responsible for combating violence against women that should collaborate with other government agencies and NGOs.

The first step in implementing the Platform of Action was that states were to submit National Plans of Action. Some states did not include violence against women in the National Plans because governments were free to decide the critical areas of concern to them within the overall Platform (Avdeyeva 2007, 885). The Commission on the Status of Women (CSW) is the UN agency responsible for monitoring the implementation of national

plans; it analyzes national reports, issues questionnaires to governments, and collects data. It is clear that implementation of the Platform is voluntary in the sense that there are no official sanctions that can be imposed for lack of action (p. 886). Nevertheless, in policy and operational terms, the Platform and the detailed Actions constitute a comprehensive strategy and set of measures to prevent, counter, and eliminate violence against women.

UNiTE to End Violence Against Women

In 2008 the UN Secretary-General initiated a campaign called UNiTE to End Violence Against Women, which designated violence a “global pandemic” and called violence against women “never acceptable, never excusable, never tolerable.” The campaign, now operated by UN Women, “aims to raise public awareness and increase political will and resources for preventing and ending all forms of violence against women and girls in all parts of the world.” Its goals include changes in domestic laws, action plans, data collection and analysis, and local campaigns through civil society groups.⁸

In the following section, we examine strategies and national responses to the international agenda to end violence against women. What form have these strategies taken, and have they proved to be successful? Have the global norms about violence against women been successfully disseminated worldwide, and what has been the outcome of publicizing them in countries? Strategic studies that take a global approach covering many countries can be contrasted with local country profiles of DV in Russia, Nicaragua, and Ghana that appear in the following section. Comparing the global and the local gives greater insight into progress on translating global norms about violence against women into a local context: has the global linked to the local, or have local practices and beliefs mediated or resisted global norms?

NATIONAL STRATEGIES TO COMBAT VIOLENCE AGAINST WOMEN

In the late 1980s, major U.S. foundations and funding agencies concerned with international development decided that violence against women should become a major funding priority

and began channeling funds to NGOs for that purpose (Hemmett 2004, 819). International NGOs commonly work with local NGOs to develop and implement advocacy, awareness, and training programs about DV and many other topics, with the local NGOs being responsible for translating concepts of human rights into local terms, in other words, remaking them in the vernacular (Merry 2006a, 1).

These programs, based on The Fourth World Conference on Women’s Platform for Action, Beijing 1995, are conducted in developing countries where local customs and traditions regulate and bring social order to daily life. Western transnational discourses about human rights and DV are often unknown, especially in rural areas, and as indicated in the country profile of Ghana (discussed later), often come into tension with local practices, values, and beliefs. For Ghana and other developing countries, DV is deeply embedded in systems of kinship, and implementing measures to combat DV is challenging, requires patience, demands attention to local practices, and represents a major social change in communities and families. It requires nothing less than a reshaping of “the rules people carry in their heads” (Merry 2006a, 2–3).

Transnational discourses about human rights for women usually meet local resistance in both developed and developing countries (e.g., see “Russian Federation” under “Country Profiles: Domestic Violence,” later in this chapter). While local values and beliefs must be examined for consistency with messages about human rights and adjustments made to framing and methodology, as Sally Engle Merry (2006a, 5) points out, it is nevertheless necessary that these discourses be framed in transnational rights terms because only then will funding be secured from international donor agencies.

For many Asian leaders and citizens, the Western discourse of women’s rights is subordinated to an Asian discourse that values and promotes culture, community, and the nation (Ong 1996, 111). This Asian focus on economic development of the nation, as well as community support for that focus, means that within Asia, gender issues may be situated within the context of a set of competing problems that affect developing countries generally, taking into account global inequalities. Thus, Asian leaders are likely to privilege economic and social responsibilities and place limits on the rights of individuals (p. 116). At the same

time, however, these discourses about community, family, and the nation commonly contain “the unspoken assumption of sexual inequality” (p. 121) and fix women within “webs of power relations.” In addition, it has been claimed that the Asian perspective on human rights that stresses “economic development over political rights and collective duties over individual freedoms, is largely a self-serving construct of Asian governments that has been widely rejected by Asian human rights activists” (Human Rights Watch/Asia, quoted in Ong 1996, 121).

Drawing on data from China, Indonesia, and Malaysia, Aihwa Ong gives examples of alternative strategies to the Western formulated approaches to violence against women. In these countries, struggles for human rights are usually framed in terms of community, class, religion, or nation and not in terms of gender (Ong 1996, 107). In Malaysia, Muslim feminists have formed Sisters in Islam,⁹ a civil society group that does not form alliances with Western feminists in pursuing women’s rights but instead engages local males in examining gender within the framework of Islamic morality. Thus, Ong calls for “a feminist sisterhood with men in interpreting and formulating public morality.” Sisters in Islam articulate issues within Islam by arguing with male Islamic scholars for an interpretation of Islam that rejects a narrow and anachronistic reading of the Qur’an rooted in yesterday in favor of a reading that creates a space for the renegotiation of gender roles and rights (pp. 131–32).

Some scholars assert that strategies perceived to be effective in the North, for example, in the United States, where resources are extensive and there is a significant history of campaigning against DV, are not appropriate for Africa, where resources are always lacking. This view cites the existence of a significant traditional sphere of life “much of which reinforces the subordinate position of women within the family” even though it is acknowledged to have been eroded by development (so that customary sanctions against DV are no longer effective) and severe economic constraints, like effective law enforcement and inadequate medical facilities (Bowman 2003, 474).

As Cynthia Bowman (2003) acknowledges, questions about this assertion might include why, in spite of virtually unlimited resources, the United States has failed to eliminate DV in the United States and why attitudes toward gender in the United States (“traditional” attitudes) have not

changed radically despite the focus on women and DV since the 1970s. In other words, the issue is not simply one of choice of strategy but *effective* strategies.¹⁰ The following discussion examines implementation of some of the strategies that have been employed and notes where questions have been raised about government responses to them.

Policy Strategies: Government Responses to Violence Against Women

The issue of government responsiveness to DV action has been examined cross-culturally by S. Laurel Weldon (2002) in an empirical study that asks how responsive governments have been in implementing a series of actions designed to prevent or combat violence against women. For her study, Weldon selected thirty-six countries that had been continuously democratic from 1974 to 1994. She examined the extent to which these thirty-six governments had implemented the following actions:

- Legal reform for domestic violence
- Legal reform for sexual assaults
- Establishment of, and government funding for, shelters, emergency housing, and crisis centers
- Training of judges, police, social workers, and other service providers and professionals dealing with violence against women through government-sponsored programs
- Public education/awareness programs about violence against women
- Establishment of a central coordinating government authority to coordinate national policies on violence against women

The objective of the study was to identify the measures to which governments had been most responsive.¹¹ This should not be confused with effectiveness; responsiveness does not necessarily imply effectiveness, which is an assessment of the impact of government actions in a particular field (Weldon 2002, 7).

The data showed that none of the thirty-six states, except Canada, had addressed any of these policy areas in 1974, but by 1984 France had addressed four areas, other industrialized countries (Sweden, United Kingdom) three areas, eight

countries (seven developed countries, including the United States and India) two areas, four countries (Costa Rica, Iceland, Luxembourg, Spain) one area, and the remaining twenty-one countries still had not addressed any areas of policy action.

By 1994 however, only four countries had failed to take any action (Botswana, Italy, Nauru, and Venezuela); two had addressed all seven areas (Australia and Canada); the United States had addressed six areas; five countries (including Costa Rica) had addressed five areas; four countries had addressed four areas (including the United Kingdom and India); seven had addressed three areas (including Bahamas, Barbados and Colombia); seven had addressed two areas (including Germany and Trinidad and Tobago); and five had addressed one area (including Japan, Jamaica, and Papua New Guinea; Weldon 2002, 31).

In seeking an explanation for these differing responses, Weldon examined a number of factors but found that no single factor or set of factors could satisfactorily explain the bulk of the variation in government response. Thus, while there was some correlation between the level of development of a country to government responsiveness, it was not determinative (Weldon 2002, 60).

Taking the same set of seven actions, Weldon examined whether the existence of social movements, such as women's movements, affected government responsiveness. She found that "strong, independently organized women's movements" improved government responsiveness to violence against women. Commonly, women's movements were the first to articulate the violence issue and urge for its recognition as a public problem that required government action. Women's movements work through "everyday politics"; that is, they challenge assumptions and discourse as a daily event and through constant dialogue; through cultural productions such as books, movies, magazines, street theater, and events like "speak outs" and Take Back the Night marches; and through making moral and political arguments to gain public support for their views and bring pressure to bear on policymakers (Weldon 2002, 69–70).

The importance of women's movements is highlighted by the finding that in all the countries included in the study, during the period 1974 to 1994 no government initiative on violence against women was adopted in the absence of a women's movement (Weldon 2002, 78). A key factor in this success was that the women's movement was autonomous; that is, it was not

attached to a political party, union, or other political institution (p. 80).

Weldon also found that, generally, women in government, elected or appointed (members of the legislature or government Ministers at Cabinet level), are unlikely to be able to increase responsiveness in governments on their own. However, if allied with an autonomous women's movement, their influence increases significantly as they have an external support base to counter resistance to the implementation of women-centered policies and actions (Weldon 2002, 97).

Does creating a woman-centered policy organization within government render a government more responsive to issues like violence against women? Almost all the countries included in Weldon's study had set up some kind of institution concerned with women's policy by 1994. They ranged from women's desks in low-ranking Ministries to complex collections of advisory bodies (Weldon 2002, 125). It is vital, however, that whatever its structure, the woman's policy body has the bureaucratic power to coordinate policy across sectors of government—it must be an effective agency. Important attributes of an effective women's policy body include

- adequate resources must be provided to it;
- it must have at least equal status with other government agencies or ministries;
- it must possess a degree of autonomy; and
- it must possess the institutional power to review and comment on government policy across sectors; it must be perceived as having "cross-cutting powers."

An example of the optimum model comes from Australia where, in 1976, women's offices were created in every department within government to analyze the gender impact of policies. Moreover, these offices were connected to a central office within the Office of the Prime Minister (Weldon 2002, 129).

When an active and autonomous women's movement is linked to effective, powerful women's policy machinery within government, the most comprehensive policy responses to women's concerns can be achieved. This was the case in both Canada and Australia (Weldon 2002, 156).

In a similar study (Htun and Weldon 2012, 548), the researchers extended the time frame for

the comparative policy analysis to 2005 from 1975 and to seventy countries. Again, their analysis shows that a strong autonomous feminist movement is a predictor of government responsiveness to addressing violence against women across all policy actions, that “autonomous organizing ensures that words become deeds,” and that organizing of this kind institutionalizes international norms about violence against women (p. 564).

Nongovernmental Watch Groups

These groups are able to address DV on a global level through identifying problems, publicizing issues, and pressuring governments. They may monitor and report abuses to the UN agencies. A good example of such a group is the International Women’s Rights Action Watch (IWRAP),¹² established in 1985 at the Third World Conference on Women in Nairobi, Kenya, to promote recognition of women’s human rights under the CEDAW. IWRAP undertakes advocacy for women’s human rights under all the international human rights treaties and is an international resource and communications center that serves activists, scholars, and organizations throughout the world. IWRAP pioneered shadow reporting (NGO participation in the review of a country that has ratified a treaty) to the CEDAW Committee and shadow reporting on women’s human rights to the Committee on Economic, Social and Cultural Rights.

Crime-Centered Approach: Britain and the United States

Recourse to the law as a strategy for responding to violence against women has followed different pathways in England and in the United States. In England, Home Office Circulars in 1986, 1990, and 2000 promoted the policing of DV to a more central position within the policing function, required that clear strategies for DV be developed, urged a presumption of arrest where an offense had been committed, and encouraged the setting up of specialist units to deal with incidents of DV (Silvestri and Crowther-Dowey 2008, 93). This meant that the legal authority of the police could be applied in the private home and in public spaces. Thus, for the first time, there was a “presumption to arrest” for acts of DV (Walklate 2008, 41). Previously, the police had been very

reluctant to intervene in what they considered to be a civil matter and had described shelters for abused women as likely to precipitate the breakup of families and DV cases as “very time consuming and a distraction to the overall police effort” (quoted in Dobash and Dobash 1992, 151).

Nevertheless, there remains within U.K. police culture an underlying belief that DV is a domestic family matter, more appropriately dealt with under civil law procedures (Silvestri and Crowther-Dowey 2008, 94), despite evidence that DV constitutes nearly one-quarter of all recorded crime in England and Wales and the police receive a call for domestic assistance every minute (Silvestri and Crowther-Dowey 2008, 89). Also in the United Kingdom, DV attrition within the criminal justice process results in DV cases being excluded. Exclusion is justified by a number of reasons, including

- when police decide not to proceed,
- when police refuse to refer a case to the Crown Prosecution Service (CPS),
- when the CPS itself decides not to proceed or reduces the charge to a less serious one, and
- when the court dismisses the case or finds the accused not guilty.

The dropping out of cases for these reasons has been a cause of growing concern, especially when cases are not proceeded with because police have decided not to prosecute in the exercise of their wide discretion.

In the United States the strength of the movement against DV was such that arrest for DV became mandatory despite studies that revealed this approach to be problematic.¹³ For example, the short-term gain of having an offender arrested could result in long-term losses in that the violence worsened. This was especially so in the case of minority women who also had to depend on the criminal justice system, but this continued to be the policy notwithstanding studies showing that arrest worked more effectively when combined with other community-based resources like shelters and crisis centers (Walklate 2008, 41). In addition, there is evidence that women who fight back in DV situations are also being arrested. This has resulted in calls for action to be taken to stem the increase in the level of female violence (p. 43).

Other perspectives on a crime-centered approach see it as ineffective when the intervention is against the wishes of the woman and where counter-charging (i.e., bringing charges against the victim if there is any evidence of retaliatory violence or self-defense) has become common and operates as a deterrent to reporting offenses at all. In addition, it is asserted that there is an absence of evidence to show that reliance on the criminal justice system has resulted in better outcomes for the woman in terms of personal safety or in diminished violence by men (Snider 1998, 2). The legacy of a DV policy dominated by criminalization and by constituencies of professionals within the justice system with an interest in perpetuating criminalization is that DV is perceived to be only about punishment (Snider 1998, 3, 9). Arguing against criminalizing DV as the dominant anti-DV strategy, scholars have pointed out that dependence on the criminal justice system alone runs the risk of ignoring the existence of legal, social, and political structures that are the foundation of male privilege. It is contended that DV should be located in these wider and deeper social structures and not in the individual pathologies of perpetrators and victims and in the details and complexity of procedures and practices (Walklate 2008, 51).

Feminists working in criminology and law “have long acknowledged that deep-seated social problems such as domestic assault can only be ameliorated by ideological and structural change” (Snider 1998, 2). Lauren Snider suggests that this lengthy process has been marginalized by the policy of criminalization (p. 2). Valorizing criminalization also has the effect of diverting funding away from shelters and programs designed to assist victims of DV (p. 2).

Australian researchers have found that the impact of legal protection is variable according to factors such as the severity of the violence experienced and whether or not the woman has asked for police help or for police and court assistance. Researchers have demonstrated that an approach that established an automatic link between protection orders and police intervention is most effective at securing protection against violence (Walklate 2008, 42). The development of specialist units to handle DV and provide victim support has raised questions in England about the degree of understanding of ethnic women’s needs and whether or not this approach militates against victim empowerment.

In England, establishing fast-track DV courts has been evaluated and found to be an effective strategy because it has improved victim confidence in the justice system and facilitated advocacy and information sharing. However, half of the victims appearing in these courts retract their statements and withdraw their support from the prosecution (Walklate 2008, 43).

DISSEMINATION AND DIFFUSION OF GLOBAL NORMS ON VIOLENCE AGAINST WOMEN

How successfully have international and national NGOs, UN and international agencies, and development agencies of developed countries disseminated and diffused these global norms about ceasing DV and violence against women in all its forms, and what has been their impact?

Scholars have documented the impact of global norms, usually determined under international agreements in a number of policy areas, for example, human rights, democracy, women’s political participation and women’s voting rights, female circumcision, and gender mainstreaming (Pierotti 2013, 241). Essentially, diffusing norms about violence against women means linking the global and the local, and in this task the growth in the number of international NGOs focused on women and violence has been very influential. Through a multitude of methods, “pathways of influence” have affected both national policies and individual attitudes. These methods include

- donor-funded programs, NGO campaigns (awareness, education, and outreach), and publications;
- media coverage;
- public discussions (conferences, seminars, and the like);
- inclusion in school curricula; and
- dialogue in various forms. (Pierotti 2013, 242)

The outcome of these activities in terms of national policy addressing DV is that since 1975, 119 countries have enacted about 260 legal changes in the form of new laws, changes to laws, decrees, and constitutional changes concerning DV. Almost 95 percent of these changes have

come about since the 1995 Beijing Conference. This suggests the development of a trend as national governments responded to the pressures generated on this subject and gradually institutionalized violence against women as a violation of human rights (Pierotti 2013, 244). While this outcome represents changes in government policies, the question arises whether individual attitudes, especially of non-elite women who are not activists, have also been influenced.

Using data from fifty-two Demographic and Health Survey (DHS) data sets—two from each of twenty-six countries, including Ghana, collected in two surveys, the first in early to mid-2000 and the second in mid- to late 2000 (usually five years apart, for Ghana 2003 and 2008)—Pierotti (2013, 248) analyzed responses to the same five questions used in the Ghana DHS, namely, whether a husband is justified in hitting or beating his wife in the following circumstances:

- If she goes out without telling him
- If she neglects the children
- If she argues with him
- If she refuses to have sex with him
- If she burns the food

Across the fifty-two sets of data, an average of 51 percent of respondents rejected all the circumstances indicated in the five questions/scenarios. There were some exceptions (i.e., Indonesia, Jordan, and Madagascar) where, for reasons yet to be explained, there was a significant decrease in the percentage of men and women rejecting DV. In twenty-three countries, there was a significant increase in the proportion of women rejecting violence: twelve countries revealed a more than 10 percentage point increase in the rejection rate, with Nigeria showing the largest of 19 percent and Zambia, Kenya, Rwanda, and Armenia showing a 15 percent increase. The results did not vary significantly for married and never-married women where both were surveyed in a country. The analysis shows a similar trend for men, with twelve countries showing a significant increase in the percentage of men rejecting DV. In the Dominican Republic, there was no significant change for men and, as in the case of women, Indonesia and Jordan showed a significant decrease in the percentage of men rejecting DV (Pierotti 2013, 252–53).

Living in an urban area also impacted the results because in twenty-two countries, women living in urban areas had higher odds of rejecting DV. In all but four countries, women who had attended high school had much higher odds of rejecting DV with an even larger effect for further education beyond high school. Media access was associated with higher odds of rejection in fourteen countries. Older women were more likely to reject DV in seventeen countries. In fourteen of the twenty countries that did not restrict the sample based on marital status, never-married women were more likely than married women to reject DV.

Women in marriages with husbands who had more education were more likely to reject DV, and married women who had more education than their spouses were less likely to reject DV. In almost all countries, a husband's level of education had a positive association with his wife's attitudes about DV, independent of her own educational level (Pierotti 2013, 254).

In summary, after only five years, a significantly larger percentage of women in twenty-three countries, including Ghana, rejected DV. As noted earlier, some changes were very rapid, for example, in Nigeria, where the percentage of women who rejected DV rose from 33 percent in 2003 to 52 percent in 2008. The rapidity of change in only five years cannot be explained by socioeconomic or demographic shifts, both of which customarily occur over generations (Pierotti 2013, 260). Consequently, the results appear to provide evidence of rapid cultural diffusion in terms of attitudes to DV. Since the study was concerned with the diffusion of norms on DV, it is arguable that the new knowledge gained by the respondents about DV is evidence that diffusion has been effective.

COUNTRY PROFILES: DOMESTIC VIOLENCE

Having considered the nature and scope of violence against women, including DV, and the international advocacy and action that has occurred to recognize this violence as a worldwide problem and to find solutions, we now present detailed country profiles of DV. The countries selected are Russia, Nicaragua, and Ghana: one developed and two developing states all with very different cultures. The country profiles situate

DV within a local framework that contextualizes DV by reference to social, cultural, and economic factors. In this way, a fuller understanding is gained concerning how and why DV continues to be an issue in these countries and the factors that continue to sustain DV. These studies can be contrasted with those noted earlier which have examined global strategies.

Russian Federation

In Russia, violence against women was first emphasized by North American feminist activists employing the language of women's human rights. Prior to this, family violence generally was not discussed publicly; this was in line with the communist ideology of ignoring the negative aspects of the lives of Soviet citizens. State organizations, however, gave some attention to problems that might contribute to DV, such as alcoholism (Fastenko and Timofeeva 2004, 111). In Russia, feminist theories trace DV in Russia to a set of gendered beliefs from the past known as *Domostroi*¹⁴ that prescribe a way of life in which women are to devote themselves to domestic functions and duties while men have authority to apply discipline if these duties are perceived to be performed inadequately.

After the 1917 Communist revolution, women benefited to some extent from the socialist principle that the cultural and economic progress of a country was linked to the status of women. The Soviet Constitution proclaimed the equality of men and women and provided for maternity care, legal abortion, child care, and the right to a divorce, but in practical terms, while this gave women the capacity to work full-time, they were expected to continue to perform their domestic duties in addition to engaging in paid employment (Fastenko and Timofeeva 2004, 113).

Prior to 1991, DV had been somewhat regulated criminally under the rubric of the crime of "hooliganism," a crime constituted by acts that violated public order and revealed a clear disrespect for society. It has been estimated that up to 40 percent of crimes charged as hooliganism in fact comprised instances of DV. Soviet police commonly ignored DV, but extreme cases could be treated as a "family scandal" and police might then intervene with the aim of reconciliation.

The Soviet housing system was also problematic for abused women because occupation was regulated by the state through a permit system

and there was no property ownership. This meant that abused women were often forced to live with their husbands who held the residential permit, or they could be forced to share living space with violent men with whom they had no relationship (J. E. Johnson 2009, 24).

In the Soviet era, women's organizations in government comprised a Women's Department within the Communist Party, chiefly concerned with recruiting women into the party, and women's councils, established during the Khrushchev regime, intended to assist women in reconciling their work and home lives. In both cases, the state decided upon the goals and mission of the organizations (J. E. Johnson 2009, 26). Even after the end of the Soviet era, women's organizations emerged only slowly until 1991, when the First Independent Women's Forum met. By 1992, two hundred organizations were registered, and by 1998, there were six hundred registered. Nevertheless, these organizations remain small and unable to exercise significant influence (p. 40).

During the Soviet time, DV was not thought of as a distinct structural problem: the prevailing traditional gender ideology perceived women's role to be mothers with responsibility to promote motherhood and marriage. Gender, as social construct, remained undiscovered and unexamined. Teachers and parents promoted traditional physiological norms of weakness in women and strength in men, of women as caretakers and men as providers (J. E. Johnson 2009, 25). Olga Voronina (2009, 253) agrees that biological determinism, and not gender, has been the dominant national ideology expressed in literature, textbooks, the media, and official ideology, "all of which assign the role of soldier and defender of the fatherland to men and the role of mother, naturally, to women." After the fall of the Soviet Union, funding from the United States, the European Union, and groups of European countries generated numerous DV programs such as those that funded shelters and crisis centers for abused women. Awareness campaigns and training of law enforcement promoted policy change to recognize the existence of DV and to design measures to counter it. By 2004, some two hundred women's organizations throughout Russia provided hotline counseling, some provided shelter for DV survivors, and others conducted awareness campaigns (J. E. Johnson 2009, 2). The promotion of anti-DV measures in Russia was spurred by a new global feminism that overcame divisions between

feminists from the North and the South and was based on “norms of inclusivity” that recognized feminists could sustain consensus even with dissent (p. 11). From the outset, DV activism in Russia drew on transnational norms and was linked to transnational feminist activism but was defined by existing Russian values and was referred to as “violence in the family” (p. 100).

From 1990 on, democracy assistance programs poured funds into the post-Soviet countries to support the new democracy. Between 1990 and 2002, Russia received some \$860 million in this form of assistance from the United States and a further 800 million euros from the European Union. It is believed that about 10 percent of this funding went to civil society NGOs (J. E. Johnson 2009, 46). In order to access this funding, many women’s organizations became formal NGOs despite warnings that Soviet history showed that the state had always co-opted social organizations.

The first women’s organizations to address DV were formed between 1993 and 1995 in Moscow and St. Petersburg. Moscow-based ANNA (No to Violence Association)¹⁵ began as a one person hotline and was registered with the authorities in 1995. The St. Petersburg Crisis Center began work in 1991, opened officially in 1994, and began to operate a regular hotline in 1995. Interest expanded to the regions, and activists established a scheme to facilitate the provision of lawyers to victims of sexual violence (J. E. Johnson 2009, 49). Crisis centers were established relatively easily and cheaply but could not expand to include shelters for abused women because of lack of resources and oppressive post-Soviet regulations (p. 52). Most centers received public funding and were heavily regulated while also claiming to be NGOs to funding donors (p. 55). By 2001, crisis centers could claim to be a success (p. 57).

The events of 9/11 caused international donors to cease funding post-communist civil society. As a result, by 2002, USAID, which had been funding crisis centers, ceased to do so, and by 2003, there was much less interest worldwide in funding women’s issues, other than trafficking, which became the new donor focus in Russia (J. E. Johnson 2009, 60). Organizations funded by the government, such as twenty-two crisis centers in 2005, continued to survive, but the autonomous organizations that relied on overseas funding support began to close down (p. 64) or seek state funding or associate themselves with universities.

DV is prevalent in Russia, which still has no discrete legislation dealing with DV.¹⁶ One survey found that one-half of married women respondents reported at least one incident involving physical violence (e.g., striking, pushing, shaking, arm-twisting) from their present husbands (J. E. Johnson 2009, 14). According to a 1998 report by the Ministry of Internal Affairs, violence against women occurs in one out of every four families (Fastenko and Timofeeva 2004, 116). Russia does not publish any official statistics on DV. Another survey conducted in 1998 in a small Russian town found that 99 percent of respondents believed that male aggression was a natural attribute of masculinity. Women excused men’s aggression by reference to various factors such as the negative influences of the school and the street, “tough times while serving in the army,” and “unbearable stress of economic burden” (p. 114).

After 1991, Russian police continued to ignore DV incidents and because more people had begun to live more privately, this gave police even less justification to intervene. As well, police argued that intervening in DV would violate the Russian Constitution’s right to privacy or that DV should be dealt with by way of a private prosecution. The decline in state services after the Soviet era meant that women suffered more because it was estimated that the social service system could meet only 7 percent of demand, including that resulting from DV (J. E. Johnson 2009, 31). According to Janet Johnson, post-Soviet society is characterized by “gender neotraditionalism,” an ideology that “draws upon pre- and anti-Soviet beliefs and practices advocating women’s roles as mothers and homemakers” (p. 38). This was seen in action in the 1990s when women were called upon to give up their jobs and return to the home and in the widespread rejection of feminism and the concept of gender. Under communism, feminism had been regarded as anti-male, and even the notion that gender was a social construct was resisted by most women, who believed that men and women had essential roles (p. 39). Voronina (2009, 252) agrees that Russian popular culture sees feminism as posing “a threat to Russian national values” and believes the media “creates the image of feminists as masculinized, sexually unsatisfied, and/or morally degraded women whose core values are rights, power over men, and money—not family and children, which a “normal woman is expected to prefer.”

Tensions Between the Local and the Global

As noted earlier, with financial assistance from overseas, women's crisis centers began to be established beginning in 1991. How was the Western conception and model of a crisis center received in Russia? In the United States and Western Europe, campaigns against DV had led to the development of women's crisis centers, the first of which were established by grassroots survivors of that violence. Providing shelters for women—secret safe places where women victims of domestic violence could take temporary shelter—was a key element of campaigning. By the late 1980s and early 1990s, the international women's movement had globalized the issue of DV so that it constituted a “common advocacy position” of both the women's and the human rights movements (Hemment 2004, 818). By the late 1990s, the United Nations and its organizations and international foundations and NGOs were working with women's groups in what were “determinedly transnational” campaigns (p. 818). It was assumed, therefore, that elements of strategies evolved to counter DV (such as crisis centers and shelters) would migrate worldwide.

Activist Russian women, after meeting with Western feminists in the early 1990s, set up the first Russian women's shelters in Moscow and St. Petersburg and then in provincial cities. Only a minority of Russian women's groups described themselves as feminist, and they were located in institutes and universities and composed of elite, highly educated women who were familiar with Western feminist literature. Their education, language skills, and familiarity with Western thinking made them a good fit for the representatives of the donor agencies (Hemment 2004, 822), and the crisis centers they established were enthusiastically received by the donor agencies. However, these elite groups did not enjoy broad support within Russia, and both men and women regarded them with “suspicion and hostility especially if they identified as feminist” (p. 822).

Tensions became apparent between local concerns, perceptions, and values and the beliefs held by international advocacy and activist groups promoting women's needs. In Russia, while elite women supported such interventions, the work of crisis centers was generally not well understood and Western models of such centers failed to understand and respond to local knowledge and

local activist priorities (Hemment 2004, 816). The work of Russian women activists at the local level was shaped by “a distinct history and a distinct set of gender alignments.” These included a local context of extreme economic dislocation as the free market took over from the planned economy (p. 817). Deep cuts in social security, changes in employment, and cuts in health care disproportionately affected women and so informed their perception of needs.

Julie Hemment found that Russian women with violent spouses were unlikely to regard their experience as gendered violence and therefore seek assistance from crisis centers. The Western conception of a crisis center assumes that women are economically dependent on men and trapped in the private sphere, but this is not true for Russian women, who were welcomed into the workforce and enjoyed only notional formal equality guaranteed by the paternalistic state. Women's concerns usually centered on chronic shortages of housing that required extended families to live communally. Thus, domestic conflict was dominated by tension caused by overcrowding, alcoholism, and personal conflicts (Hemment 2004, 823). However, one study conducted in St. Petersburg found that living communally significantly reduced the risk of the woman experiencing DV (Stickley, Timofeeva, and Sparen 2008, 483). Hence, the notion of a crisis center was inconsistent with Soviet and later Russian lifestyles. For one thing, the Western conception is that a stay in a crisis center is temporary until a woman moves on elsewhere. In Russia, there is often nowhere else to move on to. Also, in practical terms, it was often difficult to secure accommodation for a crisis center from the local authority (Hemment 2004, 824).

Following the promotion of women's programs by NGOs and Russian activists, Russian crisis centers have been created based on what Russian women call the “international model” using telephone hotlines and individual consultations (Hemment 2004, 825). In her research from 1995 to 1997, Hemment found that the crisis that occupied women's minds was not DV but that of existing in the larger Russian society. She argues that women did not feel any connection to DV as an issue as one they could coalesce around because it was considered to be too private a matter (p. 826). Russian women argued that violence was much less of a problem in Russia than economic violence and discrimination, which touched every woman daily (p. 827).

Unemployment, in particular, was profoundly destabilizing and regarded as an attack on one's dignity and very identity in a society that had enjoyed full employment (p. 827). Thus, in the early 1990s, women's groups in Russia were survival mechanisms to cope with economic turmoil and chaos. The outcome of this local view was that many crisis centers had broad mandates to respond to local needs that focused on economic issues and alcoholism and only to a minor extent on DV. The international model of the crisis center was therefore appropriated and adapted to satisfy local needs and concerns, and material needs and issues, and not DV, dominated discussions (pp. 828, 835).

Cultural, social, and economic constraints therefore continue to impede progress in combating DV in Russia. The Russian government provides little support in policy or practical terms. This is revealed by the absence of adequate legislation, few programs countering abuse, and no public reports indicating the scale of DV in the country. As well, despite the assistance Russia has received on DV issues from the West in funding, knowledge, and human resources, in 2007, Russia reported to the CEDAW Committee that government support was being provided for only fifty-five shelters for victims of DV across the country. Much of the work on DV is conducted by NGOs, both local and international. Here, the government has adopted a policy aimed at replacing the flow of foreign funds into local Russian NGOs and gaining control of NGO agendas by providing local funding. The government has also effectively reduced the number of international NGOs operating in Russia by setting up complicated procedures for the registration of foreign-based NGOs (Avdeyeva 2007, 895–96).

While violence against women has become an issue in international development and a benchmark for gauging the level of "civilization" of a state, Russian progress on countering DV remains unmoving and far distant from progress achieved in the West. In fact it has backtracked from formal gender equality under the Soviet system to now "uncivilized" gender relations (Hemment 2004, 835).

Nicaragua

Since gaining independence from Spain in 1821, Nicaragua has suffered from political instability, internal conflicts, and foreign interventions.

Poverty, high levels of unemployment, and a general distrust of government are among the legacies of the past (Powell 2004, 382). Nicaragua suffered through many years of violence in the 1980s, when it was governed by the revolutionary Sandinista Party. The Sandinistas did, however, promote gender equity as a goal. As a result, women were encouraged to obtain education and involve themselves in the development of the country. In the 1990s, governmental and nongovernmental services to women dramatically increased, and national media campaigns against violence were conducted. Research studies showed that women's feelings of self-worth and their capacity to deal with DV had been strengthened by these actions.

Across Latin America, scholars and women's activists share the theoretical perspective that violence against women occurs in a context where women are excluded from power structures and suffer social, political, economic, and cultural inequalities (Grose and Grabe 2014, 2). Where women accrue an increase in power, such as occurs when they age, they experience reduced levels of physical and psychological violence (p. 4). Concerning the empowering effect of education for women, studies in Peru and India have found that education must reach the high school level or above to have a protective value in terms of domestic abuse. In relation to employment, research in Mexico and Peru has shown that women who are employed experience more physical violence than those who are not employed. Studies from Peru and India show that women who earn more money than a man, contribute more toward household costs, have a higher level job than the man, or have a higher level of education experience higher levels of physical violence compared with other women (p. 5).

Nicaragua is a poor country—in 2013 it ranked 132 on the UN Human Development Index.¹⁷ Housing in Nicaragua for more than half the population comprises a one-room house, and in urban areas most families comprise between six and eight persons. In rural areas it is not uncommon to find that families run from between six and fifteen persons. Typically, family structures are patriarchal with the father being the principal provider and decision maker for the family, but 30 percent of households are headed by single mothers and 50 percent of men are unemployed (Powell 2004, 387, 389).

Gender and Culture

In Nicaragua, DV has been recognized as pervasive and as being sustained by traditional Hispanic cultural norms that expect women to submit to the authority of male partners, that condone the use of violence as a method of disciplining women, and that apply traditional gender roles (Powell 2004, 383). The concept of *machismo* as applied to Latino males through inherited Hispanic culture, describes a type of hypermasculinity in men. According to a Mexican definition that focuses on its adverse aspects, *machismo* means the repudiation of virtues considered to be “feminine,” including unselfishness, kindness, and truthfulness. *Machismo* endorses attributes of suspicion, envy, malice, and brutality, the willingness to fight to protect a manly image, and a drunken, sexually hot-blooded womanizer (p. 384). *Machismo* also has a positive aspect in that it conceives of the man as head of the household of an extended family charged with the protection, nurturing, and care necessary to implement that duty. It includes notions of honor and pride and obligation to the family. The macho male provides well for his family; is gracious, respectful, and loving; and is well-respected in the community (Malley-Morrison and Hines 2004, 152).

The female counterpart to *machismo* among Latinas is *marianismo*. This concept describes the emulation of the moral integrity and spiritual strength of the Virgin Mary and is manifested as a woman’s self-sacrifice for her family. It perceives a woman as capable of enduring all the suffering inflicted by men and therefore able to tolerate whatever pain may be associated with her role as the caretaker of the family. As a mother, *marianismo* affords a woman a degree of respect, but it may also operate to make wives reluctant to leave an abusive relationship because women are expected to suffer quietly in obedience to their husbands (Malley-Morrison and Hines 2004, 153).

Domestic Violence Initiatives

Since the mid-1990s, government and civil society have adopted strategies to counter DV in Nicaragua with more than one hundred resource centers having been established for abused women that provide education on DV and conduct violence prevention programs. Centers are usually run by local women’s organizations linked together in a “women against violence” network.

Police stations dedicated to the needs of women and children have also been set up in major cities. In 1995, intrafamily violence was declared a public health issue after surveys revealed the extent of DV and violence within the family generally (Powell 2004, 388).

These government and civil society initiatives have resulted in an increase in the number of women reporting violence to the police (up from three thousand in 1995 to more than eight thousand in 1997), but the criminal justice system settles or dismisses the majority of cases of abuse (Ellsberg et al. 2001, 548). For example, the León 1995 study discussed below revealed that one abused woman’s complaint to the police was not only ignored by police, but police provided her husband with a ride back home where he beat her again that same night (p. 553).

In a study conducted in 1995, in León, the second largest city in Nicaragua with a population of about two hundred thousand, 488 women between the ages of fifteen and forty-nine were surveyed using both quantitative and qualitative methods (Ellsberg et al. 2001, 551). Out of a total of 360 women who had ever been married or had partners in a common law union, 52 percent had experienced DV by a partner and 27 percent reported DV in the twelve months preceding the study. Women who had experienced DV were more likely to live in the urban area, to be poor, and to have more than four children than women not experiencing any DV. The most commonly adopted strategy used to counter DV was physical or verbal self-defense, employed by 84 percent of the abused women. Among this group, 78 percent reported that the violence ceased as a result, at least temporarily.

Of the abused women, 41 percent had separated temporarily from their partner due to the DV, and only 20 percent had attempted to obtain help outside the home. Thirty-eight percent of the abused women had permanently separated from their partners at the time of the survey, and 62 percent still lived with the abusive partner (Ellsberg et al. 2001, 551). Forty-one percent of the abused women reported that their husbands threatened to kill them or hurt them, or take away their children, if they reported the DV. No women living in rural areas reported having sought official help despite suffering DV. This seemed to reflect a lack of access to services rather than unwillingness to find help because most police stations are located in urban areas.

The research reveals that DV is prevalent in the country and that most abused women will eventually separate permanently from the abuser, but only after having tried a variety of coping strategies. Abused women are not passive in the face of the DV; rather, they attempt to manage the violence in various ways. In the case of less severe abuse, they are likely to employ physical or verbal self-defense; when it becomes more severe, they will usually leave temporarily or seek assistance. Hence, the level of severity of the DV is a factor in the choice of strategies employed. Sometimes, women will leave permanently when their children are affected by the violence. Nevertheless, most of the women did not seek outside help, and the qualitative research indicates that women had often been socialized to accept a level of violence as part of marital life. Socialization was evidenced by witnessing violence against their mothers or having husbands who were raised in violent homes. Thus, abused women who reported the DV to mothers and mothers-in-law received comments such as “Do you think you’re the only one to live through this?” and “You have to maintain your marriage, remember that he is your husband and the father of your children.”

In a study of 345 women in 2007 in the municipality of Larreynaga-Malpaisillo, Nicaragua, with the majority between twenty-five and fifty-five years of age and three-quarters in partnered relationships generally between six and ten years in duration, and the majority with three or more children, it was found that 20 percent of the women had observed violence against their mothers in childhood. Twenty-seven percent reported physical violence over their lifetime, and 47 percent psychological violence. In the twelve months preceding the study, 6 percent reported physical, and 20 percent psychological, violence. Lower levels of violence were experienced by women who were empowered in terms of income and education and where the income contribution was equal. However, where the income contribution and household decision making favored the woman, they experienced a higher level of psychological violence (Grose and Grabe 2014, 10, 12).

Although Nicaragua has significant cultural, social, and economic barriers to eliminating DV, the government is supportive and NGOs are active in anti-abuse programs. This compares to Russia, a developed state, with far greater resources.

Ghana

A number of studies of DV in Ghana have been carried out since the mid-1990s.¹⁸ They provide valuable data about the meaning, context, nature, and incidence of DV in that country. Generally, these studies suggest that Ghanaian women’s experience of DV is comparable to that experienced by other African women in nations south of the Sahara where DV is pervasive, where custom and tradition continue to play a significant role in women’s lives and in society generally, and where the majority of women live in rural areas with few government services. This is not to suggest that African women’s experience with DV is always and everywhere undifferentiated, but studies suggest that themes emerging in the following discussion would be recognizable in other African countries (see, e.g., Conroy 2014, 868; Lawoko 2008, 1056; Mann and Takyi 2009, 323; Olayanju et al. 2013, 103).

In its reports to CEDAW in 1991 and 2005,¹⁹ Ghana states that within all ethnic groups in the country, women are considered to be inferior to men and “in need of protection” and that in Ghanaian society it is accepted that husbands are entitled to “discipline” or “chastise” their wives. Ghanaians view DV an acceptable method to “train . . . and bring . . . [women] to order.” Few contest this right to correct and discipline women (Coker-Appiah and Cusack 1999, 15). Women are perceived to bring about DV by “nagging” and acting in other ways that show a failure to fulfill their proper gender role, for example, by failing to perform household duties; not seeking the husband’s approval to undertake an activity; asking for money;²⁰ using abusive words about her husband, such as “he’s a stupid man”; unreasonably refusing to do housework; not cooking food on time; engaging in unfaithfulness, disrespect, and laziness; threatening the man’s superiority; and being too independent even where she works to supplement her husband’s income. Women are reluctant to discuss DV for fear of revealing they have been a “bad wife” and because a level of DV is regarded as “normal” (Cantalupo, Martin, Pak, and Shin 2006, 540–41).

Several studies of DV in Ghana provide an understanding of the social, economic, and cultural context within which it occurs; the ways in which women and the government respond to it; and its incidence and nature. Data analyzed in an in-depth study on violence against women by

the Gender Studies and Human Rights Documentation Centre (Coker-Appiah and Cusack, 1999), showed that one in three women had suffered physical violence by a past or current partner and that annual reported cases of DV increased from 360 in 1999 to 3,622 in 2002 (Amoakohene 2004, 2373). Physical abuse was most commonly experienced by being hit with the hand, but belts, sticks, bicycle tires, chains, canes, shoes, and rope were also used (Coker-Appiah and Cusack 1999, 65–66).

Policing Domestic Violence

The high incidence of DV prompted the government to establish the Women and Juvenile Unit of the Ghana Police Service (WAJU) in 1998²¹ as a specialized unit to respond to crimes involving women and children, including DV. However, this Unit has a presence only in the largest cities (Bowman 2003, 485), and its willingness to criminalize conduct that constitutes DV seems constrained. For example, although reports of physical abuse constituted 75 percent of its caseload, out of sixty convictions secured in 2005 only one was for physical spousal abuse. In Accra, one police prosecutor in WAJU reported that out of the two hundred cases of spousal assault that he had prosecuted, all had been settled (Cantalupo et al. 2006, 564).

Police and judges also regard DV as private and are reluctant to take criminal action. Families and religious leaders will regularly directly intervene to withdraw cases of DV from the police or the courts. One police officer interviewed by Cantalupo and colleagues (2006, 545) thought that the extended family system meant “there is always an avenue for reconciliation” and a district judge explained:

Some ministers come to my court and want to settle spousal assault cases [outside of court]. When a minister comes and tells me that an offender is a church member, I always adjourn and talk to the victim to see what she wants to do. If the spouses’ life together is fairly normal, and it was only a small beating, then I encourage her to settle the case. (Quoted in Cantalupo et al. 2006, 545)

Prosecutors and judges will also seek and impose reduced penalties in DV cases that result in a trial because they believe that jailing

the husband will remove the family breadwinner. Hence, the economic dependence of Ghanaian women can perpetuate DV (Cantalupo et al. 2006, 547, 565). Police may also charge both the husband and wife in a DV case even where the woman acted in self-defense. This may occur when the woman is perceived to have provoked her husband. Similarly, judges may find the woman’s conduct constitutes provocation and a mitigating factor in punishing the husband. Commonly judges find that evidence of verbal insults such as calling the husband “foolish” or “useless,” or physical contact initiated by the woman, or her unwillingness to perform household tasks amount to provocation (p. 566). When the man is convicted of abuse it is common for the imposed sentence to be a good behavior bond—essentially a promise not to repeat the act. Breach of such a bond can result in imprisonment, but this never occurs (p. 567).

Women’s Voices

A study of fifty educated Ghanaian women (Amoakohene 2004, 2373) explored their perspectives on DV. All fifty women were high school graduates and 56 percent had university-level qualifications. All but one was employed in disparate occupations, including managerial, clerical/secretarial, teaching, health, banking, fashion design, and hairdressing. A number were self-employed. The women were chosen because of their education level, their employment status (earning regular incomes), having children, and marital status. They therefore constituted a group of educated, married women who were relatively financially independent. The women were chosen to elicit research data on “the impact of improved life situation factors such as full-time employment, financial independence and good education on domestic violence” (p. 2376). Thirty percent of the women reported no DV and the remainder reported various forms of violence, principally physical abuse by their husbands. As one woman explained, “Hitting happens all the time. I cannot count how many times my husband has hit me in this 10-year-old marriage. It seems normal for your husband to hit you, kick you and slap you upon the least provocation as if you were his punching bag” (p. 2377).

Six percent of the women did not regard their experience of DV as a serious rights violation because they were aware of similar cases, and for

one woman, the DV was justified. As she put it, "On two occasions he slapped me because I was too loud when arguing with him. . . . Anyway he made it up to me later. . . . It was just a little problem." Another woman said: "Fighting in marriage is nothing serious. It happens all the time. I tell you, very few women have not received a slap or two from their husbands since they married. . . . If they won't tell you about it, it does not mean that it does not happen" (Amoakohene 2004, 2377). As Kathleen Ferraro (2006, 42) notes, when women blame themselves, this helps them to restore a sense of control in their lives; thus, "if I don't do X, that caused me to be hurt, then I won't get hurt again." When this respondent rationalizes the abuse, it operates as a means of making what occurred more explicable and less of a random event (p. 43).

Nonphysical forms of abuse included excessive control, verbal insults, and threatening behavior, and all thirty-five respondents who had suffered abuse reported experiencing these forms of violence. (Coker-Appiah and Cusack [1999, 21] reported threats, bullying, and destruction of property as the most frequently cited instances of psychological violence.) The cases of psychological abuse included the husband screaming at the woman in front of the children and a form of control termed "close marking," described as follows: "My husband is always suspicious of me. Any time I leave the house, he gives me close-marking even when I have told him where I'm going and for how long I'll be away. I really feel like a prisoner" (Amoakohene 2004, 2377).

Economic forms of control in terms of obtaining money from a husband for household expenses were experienced by only 10 percent of the women. None of the women in this study reported any physical injuries received from DV, but the nonphysical forms of abuse engendered stress and tension with 84 percent reporting being hypertensive. As one woman described it, "I panic and feel jittery in his presence. . . . It seems I can never get over this" (Amoakohene 2004, 2379). For these women, traditional gender roles, especially the gender division of labor in Ghana, had not evolved despite their employment and education. Women's roles were explained as: "The woman is required to keep the house. She cleans, cooks, washes, bathes the children and takes care of them. In former times when the woman was a housewife, this was not a problem but today it is a big problem" (p. 2378).

Another woman expressed the persistence of tradition: "Tradition has been overtaken by events. . . . It is about time our men folk realized that things have changed" (p. 2378).

In a group of fifty women clients of the Legal Aid Clinic of FIDA,²² Ghana, respondents gave the following reasons for the DV they experienced:

- He would beat me whenever he was drunk.
- I confronted him with evidence of his sleeping with another woman.
- There was no particular reason.
- He accused me of sleeping with another man.
- My cooking was not to his taste.
- He said I was rude in public.
- I had insulted his mother.
- I spent too much money.

None of the women who had suffered DV had reported it to police or other authorities or even to family members despite the fact that all the women were aware of governmental and non-governmental agencies that existed to assist with DV. Their reasons for not reporting included that DV was condoned among their ethnic group and they did not want to be ridiculed for complaining about it; they did not want to "wash dirty linen in public"; they did not want to "unduly expose" their husbands and families; and they wanted to avoid social stigma, family disgrace, and bad repute. They believed that "family matters should be kept within the family" (Amoakohene 2004, 2378).²³

Nancy Cantalupo and colleagues (2006, 544) also found in numerous interviews with a range of leaders, justice officials, and others that DV is widely considered to be a family matter and that women are under pressure from the family to keep such matters out of the justice system. As Rosemary Ofeibe Ofei-Aboagye (1994, 3) puts it, "Ghanaians wish it out of existence and deliberately downplay its visibility."

Women used a number of strategies to confront and cope with abuse. These included keeping silent, using distractions ("pretending to be busy with the kids. . . . so I leave him to fight alone"), and leaving the home temporarily to stay with friends or neighbors until "tempers would have cooled down" (Amoakohene 2004, 2378–79). In

Ghana, abused women commonly do not permanently leave their husbands. Women have given the following reasons for staying and continuing to suffer abuse: "I felt shy at my 'failure' to keep my husband happy. . . . I would not be able to keep the children in the comfort to which they were accustomed. . . . So long as the danger to my health was not bad I felt that I could manage. . . . My family would not support me if I left. . . . I did not want my children to have different fathers. . . . I had no money to sue him in court. . . . We have to be obedient to our husbands. . . . I know of no organization that could advise and support me if I left" (Ofei-Aboagye 1994, 7).

In their study, Dorcas Coker-Appiah and Cusack (1999, 126–27) found that where the husband and wife had children this was the predominant reason for the wife electing not to leave the marriage, and that pressure from family and friends was also a significant factor in 20 percent of women who elected not to leave. When the husband apologized, 61 percent of women returned to violent relationships. The study reveals that the group of educated, economically independent, married women considered DV to be "normal" (Amoakohene 2004, 2383). Only when a physical assault resulted in injury or death would it be considered an offense against the woman. These accounts of violence from affluent educated women suggest that women with lower socioeconomic status are likely to experience higher levels of violence. If that is correct, it may suggest that the husbands of this group of women have, to some extent, restructured customary norms about the treatment of women in marriage by using physical violence less often.

The educated Ghanaian women in the Coker-Appiah and Cusack study were all earning incomes, and only 10 percent expressed any problems in obtaining household expense money from their husbands. While multiple factors are associated with DV, the role of resources has been found to be of significance. Hence it is argued that when men are unable to provide the resources concomitant with the role as breadwinner, they are more likely to express anger within an intimate relationship. When women have little access to resources or when they have access to more resources than their partner, they are likely to be at a higher risk of suffering DV (Mann and Takyi 2009, 323). Financial autonomy and independence may operate to protect

women from DV, or at least restructure the kind of violence they may be subjected to, as indicated in the Ghanaian study. There are some studies that suggest this may only be true so long as women do not possess resources in excess of their partner's (p. 324).

Data from the 2003 Ghana Demographic Health Survey, which contains detailed information on attitudes to DV but not on actual behavior, have been used to test a number of hypotheses concerning resources and DV. Based on a sample of 2,099 men and 2,106 women (the women tended to be younger, had fewer children, and had lower levels of education than their partners), researchers found that a higher percentage of women than men (26.6 percent compared to 12.5 percent) believed that physical abuse was justified in the following situations:

- If the wife went out without telling the husband
- If the wife neglected the children
- If the wife argued with the husband
- If the wife refused to have sex with the husband
- If the wife burned the food

Two-thirds of the men (64.2 percent) believed abuse was never justified, compared to 44.6 percent of women. On the basis of these data, the researchers suggest that in Ghana, married women "tend to believe that abuse is justifiable far more often than their husbands" (Mann and Takyi 2009, 329).

In relation to resources within the family unit, the relative quantity of resources was found to be significant in shaping attitudes to DV. As a result, women who contributed one half or less to the household expenses believed abuse to be justified less often than those who contributed the total amount of expenses. Education was also found to be an important factor. Both men and women who had completed higher education were less likely to believe abuse was justifiable in any situation (Mann and Takyi 2009, 335).

Strategies to Counter Domestic Violence

Governmental and nongovernmental strategies against DV in Ghana have included legislation, forms of public education, awareness

campaigns, counseling, and prosecuting offenders. Institutional responses include the creation of the WAJU and establishment of a Ministry of Women and Children's Affairs (Amoakohene 2004, 2379). However, WAJU has limited resources and is overwhelmed by the number of cases reported to it (Cantalupo et al. 2006, 531),²⁴ and there are fears that the Ministry will be politicized and not be an active driver of change in combating violence against women. There are numerous civil society organizations operating shelters and providing counseling and legal aid. For example, the Federation of Women's Lawyers has been active since the mid-1970s, and its lobbying has resulted in a Domestic Violence Bill (Amoakohene 2004, 2381).

DV victims may seek help from community leaders who have traditionally served as peace-makers and mediators in the settlement of disputes, including marital disputes. However, leaders often endorse and sustain traditional gender roles and advise women not to complain and to endure the DV, thus keeping it private (Cantalupo et al. 2006, 551). Similarly, religious leaders often counsel DV victims to be more submissive and are reluctant to refer abused women to police. One Christian leader quoted by Cantalupo and coworkers (p. 555) said of one such case:

The woman was not the type who had patience. She talks. The man believed she did not respect him. Once, he broke the window in the house and handled a gun. He tried to beat her when she was pregnant. The violence continued every day. We counsel that being the woman, she must submit. We never advised her to go to the police [because] that's the end of the marriage.

In a study of fifty abused women, each had reported the DV to relatives at some point, ten had reported it to their priests, nine had reported their husbands to the chief of their husband's village, but all admitted that "it did not help much." Of the fifty women, only four had considered the option of reporting the incident to the police, and two had reported it to their husband's workplace superiors. Two had made reports to the Department of Social Welfare, but neither received a "meaningful response." All fifty women decided to seek advice from the Legal Aid Clinic of FIDA because they believed their health to be in danger, that the abuse created a

detrimental atmosphere for their children, and, as one woman put it, because "she was going insane" (Ofei-Aboagye 1994, 8). However, where the DV involves "serious injuries," chiefs may sanction a husband. In one such case, the husband struck his wife on the jaw with a hammer and the chief fined the husband three bottles of gin, which he reported was "a harsher punishment than normally given because he used a weapon" (Cantalupo et al. 2006, 557).

Traditional healers may also be consulted for advice on DV. They treat broken bones and other injuries, they charge less than hospitals, and women believe they maintain a higher level of confidentiality. Nevertheless, healers also consider themselves to be the guardians of tradition. In one case, even though the woman had suffered being kicked, had injuries to her elbow, leg, and ribs, and was regularly beaten for not cooking food on time and not coming home on time after a visit to her parents, the healer's advice to her was to modify her behavior so as to avoid any further violence (Cantalupo et al. 2006, 558).

What constitutes a serious injury such that it violates traditional norms and calls for a response? The following were suggested in one study: "he beats her to leave a scar or deformity. . . . He leaves her with a fracture. . . . He beats her publicly. . . . The beating is more than three slaps or he beats her three or four times." Women considered an excessive beating to be deplorable because "a man should not use his strength to 'cheat' a woman. . . . She is not a slave. . . . She is his partner and not his child. . . . It does not show respect for the woman . . . it has an adverse effect on the children. . . . It is not fair" (Ofei-Aboagye 1994, 6-7).

In 2007, Ghana enacted the Domestic Violence Act. The Act makes it an offense to engage in DV. On conviction, a penalty of up to two years imprisonment or a fine, or both, can be imposed, and the court can also order the payment of compensation. Courts may issue protection orders and interim protection orders that prohibit a respondent from committing or threatening to commit an act of domestic violence personally or otherwise against an applicant or a relation or a friend of the applicant. The Court may also order a respondent to vacate the family home.²⁵

The numerous studies on DV in Ghana provide a rich source of information about DV and its social, economic, and cultural context. Qualitative studies are especially important in providing explanations for abuse because they describe

the forms of abuse and the coping strategies used and report on community responses to abuse. Government has responded to the issue in Ghana in appropriate ways, especially by enacting specific legislation.

Summary

Commonalities in perceptions about gender and gender roles are apparent in all three country profiles. Recourse to the criminal justice system seems to be problematic in all three countries. Other strategies, such as education, awareness raising, and adequate legislation, appear to have some degree of effectiveness in Ghana and, to a limited extent, in Nicaragua. The NGO sector is an important change agent in Ghana and Nicaragua but not in Russia where the government imposes restrictions to hamper the sector's activities. The country profiles suggest that the progress achieved in disseminating global norms about violence against women has been limited because the local studies summarized and analyzed here reveal entrenched beliefs about gender and culture that have not as yet been appreciably eroded by the internationalization of violence against women. Governments in Ghana and Nicaragua are supportive of change, but this is not the case in Russia. This partial analysis of these country profiles indicates that all three countries have been impacted by global norms about violence against women but that overcoming the local social and cultural beliefs and adverse economic conditions will be a long-term challenge for governments and for civil society.

VIOLENCE AGAINST WOMEN: HONOR CRIMES

The introduction to this chapter identified honor crimes as an instance of violence against women in the family and as a harmful traditional practice. In some cases such crimes may also involve the community. What are these crimes, who commits them, for what reasons and how? What is the cultural context within which such crimes are committed? What measures are being taken to end honor killings, and how successful are they? These and other questions will be addressed here with the aim of adding to Western knowledge this form of violence against women.

Honor crimes have been variously described as “extreme acts of domestic violence culminating in the murder of a woman by her family or community” (Meeto and Mirza 2007, 187) or “the killing of women for suspected deviation from sexual norms imposed by society” (Faqr 2001, 66). The concept of “honor” is associated with such crimes (which do not always involve killings) in religious and ethnic communities as justification for these acts because murdering the woman (and sometimes the man where they are involved in a perceived illicit relationship²⁶) is thought to salvage the good name of the family and the family's status and reputation.

In research into honor crimes in Iraqi Kurdistan, Cyndi Banks (2010, 28) found that a variety of sanctions were applied to women and girls for breaches of honor. These included home imprisonment, denial of education, withholding food, poisoning, beating, forced marriage, *Zhin be Zhin* marriage (woman for woman—a woman is traded for another in an arranged marriage), suicide through self-immolation (women may douse themselves with kerosene and set themselves alight), and murder (by shooting, suffocation, stabbing, burning, and drowning), payment of compensation, and divorce.

“Honor,” therefore, relates to the violation of a code of conduct that is perceived to have brought shame upon the family. The UN Special Rapporteur on violence against women explains honor crimes by reference to such crimes in Lebanon as follows: “Honour is defined in terms of women's assigned sexual and familial roles as dictated by traditional family ideology. Thus, adultery, premarital relationships (which may or may not include sexual relations), rape and falling in love with an ‘inappropriate’ person may constitute violations of family honour” (quoted in Welchman and Hossain 2005, 5).

Women's sexuality is at the core of concerns about women's behavior, and the need to preserve a woman's virginity for her husband places limits not only on how she is to act sexually but also on the nature of her contacts with men outside the circle of the extended family, contacts that may hold sexual potential (Sen 2005, 48).

Violations of honor can extend beyond these parameters of sexual conduct to include other behaviors that are perceived to challenge male control such as staying out late and smoking (Welchman and Hossain 2005, 5). Codes of honor

construct not only what constitutes a woman but also what it means to be a man, and therefore the codes are linked to both genders (Sen 2005, 48). The traditional family ideology can often be sourced to tribal rules. In Iraqi Kurdistan, gendered clan-based values serve as a powerful force for nationalism among the Kurds so that challenging patriarchal ideology becomes a challenge to the nationalist cause, rendering the dismantling of that ideology highly problematic (Begikhani 2005, 220).

These frameworks of shame and honor “control, direct and regulate women’s sexuality and freedom of movement by male members of the family” (Coomaraswamy 2005, xi). Mothers often support these controls; for example, mothers

interviewed following the death of daughters often state that their daughters deserved the death (Coomaraswamy 2002, 496). In Egypt, older women gain status by supervising younger women to ensure that the honor (*sharaf*) of the tribe is maintained. They may use gossip as an instrument of control, for example, “Because you are a girl, and people will talk if you do this” (Abu-Odeh 2010, 919).

Honor crimes are characterized by the notion that the family and community of the woman and not simply her husband or partner are empowered to perform the killing (Meeto and Mirza 2007, 187). Forms of killing can include stoning, ritual stabbing, or killing in public spaces (Devers and Bacon 2010, 360).

BOX 13.2 Prosecutor Modernity Versus Tradition

An incident chronicled by Banks (2010, 16) shows how modern communication techniques highlight the tensions between modernity and tradition. An incident occurring in 2004 (the year that mobile phones were introduced into Iraq) involved a teenage boy and girl in Erbil and became a notorious instance of this tension. The boy encouraged the girl to drink alcohol, and she became drunk and insensible. He drove her to an isolated place and had sexual relations with her. During his assault the boy took pictures of their relations on his mobile phone. He later showed the pictures to his friends, who in turn showed them around the community. The pictures were also uploaded to the Internet. In response, the girl’s family killed her to redeem their honor. The boy’s family attempted to settle the affair with the girl’s family, but the latter insisted that the boy must also be killed. The girl’s family argued that the incident could only be resolved by an honor killing, given the enormity of widespread public knowledge of the incident on the Internet and the powerlessness to erase that record. Finally, the boy’s family agreed that their son must be killed, and the boy’s father took his son to an isolated place and killed him. No criminal charges were brought against the parents.

Migration away from one’s own country can be associated with DV and honor crimes because migrant women may be perceived by the family and community to be the guardian of patriarchal practices and traditions sustained in the home country and this cultural responsibility can be amplified in the new country. Diaspora women from India, for example, are often expected to protect the cultural specificity of their communities by not dating men, not arranging their own marriages, and abstaining from same-sex relationships (Narayan 1997, 177). As Coomaraswamy (2005, xi) puts it, “Honour is generally seen as residing in the bodies of women,” but at the same time “a woman’s honor is the property of her male relatives, not her own property” (Hoyek, Sidawi, and

Mrad 2005, 112). Thus, immigrant women who live in the West and refuse to marry men chosen for them by their parents run the risk of honor killing.

Clare Beckett and Marie Macey (2001) argue that women in the United Kingdom who are at risk of honor crimes because of religion or ethnicity are placed in more danger because discourses of multiculturalism and respect for other cultures and traditions operate to engender non-intervention in cases where honor killings may occur. The emphasis in multiculturalism on “non-interference in minority lifestyles and its insistence on community consultation (with male self defined community leaders),” while not directly causing DV, does facilitate it (p. 311).

According to data from the UN Population Fund (UNFPA), about five thousand women are killed annually in the name of honor in states as widespread as Bangladesh, Brazil, Ecuador, Egypt, India, Israel, Italy, Jordan, Morocco, Pakistan, Sweden, Turkey, Uganda, Afghanistan, Saudi Arabia, Iran, Iraq, and the United Kingdom. Data on the number of honor crimes committed in countries is unreliable because many such crimes go unreported, but Pakistan reports a far higher number of such crimes than other countries where they are known to occur. This may be an indication of underreporting in other countries (Devers and Bacon 2010, 361).

Honor Crimes in Court

Legal scholars in the Middle East state that legal regimes in that region favor men who kill in the name of honor (Devers and Bacon 2010, 362) even though “honor” as such is not expressly stated to be a mitigating or even an exculpatory factor in such killings. Rather, laws explain the nature of conduct that will allow a penalty to be reduced. For example, the 1961 Penal Code of Jordan, Article 340²⁷ provides: “The perpetrator of a killing, wounding or injury benefits from a mitigating excuse if he surprises his wife or one of his female ascendants or siblings with another in an unlawful bed” (quoted in Devers and Bacon 2010, 364).

The Article was later amended to give a wife the same right to claim mitigation if she surprises her husband committing adultery due to concerns that it violated the Jordanian Constitutional right to equality (Devers and Bacon 2010, 364). While Article 340 is very specific about the conduct that can mitigate a penalty (similar provisions apply in Iraqi Kurdistan and in Lebanon), it is rare for an accused person in an honor killing to rely on this defense. Instead, defendants in honor crime cases plead that the crime was committed in a “fit of fury” or “a sudden spurt of anger,” and if this plea is accepted it will reduce premeditated murder to manslaughter. This then is the favored defense of those accused of honor killings (Abu-Odeh 2010, 918; Welchman and Hossain 2005, 11).²⁸

In the case of Jordan, Article 98 of the Penal Code provides that “whosoever commits a crime in a state of extreme rage resulting from an unrightful and dangerous act on the part of the victim shall benefit from the mitigating/extenuating excuse”

(quoted in Hassan and Welchman 2005, 204). Recent decisions in Jordan (1999–2003), however, have required that in order to take advantage of this defense, the rage, or “fit of fury” as it is commonly referred to, must be immediate in relation to gaining knowledge of the act. This would negate any period of reasoning prior to the act, and the Jordanian courts have indicated that the time involved can be no more than fifteen minutes (Hassan and Welchman 2005, 205). As to the concept of “dangerous” in this Article, the courts have interpreted this to cover a broad range of conduct, including talking with a strange man and leaving home for a week with no prior explanation for the absence (Madedk 2005, 55).

In Egypt the law contains no general excuse of provocation, nor is there any excuse where a murder is committed in circumstances of *in flagrante delicto* (Abu-Odeh 2010, 921). However, those who commit crimes of honor are likely to ask the court for compassion under Article 17 of the Egyptian Penal Code, an issue solely within the discretion of the judge and that cannot be appealed because it is not an issue of law (p. 921). When this discretion is exercised in favor of a defendant, this can result in a significant reduction in punishment; for example, the death penalty can be replaced with life imprisonment or imprisonment for a fixed term (CEWLA 2005, 143). Here is an example of such a case from Egypt:

The brother of the victim was suspicious of his sister’s behaviour and thought that she had fallen pregnant through extramarital sexual relations; her husband had been out of the country for a period. He asked her to abort her pregnancy and she refused so he hit her on the head and then set her on fire. She managed to put out the fire and then shut herself in the water closet. He then poured petrol under the door jamb, set it alight and she burned to death. The forensic report showed that the victim was pregnant and with that the court issued a ruling of prison for three years for the man who murdered his sister. (Quoted in CEWLA 2005, 144)

Here, the court accepted that the murderer was under severe emotional pressure and required to defend his honor because the victim deviated from accepted standards of behavior. The murderer’s act of killing his sister was justified as an attempt to “wash away” or bury the shame that

the sister had brought on the family. The court therefore believed that it was a proper case in which to exercise compassion in favor of the defendant (CEWLA 2005, 156).

It is common for men who perpetrate honor crimes to surrender to police almost immediately after committing the crime. This not only constitutes a statement that the family is an honorable one but also facilitates the man seeking and obtaining the sympathy of the court. Judges tend to believe that victims of honor crimes are not guiltless. In one case in Palestine, for example, a man who murdered his sister because of rumors that she was committing adultery (but there was no proof of this) received a lesser penalty for the crime because “the accused sister stabbed him in his manhood,” meaning her behavior was an affront to his manhood (Shalhoub-Kevorkian 2005, 174). It is common for the courts to accept evidence of a woman’s conduct that amounts only to rumors (Devers and Bacon 2010, 366).

In contrast to the lenient approach taken by the courts in Egypt and Jordan, the Regional Court of Haifa, in dealing with honor crimes involving the Palestinian community in Israel, has resolutely refused to give any credence to pleas of mitigation. As the court has said:

We consider it necessary to state that one should never expect that in the juridical system of Israel we will recognise the issue of family honour as an extenuating circumstance, which could result in mitigating the charge in cases such as the one under consideration here at the moment from an intentional murder to a manslaughter. Such recognition would mean giving an official permission to each and every one to kill another person when “family honour” is at stake. (Quoted in Touma-Sliman 2005, 189)

Honor Crimes: International Responses

International action against honor crimes includes a United Nations General Assembly Resolution on the Elimination of Honor Crimes against Women and Girls, 2004.²⁹ This states that crimes committed in the name of honor are a form of violence against women; that such crimes are “incompatible with all religious and cultural values”; and calls upon states to eliminate such crimes and to prosecute them effectively. It

should be noted that the UN Special Rapporteur on extrajudicial, summary, or arbitrary executions included a statement in her annual report concerning the practice of “honour killings” indicating as follows: “It should be noted that a number of renowned Islamic leaders and scholars have publicly condemned this practice and clarified that it has no religious basis” (quoted in Welchman and Hossain 2005, 13).

The 2006 UN In-Depth Study on All Forms of Violence Against Women states that crimes against women committed in the name of “honor” are a form of violence against women that are considered harmful traditional practices and that may involve both family and community. States therefore have a duty to investigate and punish such acts and to modify the cultural patterns of conduct that give rise to such acts (Declaration on the Elimination of Violence Against Women 1993).

The Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence, 2011, specifically highlights honor crimes in Article 12, providing that parties to the Convention “shall ensure that culture, custom, religion, tradition or so-called ‘honour’ shall not be considered as justification for any acts of violence” covered by the Convention. As well, under the heading of “Unacceptable justifications for crimes” (Article 42), the Convention requires that parties ensure that “in criminal proceedings initiated following the commission of any of the acts of violence covered by the scope of this Convention, culture, custom, religion, tradition or so-called ‘honour’ shall not be regarded as justifications for such acts. This covers, in particular, claims that the victim has transgressed cultural, religious, social or traditional norms or customs of appropriate behaviour.” This requirement is directed at countering the practices noted earlier in relation to prosecutions that involve a claim of honor.

Frameworks of shame and honor continue to control, direct, and regulate a woman’s sexuality and freedom of movement in countries where the reputation of the woman’s family in society is perceived to be the paramount consideration. While the family or community members who commit these crimes surrender to police and stand trial, the courts have shown leniency toward their crimes. Judicial rejection worldwide of the notion that “honor” justifies such crimes would constitute a major step toward their elimination because such crimes would then be appropriately

punished. In the absence of a transformation in judicial approaches, it is likely that local cultural constructions of shame and honor concerning a woman's sexuality will remain largely unaffected by national and international action.

VIOLENCE AGAINST WOMEN: ARMED CONFLICT

Women experience multiple forms of violence during armed conflict, including physical, sexual, and psychological violence inflicted by state and non-state actors. Forms of violence include murder, torture, and other cruel, inhuman, or degrading treatment or punishment; abductions; maiming and mutilation; forced recruitment of women for combat; rape; sexual slavery and sexual exploitation; disappearance and detention; forced marriage; sterilization; and forced prostitution. Sexual violence has long been used against women in armed conflicts to torture or injure, extract information, degrade and intimidate, and to destroy communities. Rape has been used to humiliate enemies, drive communities off territory, and deliberately spread HIV. Women have also been forced to act as domestic slave labor and to perform sexual services or to act as "wives" as a reward to combatants.

Increasingly, violence against women in armed conflict, especially cases of rape, has been documented. It has been reported in numerous countries arising in conflict and post-conflict situations. During the 1994 Rwandan genocide, it is estimated that between 250,000 and 500,000 women were raped. In Bosnia, during the conflict of the early 1990s, between 20,000 and 50,000 women were raped. In 1971 about 200,000 women were raped during the conflict between Pakistan and Bangladesh (United Nations 2006, 44–45).

Of all the forms of violence used against women in situations of armed conflict, this section focuses on the *rape of women*, tracing the development of international humanitarian law and practice in recognizing and punishing rape in the context of armed conflicts. Most recently, conflicts in the former Yugoslavia and Rwanda brought to international attention the use of rape as part of a deliberate strategy to weaken community bonds and to perpetrate ethnic cleansing through impregnating women by raping them. These recent events supplement previous instances

in the past where soldiers raped women in time of armed conflict. During World War II, Japanese forces systematically raped civilian women in Korea, China, and the Philippines. Rapes occurred in Bangladesh in 1971 and in Rwanda in 1994. As well, rape has been documented in conflicts in Liberia and Uganda. In the 1990 invasion of Kuwait, an estimated five thousand Kuwaiti women were raped by Iraqi soldiers (Chinkin 1994, 327). There have also been reports of rapes committed by members of UN peacekeeping forces (p. 326; see also Terry 2007 p. 161; "UN Releases Report" 2015).

Understanding how women have fared in times of war, what degree of protection they have from rape during combat, and how their status in armed conflict has been viewed under rules of international law over time adds context to the following discussion of how contemporary international tribunals have shaped the situation of rape in armed conflict. The brief historical account that follows is therefore crucial in comprehending the evolution of women and rape in armed conflicts.

Rape, Women, and Armed Conflict

In early forms of warfare, women were vulnerable to attack because they were the propagators of the enemy forces: eliminating the source of future warriors would be one fundamental way of ensuring that the enemy would not have to be faced again. Among the ancient Greeks, Romans, and Hebrews, women were commonly seized as prizes of war and might become wives, concubines, servants, or slaves. The Old Testament reports that Hebrew tribes who invaded Canaan seized spoils of war that included thirty-two thousand virgins. Hugo Grotius, father of the law of nations, writing in the seventeenth century, noted that while the rules of war required that the chastity of women and girls be respected, this was not the practice. Grotius called for sexual violence committed in time of war to be dealt with in the same way as such crimes were punished outside the context of wars (Askin 1999b, 50).

Constructing women as spoils of war fully resonated with their status as virtual property (Niarchos 1995, 653), and sexual atrocities involving women were considered the inevitable consequence of armed conflicts (Askin 1999b, 49). By the Middle Ages, notions of chivalry had come to include a limited degree of protection for

women in warfare, and laws made during the Hundred Years War (1337–1453) prohibited rape during war on penalty of death. However, this rule did not apply to cities taken by siege, a common method of conquest. In fact, the “license to rape was considered a major incentive for the soldier involved in siege warfare” (p. 654). Generally, during that time, the possibility of unrestricted sexual access to women meant that sexual crimes were ignored or tolerated by commanders who believed, along with their men, that rape after a battle was an acceptable method of releasing tensions (Askin 1999b, 49).

During the nineteenth and twentieth centuries, protections for women improved. For one thing, the influential U.S. Lieber Code, proclaimed in 1863 as the military code for the Union Army, made rape a capital offense and listed it as a war crime (Askin 1999b, 50). The Hague and Geneva Conventions provided some protection against rape. Despite these apparent advances for women, rape, which had always been known to be a weapon of war, now became recognized as a means of demoralizing and destroying an enemy. Rape was now used to terrorize a population, with women constituting the instrument for inflicting it. For example, when the Germans invaded Belgium and France in World War I, they used rape and associated atrocities to instill terror in the population as they advanced. Similarly, during World War II, there was widespread raping of women in Europe and Asia by the Germans, and when the Russians entered Berlin in 1945, they were reported to have raped more than one hundred thousand women (Niarchos 1995, 655).

The Tokyo War Crimes Tribunal heard evidence about the “Rape of Nanking” by the Japanese military where about twenty thousand cases of rape occurred during the first month of the occupation of this Chinese city. However, it was not until many years after Tokyo that the fate of countless women known as “comfort women” from the Philippines, Korea, China, Indonesia, Burma, and Holland who were forced into Japanese military brothels became publicly known and eventually acknowledged by Japan.

While rape has been a consistent practice over time in wars and other armed conflicts and more recently has been prohibited under international law, the prohibition has been largely ignored primarily because rape is an effective weapon in war and because wars are dominated by men (Niarchos 1995, 664). Rape was neither mentioned

in the Nuremberg Charter nor prosecuted at Nuremberg as a war crime but was prosecuted at Tokyo as a war crime where the Tribunal found some Japanese military and civilian officials guilty of war crimes, including rape.

Kelly Askin (1999b, 48) argues that in modern times, sexual violence committed against women in armed conflicts has evolved into deliberate strategies and tactics aimed at destroying mental and well as physical capacities of populations. More specifically, the evidence of atrocities in the former Yugoslavia (described later), including the “indescribable abuse of thousands of women . . . was needed to shock the international community into rethinking the prohibition of rape as a crime under the laws of war” (Meron 1993, 425).³⁰ The creation of International Criminal Tribunals for the former Yugoslavia and for Rwanda by the UN Security Council has resulted in an unparalleled response to crimes of mass rape.

International Rules Concerning Wars and Armed Conflicts

The Hague Conventions, the four Geneva Conventions and two Additional Protocols passed after World War II, regulate the conduct of war. Supplementing these are the customs of war and the jurisprudence of international tribunals set up after World War II (Askin 1999b, 43). These Conventions and Protocols prescribe numerous procedures and processes that include placing limits on how war can be waged, regulating the conduct of hostilities, setting rules for treating the sick and wounded, setting standards for the treatment of prisoners of war, and distinguishing between combatants and noncombatants. More often than not, these rules are ignored in the heat of battle and violations of the rules can constitute individual crimes, including crimes for which persons may be responsible as the superiors of others who violate international rules of war (Askin 1999b, 41).

These instruments establish the major part of what is known as international humanitarian law (IHL), sometimes known as the law of war. The Conventions apply where a war is declared or armed conflict arises between contracting parties. There are about 560 Articles in the Conventions and two Protocols of which about forty specifically relate to women (Fitzpatrick 1994, 546). IHL instruments regulate many issues in great detail, but crimes of

sexual violence receive little attention. For example, the forty-two-volume set of transcripts of the Nuremberg Trial includes a 732-page index, but rape is not included in it, despite the fact that the transcripts extensively document crimes of sexual violence. This leads one commentator to conclude that “crimes committed primarily against women and girls were considered insignificant by-products or mere accidents of war, unworthy of being addressed” (Askin 1999b, 47).

Rape Under International Humanitarian Law

So far as women and rape are concerned, the following protections are given under IHL:

- Fourth Geneva Convention, Article 27: “Women shall be especially protected against any attack on their honour, in particular against rape, enforced prostitution, or any form of indecent assault.”
- Protocol I, Article 76: “Women shall be the object of special respect and shall be protected in particular against rape, forced prostitution and any other form of indecent assault.”
- Protocol II, Article 2(e) prohibits the following: “at any time and in any place whatsoever. . . (e) Outrages upon personal dignity, in particular humiliating and degrading treatment, rape, enforced prostitution and any form of indecent assault.”

These rules suggest rape is not regarded as a violent assault on women but as a challenge to honor and dignity (Niarchos 1995, 658). The language reflects nineteenth-century concepts of “family honor and rights” such as appears in the Hague Regulations of 1899 and 1907, in which references to the violation of a family’s honor was coded language that a woman had been sexually assaulted (Askin 1999b, 51). It is argued that notions of honor and modesty cannot possibly express the suffering of women raped during wars (Niarchos 1995, 659).

Defining Rape Under International Law

There is no definition of rape in international law, but recent cases before International Criminal Tribunals in Yugoslavia (ICTY) and Rwanda

(ICTR) (discussed in greater detail later in this chapter) have had to grapple with the task of providing definitions (Eboe-Osuji 2007, 252). In the 1998 *Akayesu* case before the ICTR, the Trial Chamber adopted a broad definition: “a physical invasion of a sexual nature, committed on a person under circumstances which are coercive.” Unlike many domestic laws on rape, this definition focuses not on what happens to body parts but on the issue of physical force and coercion. Consequently, rape becomes aggression of a sexual nature. The Trial Chamber said, “The Tribunal considers that rape is a form of aggression and that the central elements of the crime of rape cannot be captured in a mechanical description of objects and body parts” (quoted in Eboe-Osuji 2007, 253). In the *Celebici* case before the ICTY (see Box 13.3) the Trial Chamber adopted this definition. However, in later cases, Trial Chambers of the ICTY declined to follow this approach. Instead, they surveyed how rape had been defined in national jurisdictions and, in two cases, defined rape in terms of sexual penetration of enumerated parts of the body using force or coercion, or threats of force or coercion (p. 254).

In further cases before the ICTR, the *Akayesu* definition has sometimes been followed, but other cases have applied the ICTY definition. In national laws about rape, traditional rape inquiries have focused on the victim and the issue of consent, but a number of jurisdictions such as Canada, Italy, and numerous U.S. states have adopted the *Akayesu* approach. For example, Canada has replaced rape with sexual assault which recognizes the element of aggression and recognizes that rape is a crime of violence and domination and is not about sexual passion (Eboe-Osuji 2007, 256).

The Appeals Chamber of the ICTR (the judges of which also decide appeals from the ICTY) has now decided the issue of the definition of rape by stating that proof of lack of consent will continue to be an element of rape to be proved by the prosecution. However, the Chamber also stated that the prosecution will be able to prove lack of consent by establishing the existence of “coercive circumstances under which meaningful consent is not possible” (quoted in Eboe-Osuji 2007, 260).

Rape as a Violation of International Humanitarian Law

Determining the status of rape under IHL has been a key feminist issue in this field. In the

following sections we examine how rape has been treated by international Tribunals in terms of the following key questions under IHL:

- Can rape amount to torture?
- Can rape amount to a crime against humanity?
- Can rape amount to genocide?

These are key questions for prosecutors in international tribunals and in the International Criminal Court because, as a matter of law, if tribunals determine that rape can amount to these crimes and there is sufficient evidence of the crime, prosecutors can charge rape as torture, rape as a crime against humanity, or even rape as genocide.

Article 4 of the Fourth Geneva Convention refers to the commission of a “grave breach” of the Convention. Such breaches may only occur in conflicts that are international in nature and must be perpetrated against persons who are defined as “protected” under any of the four Geneva Conventions. Grave breaches are explained in Article 147 of the Convention to include torture, inhuman treatment, and willfully causing great suffering or serious bodily injury to body or health. Rape is not explicitly included in the definition, but scholars have argued that it falls within the definition. *Can rape amount to a grave breach?* This is an important question because grave breaches can be tried in any country: they are subject to universal jurisdiction, as are the crimes of genocide, torture, slavery, and crimes against humanity, and they are considered to be the most egregious violations of IHL (Askin 1999b, 44, 76).

Rape as Torture: The Former Yugoslavia

In August 1992, after reports of atrocities having occurred there, the UN Commission on Human Rights appointed a Special Rapporteur to investigate alleged abuses of human rights in the former Yugoslavia. In October 1992, the UN Security Council set up a Commission of Experts to analyze the data produced and conduct its own investigation. Rape allegations were investigated by a team of medical experts sent to Bosnia and Herzegovina, and in March 1994 the Experts Commission sent lawyers and mental health specialists to carry out interviews with witnesses and victims. Most of the documented rape cases

occurred between the fall of 1991 and the end of 1993, and the majority of cases comprise Muslim women from Bosnia and Herzegovina being raped by Serbian men. There was a pattern to the rapes as follows:

- *Rapes committed before outbreaks of fighting.* Individuals and groups would break into a house, terrorize the residents, steal property, and rape women. Rapes were often gang rapes; in one incident, a woman was raped by eight soldiers in front of her six-year-old sister and five-month-old daughter.
- *Rapes committed concurrently with invasion and capture of towns and villages.* The population of the captured location was assembled for deportation, but women were raped in empty houses or publicly, with gang rapes being common.
- *Rapes committed on women held in detention.* Women were separated from men after the capture of a location, and the women were held in detention camps. Soldiers, camp guards, paramilitaries, and even civilians would be allowed entry to choose women, remove them, rape them, and then return them or kill them. Gang rapes were common, as were beatings and torture.
- *Rapes occurring in so-called rape camps.* They could be large, well-organized camps or simply houses or cafés used as camps. Women suffered frequent rapes and beatings and were sometimes killed. Some captors indicated the intention was to impregnate the women.
- *Women were taken to brothels to service soldiers.* These women were more often killed than released. (Niarchos 1995, 651–52)

Common characteristics of these incidents included frequent gang rapes; rapes involving an element of public spectacle committed in the presence of the victim’s family, other victims, or the local community; and rapes involving sadism and torture. Generally, the rapes were not random acts but part of a deliberate policy, and many attackers say they were ordered to rape to ensure victims and families would never want to return to an area. About 80 percent of the rapes occurred in conditions of detention. The rapes indicate adherence to a policy and plan of “ethnic cleansing” where rape was used to terrorize and displace the community,

to force the birth of children of mixed descent, and generally to demoralize. Women were targeted because they were women, not because they were the enemy (Niarchos 1995, 653).

In light of the evidence of atrocities uncovered in its investigation, the UN Security Council established an international tribunal to prosecute persons for violations of international humanitarian law and punish offenders. The tribunal was, and is, the International Criminal Tribunal for the Former Yugoslavia (ICTY), established in May 1993 (O'Brien 1993, 639), which operates under its own statute. The ICTY and its companion tribunal established for Rwanda (described fully in Chapter 8) have, through their decisions, considerably improved the protection available for women from rape in armed conflicts. We

examine several decisions of the ICTY to understand how this came about.

In 1998, the case of *Prosecutor v. Delalic* (the Celebici case) extensively examined whether rape could constitute a grave breach of the Geneva Convention, namely, torture. The ICTY had been set up to prosecute persons responsible for serious violations of IHL committed in the territory of the former Yugoslavia since 1991. The language of the Geneva Conventions allows for rape to be subsumed within “torture” or “inhuman treatment” or “great suffering,” and therefore rape can be prosecuted under a variety of terms that constitute a grave breach. Nevertheless, it is argued that rape should be recognized as a grave breach in its own right (Askin 1999b, 79).

BOX 13.3 Prosecutor v. Delalic (Celebici Case)—Rape as Torture

In 1992, Bosnian Muslim and Croat forces took control of villages in the predominantly Bosnian Serb municipality of Konje. Delalic was the coordinator of Bosnian Muslim and Bosnian Croat forces and later a commander in the Bosnian Army. Persons detained from the villages were held in a prison camp in the village of Celebici, where detainees were tortured, sexually assaulted, and subjected to cruel and inhuman treatment by Delalic and three others: the camp commander, a camp guard, the deputy camp commander. The four were indicted for offenses constituting grave breaches of the Geneva Conventions and violations of the laws and customs of war. Allegations of rape were charged as torture, constituting grave breaches. Delalic was charged with responsibility for crimes committed by subordinates, namely, torture, murder, and rape. According to the indictment, one woman was subjected to repeated incidents of forcible sexual intercourse. In one incident she was raped in front of others, and another time she was raped by three different persons in one night. Another woman was subjected to repeated rape, including both vaginal and anal rape over a period of six weeks. One detainee had a burning fuse cord placed around his genitals, persons were forced to commit fellatio, and an electric current was used to inflict pain on detainees.

SOURCE: Askin 1999a, 114.

The prosecution indictment alleged the commission of rape, categorized as torture and punishable as a grave breach. Reviewing various international instruments, the Trial Chamber first concluded that there is no doubt that rape and other forms of sexual assault are prohibited by international humanitarian law. The Trial Chamber considered that rape should be defined as follows: “a physical invasion of a sexual nature, committed on a person under circumstances that are coercive.” Rape constitutes torture if all the requisite elements of that crime are met; this means that for rape to be torture it must satisfy each of the

elements of the offense as set out in the Convention against Torture (Marshall 2005, 158). After reviewing other international jurisprudence,³¹ the Trial Chamber found that rape causes severe pain and suffering, both physical and psychological. As well, the Trial Chamber said it was difficult to envisage circumstances during armed conflict in which rape could be considered as occurring for a purpose that did not, in some way, involve punishment, coercion, discrimination, or intimidation. It was the view of the Tribunal that “this is inherent in situations of armed conflict” (quoted in Askin 2003, 323).

Rape as a Crime Against Humanity: The Former Yugoslavia

As well as grave breaches of the Convention, IHL also prescribes offenses that constitute *crimes against humanity*. The notion of a crime against humanity came out of the proceedings of the Nuremberg Tribunal as a means of criminalizing the actions of the Nazis against distinct communities, such as the Jews (Buss 2002, 94). The charters of the Nuremberg and Tokyo tribunals after World War II did not specifically enumerate rape as a crime against humanity, although it could be subsumed within the phrase “inhumane act” used in both charters (Niarchos 1995, 660). Crimes against humanity are described also in numerous international instruments of more recent origin, including the statute of the recently established International Criminal Court (see Chapter 9), and explicitly include rape.

While there is no agreed international consensus on the elements required to constitute a crime against humanity because the concept is defined differently in different international instruments (Askin 1999b, 70), a report of the United Nations³² contains a commonly adopted interpretation stating that crimes against humanity “refer to inhumane acts of a very serious nature . . . committed as part of a widespread or systematic attack against any civilian population on national, political, ethnic, racial or religious grounds.” Thus, where rape is committed on a

wide scale against a civilian population for the specified grounds, it could be prosecuted as a crime against humanity. Up to the time of the formation of the ICTY, no prosecution had been taken. The statute of the ICTY gives it jurisdiction over crimes against humanity, and these are enumerated to explicitly include rape (O’Brien 1993, 645). In the context of the former Yugoslavia, charges of crimes against humanity are aimed at acts amounting to “ethnic cleansing,” the forced removal of populations from specific locations that led to widespread violations of IHL (Buss 2002, 94).

Can rape amount to a crime against humanity? In 2001, in the landmark case of *Prosecutor v. Kunarac*, the Trial Chamber of the ICTY found that the mass rape, torture, and enslavement of Muslim women in the municipality of Foca during the conflict in Bosnia amounted to a crime against humanity. This was the first case to successfully prosecute rape as a crime against humanity (Buss 2002, 91). The Trial Chamber also found that the rapes were an element of a broader policy agenda that comprised terrorizing Muslims, evicting them, and making the area a Serbian stronghold. The accused Kunarac stated that the rapes “were one of the many ways in which the Serbs could assert their superiority and victory over the Muslims” (Buss 2002, 94). The decision makes it clear that wartime violence against women will be taken seriously and those who rape women will be held accountable.

BOX 13.4 Prosecutor v. Kunarac—Rape as a Crime Against Humanity

In April 1992, the city and area of Foca in Bosnia were invaded by Serb forces. Muslims residing in the city and its environs were attacked, deported out of the region, and/or detained. Women, children, and some older men were transported to detention centers located at the local high school and sports hall. Before the war in Bosnia, 52 percent of the approximately forty thousand residents of the municipality of Foca were Muslim. After the war, only ten remained. Conditions for those placed in detention were horrendous, with unhygienic facilities, little food, beatings, and repeated rapes. Serb soldiers habitually raped the women kept in the high school and sports hall. The accused Kunarac, along with two others, was involved in the rapes and in the removal of a group of women and girls, aged from twelve to twenty years, to houses and apartments where they were raped repeatedly by the accused and other soldiers. Some of this group were detained for months and subjected to constant rapes, taken as the “property” of the accused and made to perform housework, cooking, and cleaning. After some time, some women were sold to other soldiers. The twelve-year-old girl was never seen again. Kunarac and others were charged with rape as a crime against humanity.

SOURCE: Buss 2002, 92–93.

Rape as Genocide: The Former Yugoslavia

Genocide is defined by Article 2 of the Convention on the Prevention and Punishment of the Crime of Genocide 1948 and requires an intention to destroy, wholly or partly, a national, ethnic, racial, or religious group by committing acts such as killing; causing serious bodily or mental harm to group members; inflicting conditions on the group calculated to bring about its physical destruction, wholly or partly; imposing measures to prevent births in the group; or forcibly transferring children of the group to another group. Rape is not specifically mentioned, but it is argued that, where it has been conducted on a massive and systematic basis to produce babies of the ethnicity of the rapists or to destroy family life and to cleanse the area of all other groups, rape becomes genocidal (Chinkin 1994, 334). It is also argued that rape that amounts to serious bodily or mental harm to members of a group must be seen as an act of genocide (Eboe-Osuji 2007, 252).

Where rape is prosecuted as an act of genocide, it must be shown that the intention was to destroy a group, in whole or in part, and thus coercion or use

of violence must be a key feature of the narrative given in genocide trials. Questions of consent, often the focus of domestic laws on rape, are irrelevant (Eboe-Osuji 2007, 258). In charging rape as genocide, it can be challenging to fulfill the requirements of the elements of genocide. For example, a UN report found no genocidal intent in Darfur, Sudan, because counterinsurgency and an intent to drive the victims from the land were additional motivations in what occurred there (Faucette 2012, 56).

Can rape amount to genocide? In the Akayesu case before the ICTR, rape was tried as genocide for the first time, with the ICTR noting that sexual violence was “an integral part of the process of destruction” and that the evidence of victims showed that sexual violence was a “fundamental and integral part of the genocide” with the use of HIV-positive soldiers providing evidence of intent to destroy. The ICTY focused on the systematic nature of rape, the targeting of Tutsi women, and the degree of harm and concluded that rape was used as an instrument of genocide. Akayesu was found guilty of rape as genocide, an unprecedented finding in international law. The decision has been described as of “monumental legal significance” (Faucette 2012, 59).

BOX 13.5 Prosecutor v. Akayesu—Rape as Genocide

Jean-Paul Akayesu was the *bourgmestre* (akin to a mayor) of Taba commune, Rwanda. The Tribunal found that a widespread and systematic attack against the civilian ethnic population of Tutsi took place in Taba between April 7 and the end of June 1994. Many Tutsi women endured sexual violence, mutilations, and repeated rapes, often in public and often by multiple men. One witness said, “Each time that you met assailants, they raped you.” It was proved that some armed communal policemen and Akayesu himself were present during the commission of some of the rapes. While there were no allegations that Akayesu committed rape, it was held that he could be held accountable for the rapes and sexual violence that occurred in the area of Taba, perpetrated by Hutu on Tutsi women because he was involved in ordering, instigating, or aiding and abetting the rapes, forced public nudity, and sexual mutilation. He did this by being present and by verbally encouraging during or before instances of sexual violence. His presence and words sent “a clear signal of official tolerance” for the acts that took place.

SOURCE: Askin 2003, 320–21.

The incorporation of the crime of rape into international crimes is a significant step in the protection of women during times of armed conflict. Those involved in such conflicts who commit acts of rape can now be held accountable, depending on the evidence and circumstances, for the most serious international crimes. One

outcome of the decisions discussed in this chapter is that rape as torture, rape as a crime against humanity, and rape as genocide can all be prosecuted in any state. Finally, it can be said that this is “compelling evidence that crimes of sexual violence are now considered amongst the most serious international crimes” (Askin 2003, 349).

NOTES

1. The public sphere focuses on the political public life of rational thinking and is where political and legal activity traditionally occurs. This contrasts with the private sphere where the focus is on the family, privacy, and the domestic and emotional life, where political and legal regulation is, in theory, believed to be inappropriate. In fact, there is a good deal of regulation of the private sphere, for example, in the case of abortion. Feminists have pointed out that the division between public and private is gendered and hierarchical and works to the disadvantage of women. The public world is male oriented and assumes greater power than the private world to which women are assigned. Thus, the domestic sphere entrenches inequality and renders women's concerns invisible.

2. The WHO (2013, 8) reported that psychological trauma and stress resulting from intimate partner violence can result in mental health problems, including post-traumatic stress disorder, anxiety, depression, eating disorders, suicidality, as well as substance abuse through alcohol, drugs, and tobacco.

3. Ninety-four percent of empirical studies found a significant relationship for men between witnessing violence against their mother and later abusing a partner themselves. This suggests that violence in adulthood is learned as boys grow up in a violent home (Heise 1998, 267).

4. As Rebecca Dobash and Russell Dobash (1992, 276) point out, "The survey is particularly poor at investigating complex behaviours, emotions and social processes such as those associated with violence, and its necessary brevity means it can rarely be used to explore the contexts associated with social behavior."

5. In the traditional ideology of patriarchy, men are the providers and heads of households while women provide emotional support and domestic services, but the exact nature of patriarchy differs depending on culture and context (Ferraro 2006, 79).

6. Charlotte Bunch is an activist for women's and human rights. She was a major lobbyist for the United Nations to consider women's rights as human rights.

7. See <http://www1.umn.edu/humanrts/instree/e5dplw.htm>.

8. See <http://www.un.org/en/women/endviolence/about.shtml>.

9. See <http://www.sistersinislam.org.my/>.

10. For example, in the United States, the strategy of providing treatment to abusers has been found to be ineffective. Studies have found that men arrested and treated for violence against women resume their violent conduct at the same rate as men arrested but not treated, and other studies have found no significant difference in recidivism rates between those who complete treatment programs and those who do not (Hanna 1998, 1505, 1533).

11. Weldon (2002, 7) explains that in her study, "responsiveness" in relation to governments means asking "whether governments are taking action to address violence against women or whether they are avoiding such action."

12. See <http://www1.umn.edu/humanrts/iwraw/>.

13. In the United States, police concerns about arresting perpetrators of DV centered on the dangers that conflict in the home presented to police. The police view was that they should become counselors and mediators and be trained in crisis intervention rather than make an arrest (Dobash and Dobash 1992, 161).

14. Historical Russian literature casts women as possessing evil and magical powers and as calling for rules and punishments to control them. Women were considered to be sinful and depraved. This set of beliefs about women found further expression in the *Domostroi*, a household manual that, as well as proscribing appropriate gendered roles for women and men, contained the appropriate dimensions for whips and instructed that a wife should be whipped without her blouse on and in private (Horne 1999, 56).

15. By 1998 ANNA had twelve staff and numerous volunteers, and by 2001 its leaders had become national advocates for DV by participating in conferences all over the country funded by programs operated by the American Bar Association (J. E. Johnson 2009, 54).

16. Reuters news agency reported in August 2013 that a new draft law on DV was being considered by committees of the Lower House of the Russian Parliament. This draft is the third such draft, the others having been "watered down" and dropped (Gabriela Baczynska, "Victims of Domestic Violence Face Uphill Battle for Protection in Russia," Reuters, August 20, 2013, <http://www.reuters.com/assets/print?aid=USBR E97JOCX20130820>).

17. The Human Development Index measures three basic dimensions of human development: long and healthy life, knowledge, and decent standard of living. Four indicators are used to calculate the index: life expectancy at birth, mean years of schooling, expected years of schooling, and gross national income per capita.

18. In an article published in 1994, Ofei-Aboagye (1994, 1) indicated there were no published studies on domestic violence in Ghana at that time.

19. Ghana's Country Reports to CEDAW submitted under Article 18 of CEDAW are referenced in Cantalupo et al. 2006, 531, footnote 22.

20. Where a woman asks for money, this is associated with perceptions that women are "greedy and have insatiable material desires" (Coker-Appiah and Cusack 1999, 16).

21. The WAJU was subsequently renamed the Domestic Violence and Victim Support Unit (Immigration and Refugee Board of Canada, *Ghana: Domestic Violence, Including Protection, Services and*

Recourse Available to Victims, GHA103468.E, June 10, 2010, available at Refworld, <http://www.refworld.org/docid/4dd22ae92.html>.

22. FIDA (Federación Internacional de Abogadas) is an international organization of women lawyers.

23. In the United States, survey data from the National Crime Victimization Study show that the reason most often given for failing to report DV (25 percent) is that it was a “private matter” (Ferraro 2006, 51).

24. While WAJU asserts that it refers all DV cases to court, WAJU officers reportedly refer cases for counseling. In addition, some WAJU officers do not sympathize with victims of DV (Cantalupo et al. 2006, 531).

25. See <http://www.refworld.org/docid/4dd22ae92.html>.

26. Men are rarely victims of honor crimes, but this can occur when both the man and the woman are murdered as a consequence of an act of adultery (Devers and Bacon 2010, 361).

27. The origins of Article 340 are the Ottoman Penal Code of 1858 and the French Penal Code of 1810, repealed only in 1975. Provisions similar to Article 340 are found in almost every Arab Penal Code and were in the Italian Penal Code, which was repealed in 1979 (Abu-Odeh 2010, 913–14).

28. The defense of provocation is available under almost all legal regimes. For example, in England and Wales, provocation is a partial defense to homicide where the killing is claimed to have taken place as a result of a sudden and temporary loss of control (Homicide Act 1957).

29. Resolution A/c.3/59/L.25 of 15 October 2004.

30. The 1995 Beijing Declaration and Platform for Action recognized the pervasiveness of sexual violence

against women in times of armed conflict and noted, “Parties to a conflict often rape women with impunity, sometimes using systematic rape as a tactic of war and terrorism” (quoted in Askin 1999b, 61).

31. The Trial Chamber reviewed a case from the Inter-American Commission on Human Rights of 1996 in which the Commission found that rape constituted torture. The case, *Raquel Mejía v. Peru*, concerned events in 1989 when, during the evening, Peruvian military units with their faces covered entered the Mejía home and abducted Fernando Mejía on suspicion of being a subversive. Subsequently, Raquel Mejía was raped twice by a single soldier. The Commission found that she had been raped with the aim of intimidating her and inflicting punishment upon her. As to the level of suffering involved in torture, the Commission found that the rapes constituted an act of violence that caused physical and psychological pain and suffering, shock, fear of public ostracism, feelings of humiliation, fear of her husband’s reaction, damage to the integrity of the family, and an apprehension that her children would feel humiliated if they came to know about the rapes. The European Court of Human Rights in the case of *Aydin v. Turkey*, in 1997, involving the rape of a woman in a police station after being blindfolded, beaten, stripped and sprayed with high pressure water, also found that the acts constituted torture. Also, in the case of *Akayesu*, 1998, the International Criminal Tribunal for Rwanda found that rape constituted torture because it degraded and humiliated, violated personal dignity, and was inflicted by a public official. All three cases involved rape by public officials.

32. Report of the Secretary-General Pursuant to Para. 2 of the Security Council Resolution 808 1993.