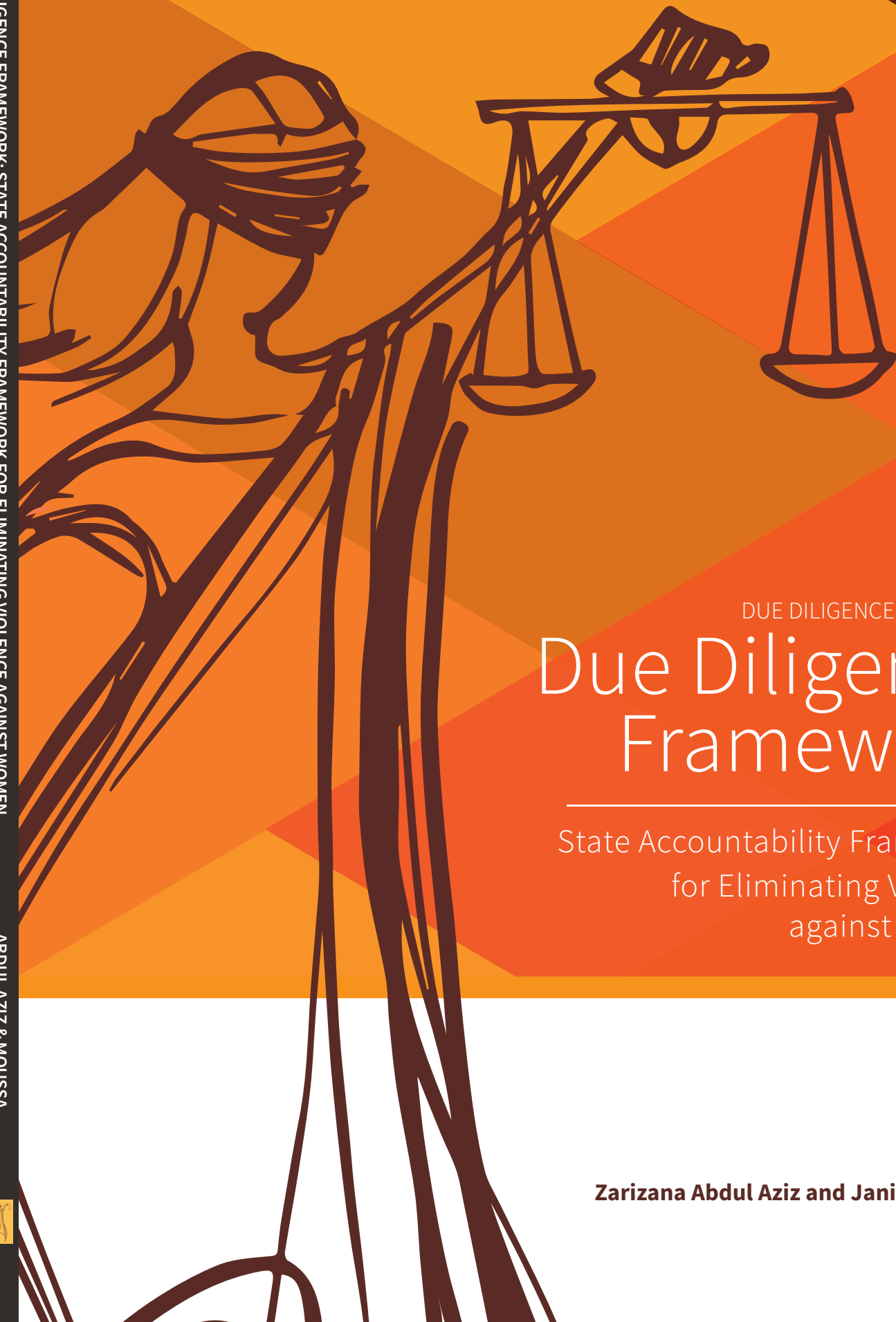


DUE DILIGENCE FRAMEWORK: STATE ACCOUNTABILITY FRAMEWORK FOR ELIMINATING VIOLENCE AGAINST WOMEN

ABDUL AZIZ & MOUSSA



DUE DILIGENCE PROJECT'S

Due Diligence Framework

State Accountability Framework
for Eliminating Violence
against Women

Zarizana Abdul Aziz and Janine Moussa



Due Diligence Project
International Human Rights Initiative
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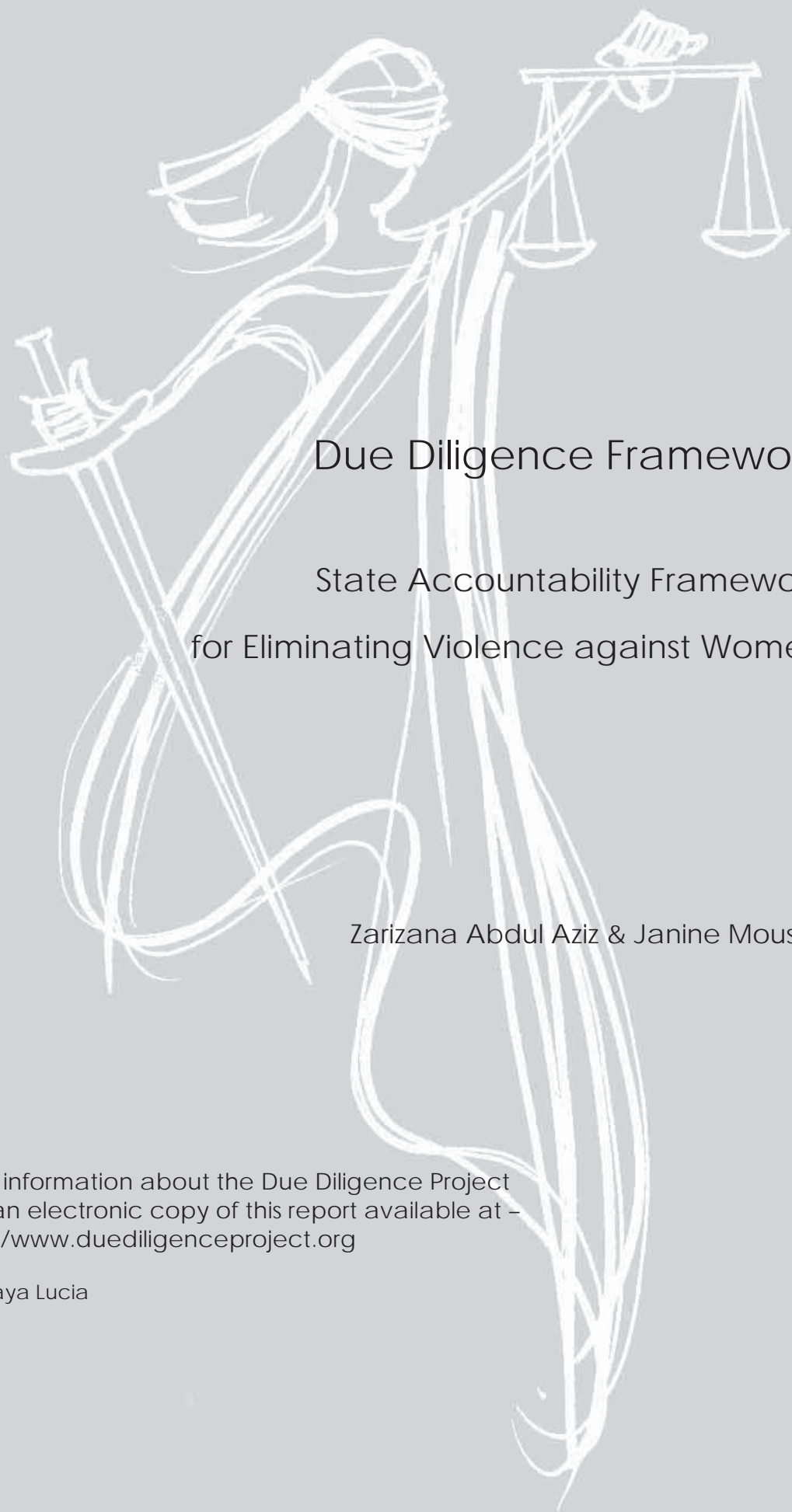
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Due Diligence Framework

State Accountability Framework for Eliminating Violence against Women

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More information about the Due Diligence Project
and an electronic copy of this report available at -
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For Maya Lucia

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FOREWORD

The struggle to understand women's rights as human rights and to bring violence against women out of the private zones of silence and place it firmly in the public sphere of State accountability are among the most important gains of the global women's movement over the past three decades. For the most part, this was accomplished through hard work and hard fought battles by women/feminist movements at the local, regional and global levels. But it has also involved the bringing together of feminist theory and practice with human rights thinking and experience, building alliances across movements and with government officials locally and nationally, as well as with the United Nations and other international bodies.

Violence against women (VAW) emerged as an issue locally from women's groups at the grass roots in every region because it is a problem that holds women back everywhere, and from which no country, culture, or religion is immune. Women came together globally in the 1980's and 90's to advocate at the international level for an understanding of VAW not only as a global pandemic, but also as the most pervasive abuse of human rights experienced by women. The global campaign for this issue and the demand for recognition that "women's rights are human rights" gathered momentum at many levels, from the creation of the 16 Days of Activism against Gender Violence locally to the UN world conferences in Vienna (on human rights), Cairo (on population and development), Copenhagen (on social development), and culminating in the Fourth World Conference on Women in Beijing in 1995.

Norms and standards around women's human rights have been evolving rapidly ever since with considerable attention paid to violence against women (VAW). This report spells out the important advances made globally and regionally through UN declarations, resolutions, general comments from treaty bodies, as well as in several regional conventions, and human rights mechanisms created, such as the UN Special Rapporteur on

VAW, its causes and consequences, and the UN Special Representative on Sexual Violence in Conflict.

However, despite these important gains, violence against women has not significantly diminished globally because it is deeply embedded in all our cultures and the implementation of these norms is still weak; impunity for perpetrators too often reigns. It is widely recognized that greater political will and commitment of resources to ending VAW is needed at every level. But there is also a need for greater conceptual clarity and research on how to combat VAW more effectively as well as on the scope and extent of state accountability and obligations. These obligations need to be broken down into tangible, measurable, comparable, and implementable components.

The Due Diligence Project addresses these gaps through a unique effort to bring together the lessons learned by diverse civil society organizations from all regions, and especially women's groups, that have been addressing VAW over the past few decades. Through regionally based research and consultations, the project gathered rich information on how various NGOs view the work needed now to end VAW, including both good or promising practice examples, and what has not worked and why. By unpacking the concept of due diligence through the concrete experiences of women's groups, it provides the kind of information that is essential to ensuring that governments shape the most effective human rights based policies and programmes in their work on the elimination of VAW.

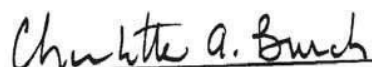
I have been an enthusiastic supporter of the Due Diligence Project precisely because it is aimed at addressing many of these issues:

1. It functions at the nexus between women's rights and human rights, presenting the issue of violence against women within the human rights framework of State accountability;

2. It offers a comprehensive framework for approaching VAW based on the international legal principle of due diligence through its designation of the “5Ps” - prevention, protection, prosecution, punishment, and provision of redress;
3. It provides Guiding Principles, further breaking down each of these 5Ps into tangible, measurable, and implementable elements;
4. It draws on the vast experience of CSOs working on the front lines in creating these Guiding Principles, and in identifying good or promising practice examples;
5. It is a tool to facilitate engagement and cooperation between CSOs and government officials working towards the elimination of VAW.

of the discourse on eliminating VAW – this is a long and winding road from which we still have much to learn. But it does plough the field for further elaboration by ensuring that the voices of those who have been active on this issue at the ground level are heard and their experiences systematized in a concrete and usable way. It utilizes an intersectional approach recognizing the diversity of forms that VAW can take and acknowledges cultural diversity in strategies to combat it, while never abandoning the universality of the principle that all VAW violates fundamental human rights. Its great value added is that it moves us forward in developing guidelines for implementation by shedding much needed light on the role and responsibility of the State in this arena, and on what it means in a very practical way to effectively and comprehensively address ending violence against women. It is an invaluable and welcome contribution to this ever-evolving discussion.

The Due Diligence Project and its Framework for Accountability does not represent the final stages



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List of Abbreviations

CANZUS	Canada, Australia, New Zealand and United States of America,
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CSO	Civil Society Organization
DDP	Due Diligence Project
ECHR	European Court of Human Rights
LAC	Latin America and the Caribbean
IACHR	Inter-American Commission of Human Rights
IACtHR	Inter-American Court of Human Rights
MENA	Middle East and North Africa
VAW	Violence against Women

CHAPTER 1

INTRODUCTION

a. Due Diligence Principle

Traditionally, States have only been responsible for their own actions or those of their agents. Gradually, public international law developed to mandate States to exercise due diligence to promote, protect and fulfil human rights. This obligates States to take reasonable measures to prevent human rights abuses before they occur, such as adopting relevant laws and policies, and effectively prosecute and punish perpetrators if abuses occur.

The 'due diligence principle', as it is commonly termed, holds States accountable for human rights abuses committed not only by the State or State actors, but also by non-State actors. Violence against women (VAW) is most often perpetrated by non-State actors — for example, a close male relative or an intimate partner.¹ The due diligence principle is a critical tool in the formulation of accountability. By making the State accountable for violence perpetrated by non-State actors, public international law recognizes that VAW, regardless of who commits it, constitutes human rights violations. Due diligence has also ruptured the artificial 'public/private sphere' divide and the dichotomy between State and non-State actors,² as States are now not only permitted but obliged to enter the so-called 'private sphere' where most instances of VAW take place and where States have traditionally been barred.

The due diligence principle can be found in several international instruments. General Recommendation No. 19 (1992) of the Convention on the Elimination of All Forms of Discrimination Against Women ("CEDAW") Committee and the United Nations General Assembly (1993) Declaration on the Elimination of Violence against Women underline that States are responsible

for private acts of VAW if they fail to act with due diligence to prevent, protect against, investigate, punish and redress the same.³ This point was later reiterated at the Platform for Action of the Beijing World Conference on Women and in a number of regional and international documents and court decisions.⁴ In 1994, the resolution establishing the mandate of the UN Special Rapporteur on violence against women, its causes and consequences emphasized 'the duty of Governments to refrain from engaging in violence against women and to exercise due diligence to prevent, investigate and, in accordance with national legislation, to punish acts of

³ UN CEDAW, General Recommendation 19: Violence against women, 11th session, 1992, U.N. Doc. HR/GEN/11/Rev.1 at 84 (1994), para. 9. UN Declaration on the Elimination of Violence against Women. General Assembly resolution 48/104 of 20 December 1993; A/RES/48/104, 23 February 1994, Article 4.c. See also UN CEDAW, General Recommendation 28: Core Obligations of State under Article 2 of CEDAW, U.N. Doc. CEDAW/C/GC/28, 16 December 2010.

⁴ United Nations, Report of the Fourth World Conference on Women, Beijing, 4–15 September 1995, Beijing Declaration and Platform for Action approved at the 16th plenary session held on 15 September 1995. A/CONF.177/20/Rev.1, para. 1245b. Also see Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women 1994, 'Convention of Belém do Pará', para. 7(b); Protocol to the African Charter on Human and People's Rights on the Rights of Women In Africa, adopted 11 July 2003; Istanbul Protocol submitted to the United Nations High Commissioner for Human Rights, U.N. Doc. HR/P/PT/8 (1999), paras. 76, 79; Council of Europe Convention on preventing and combating violence against women and domestic violence, *Council of Europe Treaty Series - No. 210* (also known as the Istanbul Convention). It has been submitted to the United Nations High Commissioner for Human Rights, U.N. Doc. HR/P/PT/8 (1999), paras. 76, 79. EU member states are also bound by EU Directive 2012/29/EU of the European Parliament and of the Council establishing minimum standards on the rights, support and protection of victims/survivors of crime and replacing Council Framework Decision 2001/220/JHA. The 27 Member States and Croatia are bound by these standards. The only Arab regional mechanism that clearly mentioned family violence is the Arab Charter on Human Rights, 2004. Paragraph 2 of article 33 recognizes only violence within the family; most importantly, it addresses women as mothers not as citizens. Arab Charter on Human Rights, 2004, translated by Dr. Mohammed Amin Al-Midani and Mathilde Cabanettes and revised by Professor Susan M. Akram, *BOSTON UNIVERSITY INTERNATIONAL LAW JOURNAL* [Vol. 24:147].

¹ UN (2006) The Secretary-General's in-depth study on all forms of violence against women, A/61/122/Add.1, para. 112., United Nations, New York

² Yakin Ertürk (2006) Report of the Special Rapporteur on violence against women, its causes and consequences, *The Due Diligence Standard as a Tool for the Elimination of Violence against Women*, Commission on Human Rights, U.N. Doc. E/CN.4/2006/61, 20 January 2006, paras. 59-63, United Nations, New York.

violence against women and to take appropriate and effective action concerning acts of violence against women, whether those acts are perpetrated by the State or by private persons, and to provide access to just and effective remedies and specialized assistance to victims'.⁵ The Special Rapporteurs on violence against women, its causes and consequences have twice focused their thematic reports on the due diligence principle.⁶

This principle of due diligence was further fleshed out in a series of recent international and regional opinions and cases. The CEDAW Committee also addressed a State's due diligence obligation in its communications on VAW under the Optional Protocol to CEDAW.⁷ The Inter-American Commission of Human Rights (IACHR) and the Inter-American Court of Human Rights (IACtHR) also delivered several landmark opinions/decisions which set out and developed the due diligence principle and State responsibility for violations of human rights by non-State agents.⁸ The European Court of Human Rights (ECHR) further elaborated on the due diligence obligation, particularly where the State knew or ought to have known of a 'real and immediate risk' to the life or safety of an identified individual.⁹ The African

Commission of Human and People's Rights similarly held the State responsible for 'acts of gender-based violence, perpetrated by state actors, and non-state actors under the control of state actors, that went unpunished'.¹⁰

The due diligence principle is not only entrenched within international human rights instruments and cases but can also be discerned at the national level, either through domestication of international law and the due diligence principle or through litigation on the constitutional duties of States to protect fundamental rights, liberties and freedoms.

Courts in different countries have affirmed State responsibility in case of 'positive inaction' and dereliction of duty through inaction by enforcement officers. In some cases in India, if such inaction is found to result in violation of constitutional rights to life, liberty and property, Courts reject the State defence of sovereign immunity, even if the inaction was in the face of third-party actions (for example, acts by a mob or terrorist).¹¹

Also significant are the findings of the Verma Committee, convened by the Indian government following public outcry against the brutal rape and murder of a young woman in New Delhi.¹² The Committee underlined that 'it is indubitably the position that the Constitution guarantees fundamental freedoms to women... these fundamental freedoms bind the State in the performance of its task of governance of the country. A fortiori, the duty of the State, therefore is to provide a safe environment at all times, for women... It may also be noticed that Article 51A(e) provides that it shall be the duty of every citizen of India to renounce practices derogatory to the dignity of women'.¹³ 'The right to be protected from sexual harassment and sexual assault is, therefore, guaranteed by the Constitution and is one

⁵ Resolution E/CN.4/RES/1994/45, para 2.

⁶ Yakin Ertürk (2006) Report on *The Due Diligence Standard as a Tool for the Elimination of Violence against Women*, *supra* note 2, paras. 14-105; Rashida Manjoo, Report of the Special Rapporteur on violence against women, its causes and consequences, Human Rights Council, U.N. Doc. A/HRC/23/49, 14 May 2013, paras 11-77.

⁷ See, for example, Communication No. 2/2003, Ms. A.T. v. Hungary (Views adopted by the CEDAW Committee on 26 January 2005, thirty-second session under the Optional Protocol to CEDAW); Communication No. 6/2005, Fatma Yıldırım v. Austria (Views adopted by the CEDAW Committee on 6 August 2005).

⁸ The 1988 Velázquez Rodríguez case of the Inter-American Court of Human Rights is a landmark that clearly set out the due diligence principle and State responsibility for violations of human rights caused by non-State agents. 'An illegal act which violates human rights and which is initially not directly imputable to a State (for example, because it is the act of a private person or because the person responsible has not been identified) can lead to international responsibility of the State, not because of an act itself, but because of the lack of due diligence to prevent the violation or to respond to it as required by the Convention.' Velázquez Rodríguez v. Honduras, judgment of 29 July 1988, IACtHR (ser. C) No. 4, para. 172; Maria Da Penha v. Brazil, Case 12.051, Report No. 54/01, IACHR, Annual Report 2000, OEA/Ser.L/V/II.111 Doc.20 rev. (2000), paras. 55 and 56; González et al. v. México (Campo Algodonero), IACtHR Judgment of 16 November 2009, IACHR; Jessica Lenahan (Gonzales) v. United States, IACHR, Report No. 80/11, Case 12.626 Merits, 21 July 2011.

⁹ Osman v. the United Kingdom, § 115, Reports 1998-VIII, ECHR, Judgment dated 28 October 1998; Case of Opuz v. Turkey, (2009), ECHR, App. No. 33401/02. Judgment dated 9 June 2009.

¹⁰ 'The violations were designed to silence women who were participating in the demonstration and deter their activism in the political affairs of the Respondent State which in turn, failed in its inescapable responsibility to take action against the perpetrators.' Communication 323/06: Egyptian Initiative for Personal Rights and INTERIGHTS v Egypt, 12-16 December 2011, para. 166.

¹¹ J.K. Traders v. State of Andhra Pradesh W.P. NO. 15050 (1993).

¹² Four of the rapists have since been convicted and sentenced. Available at http://articles.timesofindia.indiatimes.com/2013-09-13/india/42039813_1_murder-case-vinay-sharma-track-court.

¹³ Verma Committee Report ¶ 2. Also available at <http://www.prsindia.org/uploads/media/Justice%20verma%20committee%20report.pdf>.

of the pillars on which the very construct of gender justice stands.¹⁴ '[F]ailure in discharging this public duty renders it [the State] accountable for the lapse.' 'The State's role is not merely reactive to apprehend and punish the culprits for their crime; its duty is also to prevent the commission of any crime to the best of its ability. Crimes against women are an egregious violation of several human rights demanding strict punishment with deterrence to prevent similar crimes in future by the likeminded.'¹⁵

South Africa has one of the most developed jurisprudence on the due diligence principle. Courts have held that where the State fails in its obligation to enact legislation or to take other measures to protect women from violence, it should be held liable to the victims/survivors.¹⁶ In *S v. Baloyi*, the court found that the State had a number of direct constitutional obligations to deal with domestic violence and to protect every individual's right to be free from domestic (or private) violence.¹⁷ 'Domestic violence compels constitutional concern in yet another important respect. To the extent that it is systemic, pervasive and overwhelmingly gender-specific,¹⁸ domestic violence both reflects and reinforces patriarchal domination, and does so in a particularly brutal form... The non-sexist society promised in the foundational clauses of the Constitution and the right to equality and non-discrimination guaranteed by section 9, are undermined when spouse-batterers enjoy impunity.'¹⁹

In 2011, the Australian Human Rights Commission (AHRC)²⁰ intervened into an inquest and submitted

that the State violated its due diligence obligations under international law by failing to promptly, thoroughly and seriously investigate allegations of domestic violence and breaches of restraining orders, among others.²¹ Canadian courts have also recognized law-enforcement agencies' obligations to responsibly investigate gender violence.²²

Kenya is among the latest countries to employ the due diligence principle as well as violation of constitutional rights. In the '160 Girls' case', the petitioners sued to hold the Kenyan government accountable for failure to prosecute sexual offences.²³ Judge Makau of the Kenya High Court found police failure 'to conduct prompt, effective, proper and professional investigations... infringed the petitioners' fundamental rights and freedoms under... the

pregnancy, breastfeeding, family obligations or discrimination relating to sexual harassment (Sex Discrimination Act of 1984 § 48.

Available at

http://www.austlii.edu.au/au/legis/cth/consol_act/sda1984209/.

²¹ Intervention by the Australian Human Rights Commission into the inquest in the Coroner's Court of Western Australia of Andrea Louise Pickett (41/09): The facts of the case: Andrea Pickett was married to an abusive man for 23 years. The police failed to take these violations seriously. Andrea was denied access to shelter multiple times. In 2009, Andrea's husband tracked her to the house she was hiding in and killed her on the front lawn. *Available at* [http://www.humanrights.gov.au/sites/default/files/content/legal/submissions_court/guidelines/Submissions%2025%20June%202012%20\(2\).pdf](http://www.humanrights.gov.au/sites/default/files/content/legal/submissions_court/guidelines/Submissions%2025%20June%202012%20(2).pdf)

²² *Jane Doe v. Metropolitan Toronto (Municipality) Commissioners of Police*, 1998 OJ 2681 (Ont.). Conversely, see *M. (B.) v. British Columbia (Attorney General)*, 2004 BCJ 1506 (B.C.) (rejecting domestic violence victim's negligence claim against the police based on lack of causation but finding that police owed her a duty of care). For a general discussion, see Melanie Randall, *Private Law, the State and the Duty to Protect: Tort Actions for Police Failures in Gendered Violence Cases*, 44 SUP. CT. L. REV. 343 (2009); Erika Chamberlain (2012) *Tort Claims for Failure to Protect: Reasons for (Cautious) Optimism Since Mooney*, 75 SASK. L. REV. 245; Jennifer Koshan (2012) *State Responsibility for Protection Against Domestic Violence: The Inter-American Commission on Human Rights Decision in Lenahan (Gonzales) and its Application in Canada*, 30 WINDSOR Y.B. ACCESS JUST. 39.

²³ Republic of Kenya: In the High Court of Kenya Petition No. 8 of 2012, C.K. (a child), through Ripples International as her guardian and next friend & Ors v. The Commissioner of Police/Inspector General of the National Police Service & Ors seeking inter alia a declaration to the effect that the neglect, omission, refusal and/or failure of the police to conduct prompt, effective, proper and professional investigations into the petitioners' respective complaints violates the UDHR, UN Convention on the rights of the child, African Charter on the Rights and welfare of the child, and African Charter on Human and people's rights, mandamus [that the respondents conduct prompt effective investigations and formulate a national policy framework in compliance with the Constitution on sexual offences].

¹⁴ *Ibid* ¶ 4.

¹⁵ *Ibid* ¶ 7.

¹⁶ *Suzette Irene Nelson v. Minister of Safety and Security & Another*, (2006) ZANCHS 88, High Court of South Africa; *Carmichele v. Minister of Safety and Security & Another* 2001 (1) SA 489 (SCA); 2001 (1) SA 912 (CC); 2001 (1) BCLR 36 (CC).

¹⁷ *S v. Baloyi and Others* 2000 (1) BCLR 86 (CC) per Sachs J.

¹⁸ Dorothy Thomas and Michele Beasley (1993) 'Domestic Violence as a Human Rights Issue.' 15 Human Rights Quarterly 36 at 60, underlines that both abuse and the failure of law enforcement are gender-specific.

¹⁹ *The State v. Baloyi*, p 14, per Sachs J, *supra* note 17.

²⁰ The Australian Human Rights Commission was created by an act of 1986 § 31. *Available at* http://www.austlii.edu.au/au/legis/cth/consol_act/ahrc1986373/ [hereinafter AHRC Act]. The exact scope of the AHRC's functions is governed by each of the four separate acts in which it plays a role: the Racial Discrimination Act of 1975, the Sex Discrimination Act of 1984, the Disability Discrimination Act of 1992 and the Age Discrimination Act of 2004. Under the Sex Discrimination Act of 1984, the AHRC is called upon to exercise its powers in matters relating to discrimination on the grounds of sex, marital status, pregnancy or potential

Constitution of Kenya, 2010 and the general rules of international law... The respondent's ongoing failure... created a "climate of impunity" for commission of sexual offences and in particular defilement. This to me makes the respondents responsible... because of their laxity and their failure to take prompt and positive action to deter defilement'.²⁴

b. Violence against Women

This report goes beyond analyzing acts of violence, exploring structural causes and aggregated risk factors such as patriarchy; the relationship between social, economic and cultural rights on VAW and the intersectionality between VAW and other issues (for example, race, ethnicity, poverty, religion and sexual orientation. Taking into account contemporary theories of gender equality, VAW and concepts of intersectionality, the Due Diligence Project (DDP or the Project) examines various factors that intersect with and impact VAW, including poverty, ethnicity and size of rural population. It examines how membership of a particular group (for example, migrant, displaced or stateless populations) shapes the violence, affects a woman's likelihood of becoming a victim of violence and her ability to seek adequate relief after the fact.

Based on the definition contained, among others, in the 1993 UN Declaration on the Elimination of Violence against Women, this report defines 'violence against women' as an act of gender-based violence (GBV) that results in, or is likely to result in, physical, sexual, psychological or economic harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life.²⁵

The scope of VAW has evolved over time to reflect discourses on structural violence and understanding of gender inequality and gendered power imbalances within cultures and society.²⁶ Lack of strong societal

condemnation of VAW and of proper enforcement of existing laws 'operate as a means to maintain and reinforce women's subordination'.²⁷ VAW is a violation of human rights and one of the most extreme and pervasive forms of discrimination against women, severely impairing and nullifying the enforcement of their rights.²⁸ It is a manifestation of historically unequal power relationships between women and men, a major obstacle to achieving gender equality and a serious violation of the human rights of women and girls.²⁹

A broad and nuanced definition of VAW is necessary to identify and address the variety of sources and causes of violence. A multifaceted approach that recognizes the interplay of personal, situational and socio-cultural factors began in the 1980s.³⁰ In the 1990s, women worked to make their rights and VAW part of discussions on human rights.³¹ GBV against women was formally recognized as part of the human rights agenda at the Vienna Conference in 1993. The Vienna Convention stated that GBV against women included cultural prejudices and sexual harassment. It required the elimination of VAW through legal action.³² This helped focus attention on systemically mainstreaming gender equality in the international system.³³ CEDAW further obligates States to protect women against violence of any kind occurring within the family, at the work place, in the community or in any other area of social life.³⁴

²⁷ World Health Organization (1997) *Violence against Women: Definition and Scope of the Problem* (July), WHO Publication, Geneva, Switzerland.

²⁸ *Jessica Lenahan (Gonzales) v. United States*, IACHR, para 110 (August 2011), *supra* n. 8. See also, CEDAW articles 1-5 which discuss the meaning of discrimination, both direct and indirect, substantive equality and State obligations.

²⁹ This understanding of VAW is underlined in the Istanbul Convention. EU member states are also bound by EU Directive 2012/29/EU of the European Parliament and of the Council establishing minimum standards on the rights, support and protection of victims/survivors of crime, and replacing Council Framework Decision 2001/220/JHA. The 27 Member States and Croatia are bound by these standards.

³⁰ Lori Heise (1998) *Violence Against Women: An Integrated, Ecological Framework*, *Violence Against Women* vol. 4 No. 3, 263-264 (June).

³¹ Rhonda Copelon (2003) *International Human Rights Dimensions of Intimate Violence: Another Strand in the Dialectic of Feminist Lawmaking*, 11 AM.U.J Gender Soc. Pol'y & L. 866.

³² Vienna Declaration (1993) and Program of Action, Para 18 (12 July 1993) A/Conf.157/23, UN, New York.

³³ *Id.*

³⁴ UN CEDAW (1989) General Recommendation No. 12: Violence against women (Eighth session).

²⁴ <http://theequalityeffect.org/160-girls/>

²⁵ VAW has been defined and elaborated in many human rights and feminist instruments and discourse including CEDAW. This report looks at, but is not limited to, the following forms of violence: intimate partner violence; domestic violence, rape and sexual assault; trafficking; sexual harassment; forced sterilization; forced or early marriage; harmful practices such as female genital mutilation and femicide/feminicide occurring in various settings within the family and the community whether during times of peace or conflict.

²⁶ VAW in this report includes GBV committed against lesbians, bisexual women and transgendered individuals.

c. Due Diligence Project

Despite general acceptance, the exact content of State obligation remains unclear and yet is the lynchpin in the struggle to end VAW. The DDP embarked on a multi-country, multi-year research advocacy project exploring and unpacking the due diligence principle as well as understanding and analyzing its use around the world by studying State actions in the formulation, implementation and enforcement of policies, laws, procedures and processes (see methodology section below).

The DDP does this by answering the following questions: (1) How do governments, civil society advocates and international legal scholars and experts working on VAW generally interpret the due diligence principle? (2) How can compliance with this obligation be monitored, assessed and evaluated by these stakeholders? (3) How are States complying with their due diligence obligation to prevent, protect against, prosecute, punish and provide redress for acts of VAW? (4) What are good practices to eliminate VAW, globally and regionally?

The DDP aims to enhance and add content to the understanding of a State's 'due diligence' obligation to prevent, protect, prosecute, punish and provide redress for VAW; to assess the status of compliance and State action and inaction and to develop a Due Diligence Framework with a set of guidelines for compliance.³⁵ The DDP also seeks to highlight

³⁵ Eliminating VAW is all the more critical because it is widely acknowledged to have reached epidemic proportions. WHO (2013) (in collaboration with London School of Hygiene & Tropical Medicine and the South African Medical Research Council) in 'Global and regional estimates of violence against women: prevalence and health effects of intimate partner violence and non-partner sexual violence', World Health Organization, 2013, reports that physical and sexual violence against women is a global health problem of epidemic proportions, affecting one-third of all women globally. As many as 38 per cent of all murders of women globally are committed by intimate partners. 'The report shows that violence against women is pervasive globally. The findings send a powerful message that violence against women is not a small problem that only occurs in some pockets of society, but rather is a global public health problem of epidemic proportions, requiring urgent action.' The report also refers to United Nations Secretary-General, Ban Ki-Moon, having issued a global call for action to end VAW, by launching the UNITE to End Violence against Women campaign. Most recently, the agreed conclusions of the 57th session of the Commission on the Status of Women emphasized the importance of addressing structural and underlying causes and risk factors to prevent VAW and of strengthening multi-sectoral services, programmes and responses for victims/survivors. The agreed conclusions also

instances of good practices where this obligation is deemed to have been satisfied, in whole or in part.

d. Layout and Purpose of the Report

This report is the culmination of DDP's research (from mid-2010 to 2013). Its purpose is to outline the DDP's findings and present the Due Diligence Framework (together with the Compliance Guidelines for State Action for ending VAW).

The Due Diligence Framework provides content and detailed guidelines for the due diligence principle. It contributes towards the growing discourse on State obligation to end VAW by creating a framework for State accountability with regard to the 5P's.³⁶

The DDP is centred on the notion that real change will only result from partnerships at every level — governments, inter-governmental organizations, civil society, academia and grassroots advocates. This report is recommended for stakeholders working towards the elimination of VAW, including government officials setting policies and programmes; advocates working towards their effective implementation and those on the front lines tasked with ensuring that victims/survivors ultimately benefit. In many instances, civil society organizations (CSOs) step up to provide some VAW programmes, advocacy and services, particularly in prevention and protection. While smart partnerships between CSOs and the State must be encouraged and have often created innovative and successful strategies, the due diligence principle demands that States bear the ultimate responsibility for eliminating VAW.

The report is divided into five sections:

- Chapter I sets out the definition, evolution and situational context of the due diligence principle and the definition and understanding of VAW as used here. It also

call for continued multidisciplinary research and analysis of the causes of and cost and risk factors for VAW, in order to inform laws, policies and strategies and support awareness-raising efforts.

³⁶ For example, in her 2013 report, the Special Rapporteur on VAW highlighted the need to create a framework on State responsibility to act with due diligence. Rashida Manjoo, (2013) Report of the Special Rapporteur on violence against women, its causes and consequences, *supra* n.6 paras 70 and 71.

briefly describes the DDP and the purpose and layout of this report.

- Chapter II outlines the methodology of the report and its various inputs.
- Chapter III introduces the Due Diligence Framework and lays out the report's findings. Trends are identified, good practices illustrated,³⁷ and recommendations made. These are organized according to five

applicable areas: prevention, protection, prosecution, punishment and provision of redress. In this report, these five areas are also referred to as the '5P's'.

- Conclusion
- Annex 1— Due Diligence Guidelines for State compliance for each of the 'P's', as an outcome of the findings in Chapter 3.
- Annex 2 — Questionnaire

³⁷ Country examples are for illustrative purposes only; these are italicized. Promising practices are collated from regional and country experts and advocates and are presented in boxes. The DDP has not independently monitored, assessed their sustainability or satisfactory implementation.

CHAPTER II

METHODOLOGY

The DDP is a research advocacy project. The research phase, from mid-2010 to 2013, included literature reviews, questionnaire surveys with CSOs from 48 countries/territories,³⁸ wide consultations with national and international experts and panel discussions at UN side-events in New York (United Nations General Assembly October 2012 and October 2013, CSW 2013) and Geneva (Human Rights Council June 2013).

a. Experts, Advisors and Collaborating Institutions and Organizations

The DDP was undertaken by the International Human Rights Initiative. It was hosted and supported by the Northeastern University School of Law, Boston. The Project also collaborated with institutions, organizations and individual experts globally to ensure that it received, benefitted from and incorporated specialized geo-political knowledge of and from each region.

The DDP collaborated with Women's Development Research Centre (KANITA), Universiti Sains Malaysia; Centre for Human Rights, School of Law, University of Pretoria, South Africa; Institute for the Study of Human Rights, Columbia University, New York, USA; Centre for Comparative and Public Law, School of Law, University of Hong Kong; KAFA (Enough) Violence and Exploitation, Beirut, Lebanon; Bulgarian Gender Research Foundation; Gender and Justice Program, United Nations Latin American Institute for Crime Prevention (ILANUD), San Jose, Costa Rica; Bahamas Crisis Centre, Nassau; and the National Commission on Violence against Women, Indonesia. Broad collaboration ensured that diverse opinions and perspectives on issues and themes were taken into account.

It also engaged and collaborated with 25 respected experts in human rights, law, political science, sociology, anthropology, research design and methodology and women's studies as well as advocates from the women's movement. These individuals are international experts from academia, inter-governmental organizations and the legal profession as well as CSO advocates.³⁹

Five highly respected international experts served, in their personal capacity, on DDP's advisory committee. They were Professor Charlotte Bunch, Professor, Founding Director and Senior Scholar, Center for Women's Global Leadership, Rutgers University, USA; Professor Hillary Charlesworth, Centre for International Governance and Justice, Australian National University; Ms. Kamala Chandrakirana, expert, United Nations Working Group on Discrimination against Women in Law and Practice, from Indonesia; Professor Cees Flinterman, expert, Human Rights Committee of the International Covenant on Civil and Political Rights, from the Netherlands and Ms. Pramila Patten, expert, CEDAW, from Mauritius. The committee provided macro-level strategic direction to the Project, which benefitted from the vast experience and expertise of the members.

Eleven experts from the six regions also served as regional consultants to assist in drafting regional reports based on the data generated by the DDP from its meetings, consultations, literature review, discussions and questionnaires. The consultants' regional and country expertise enriched the regional reports. They hailed from some of the countries in which the DDP conducted its research.⁴⁰ This report draws from and is in part a compilation of the regional reports.

³⁸ In this report, country or State refers to a territory under a recognizable administration rather than a geo-political entity accorded indisputable nationhood status. The data from Hong Kong is analyzed separately from that of mainland China. Taiwan and Palestine are also included in this report as separate 'countries/States/territories'.

³⁹ For the list of experts, including their bios, please visit <http://www.duediligenceproject.org/Partners.html>.

⁴⁰ The consultants were from South Africa and Kenya (Sub-Saharan Africa); Malaysia and Hong Kong (Asia-Pacific); Belgium and Bulgaria (Europe); Jordan (Middle East and North Africa or MENA); Mexico and Antigua and Barbuda (Latin America and the Caribbean or LAC); and USA (Canada, Australia, New Zealand and USA, or CANZUS).

b. Experts' Group Meetings

For the purposes of sharpening the DDP's parameters and finalizing methodology and design, an experts' group meeting was convened in April 2011 in Boston, USA. The main goal was to brainstorm and strategize on the meaning and content of the due diligence principle, especially the duty to prevent, protect, prosecute, punish and provide reparations. Another goal was to discuss and finalize the DDP questionnaire, methodology and execution. Twenty-two participants from 14 countries attended the meeting.

An experts' drafting meeting was convened mid-way through the project in June 2012 in Sofia, Bulgaria. The goal was to gather those drafting the regional reports to engage in a shared, intense and focused discussion about the proposed reports, their structure and content including thematic issues and analysis and presentation of primary and secondary data.

c. Literature Review

The DDP reviewed literature on international, regional and national laws; national action plans (NAPs); State reports, submissions, pledges and statements at international fora and to international bodies; academic journals and writings; and civil society reports and statements on VAW. It studied the development and evolution of the due diligence principle in international law and its application in international and national legal systems. It also looked at the context of VAW, its historical roots of exclusion and invisibility in the human rights discourse and its later recognition as a violation of human rights.

d. Questionnaire Survey

The questionnaire was a key data-collection tool employed; it was distributed to CSOs working on VAW. It probed CSOs' perception of State action in discharging its obligation,⁴¹ the effectiveness of these actions and suggestions for improvement. These assessments are important because CSOs are often the first level of assistance sought by women in crises. CSOs also often facilitate or mediate women's access to government facilities and remedies.

Although collaborating with CSOs could provide external evaluation of State action, CSOs might not be aware of all existing State programmes and measures. This may be due to insufficient dissemination of information by the State or inadequate collaboration between the State and CSOs. For State programmes and measures to serve intended beneficiaries, they must be widely publicized and accessible; CSOs' lack of knowledge of such programmes and measures indicates poor implementation.

In 2011, the questionnaire was piloted with 19 CSOs in Africa (Mali, Tanzania), Asia-Pacific (Malaysia, Singapore), Europe (Macedonia, Romania, the United Kingdom), Latin America and the Caribbean (Costa Rica, Grenada, Peru), Middle East and North Africa (Iraq, Palestine) and North America, Australia and New Zealand (USA).⁴² Discussions with respondents, where appropriate, further helped sharpen the questionnaire.⁴³

The questionnaire was then translated into Arabic, Chinese, French, Indonesian, Portuguese and Spanish⁴⁴ and disseminated to organizations in the countries listed below. The questionnaire was administered electronically with follow-up phone calls where appropriate or necessary. Approximately 900 questionnaires were distributed; 300 organizations returned completed questionnaires.⁴⁵

The DDP aimed to ensure, as far as possible, that the respondents were respected experts in their fields. They were selected after an extensive consultative process with DDP regional experts and consultants. Organizations invited to participate in the research were well-known in their countries, with activities at national, regional and international levels, history of respectable activities and gender equality/rights-based approaches. The other criteria for selecting organizational respondents was VAW-related activities — those providing intervention services to victims/survivors of VAW, such as safe housing (shelter)

⁴¹ See Annex 2 for a copy of the questionnaire.

⁴² The DDP studied six regions, namely Africa (sub-Saharan); Asia-Pacific; Europe; Latin America and the Caribbean; Middle-East and North Africa; and North America, Australia and New Zealand.

⁴³ The pilot process was mainly undertaken in collaboration with the Women's Development Research Centre, Universiti Sains Malaysia.

⁴⁴ Persons familiar with the VAW discourse translated the questionnaire. Thereafter, a second set of translators was engaged to undertake backward translation.

⁴⁵ The numbers in brackets next to each country/region in the table refers to the number of completed questionnaires received from the country/region.

Table 1 – Distribution of Questionnaires

	Regions	Countries/Territories
1.	Africa (sub-Saharan) (51)	Botswana (3), Democratic Republic of Congo (DRC) (6), Kenya (4), Mozambique (6), Nigeria (9), Senegal (9), South Africa (7) and Uganda (7).
2.	Asia-Pacific (58)	Bangladesh (7), China (5), Fiji (4), Hong Kong (4), India (12), Indonesia (7), Mongolia (5), Philippines (8), Taiwan (3) and Solomon Islands (3).
3.	Europe (44)	Bulgaria (6), Croatia (5), Finland (5), Germany (3), Ireland (7), Kazakhstan (5), Poland (2), Spain (7) and Ukraine (4).
4.	Latin America and the Caribbean (LAC) (67)	Brazil (11), Chile (6), Colombia (11), Ecuador (5), Guatemala (11), Jamaica (4), Mexico (12), Trinidad and Tobago (3) and Venezuela (4).
5.	Middle East and North Africa (MENA) (42)	Algeria (3), Bahrain (2), Egypt (9), Jordan (7), Lebanon (7), Morocco (6), Palestine (7) and Tunisia (1). ¹
6.	North America, Australia, United States & New Zealand (CANZUS) (38)	Australia (10), Canada (13), New Zealand (5) and United States of America (10).

and legal and emotional counselling, or those whose missions or objectives include ending VAW or those advocating against VAW.

The organizations were asked to ensure that those completing the questionnaires had significant experience within the organization and were familiar with its activities and the States' laws, policies and programmes. The respondents were asked for their opinions on the questions posed, based on their experience (for example, regional and thematic).

Responses should be considered indicative of trends and not as dispositive evidence given the limited number of completed questionnaires received. The survey findings reflect trends at the particular time the DDP questionnaires were administered. It must be remembered that although the number of responses from some countries are few — for example Bahrain, Solomon Islands — the pool of independent reputable organizations working on VAW in these countries might be similarly small.

Countries were selected based on viability of conducting research, taking into account, among others, the following criteria: existence of independent CSOs and the language required to conduct the research. The DDP was also conscious of the need to ensure diversity in political and legal

systems, manifestations of VAW and economic capacity. Thus, the choice of countries was also predicated by the desirability of including diverse constitutional structures,⁴⁶ legal systems (customary, religious and informal),⁴⁷ political situations⁴⁸ and

⁴⁶ New Zealand, for example, has no codified written constitution and the principle of non-discrimination is enshrined in two different legislations. Federalism has also produced lack of uniformity and decentralized de facto accountability from the Federal/Central government to state/provincial governments.

⁴⁷ For example, Lebanon recognizes 18 sectarian personal status laws administered through special sectarian courts. Most MENA countries studied have plurality of laws as do some in the Pacific (for example, Solomon Islands).

⁴⁸ For example, Macedonia, Palestine and Solomon Islands are facing conflict or post-conflict situations, while Egypt and Tunisia underwent/are undergoing mass protests, civil unrest and revolutions. Conflict and unrest render women especially vulnerable to violence. During armed conflicts, trafficking increases considerably, affecting marginalized women the most (see Women's Refugee Commission (2001) *Country Profiles from Latin America: Colombia, Guatemala, Nicaragua*, [November]. Available at <http://www.unhcr.org/refworld/docid/48aa82f6d.html>. Legal protection for women refugees is also limited. For example, the 1951 Convention on the rights of refugees does not apply to Palestinian refugees and they are not under the administrative protection of the UNHCR but the UNRWA. Their protection is limited to health, education and social services (see Association Najdeh (2008) *Implementing CEDAW for Palestinian Refugee Women in Lebanon: Breaking Through Layers of Discrimination*, p. 31, <http://www.iwraw->

women's participation in the economy⁴⁹ and education⁵⁰ in order to understand the relationship between these and VAW.

e. Country Profiles

The DDP then prepared 15-20 page dossiers for each selected country ascertaining its compliance with the due diligence obligation. The dossiers were based on publicly accessible documents such as government reports to UN Treaty Bodies and the Human Rights Council; country visits by mandate holders and each country's own pledges and statements. Data was also obtained from census, prevalence studies, laws, policies, programmes and the country's own monitoring and evaluation of its policies. The profiles were then circulated to country experts for their comments and feedback. Country experts attending regional consultative meetings (see below) also contributed memoranda on VAW, State action and gaps and challenges in their respective countries.

f. Regional Consultative Meetings

The DDP held and participated in several regional consultations. The objective of these meetings was to obtain qualitative data of systemic regional patterns or issues and discuss important thematic issues that would feed into the drafting of the report. They were organized as standalone events by the Project, scheduled back-to-back with existing meetings and teleconference interviews and discussions. The Project convened five intensive consultative meetings with 10-20 national/regional and international experts at

ap.org/resources/pdf/40_shadow_reports/Lebanon_SR_on_Palestinian_refugee_women_English.pdf).

⁴⁹ Some MENA countries have tremendous wealth in oil reserves. Yet, the region also witnessed high unemployment especially among youth (see UNDP (2010) Arab Human Development Report, 2010, p11). Women are secondary earners in most European households. Budget cuts due to the European monetary crisis harm women disproportionately as public sector employees and as main users of public services (see European Parliament, (2011) *Gender Aspects of the Economic Downturn and Financial Crisis*, Directorate General for Internal Policies, Policy Department C, Citizen's rights and Constitutional Affairs, Gender Aspects of the Economic Downturn and Financial Crisis, 2011).

⁵⁰ In the EU, although 60 per cent of new university graduates are women, educational choices remain heavily gendered. Areas such as healthcare, education, humanities and arts, with high female participation, garner less remuneration than areas dominated by men, such as computing and engineering, see European Commission (2010) *Report on the progress on equality between women and men*, Staff Working Paper, Brussels).

each meeting, in Asia-Pacific on 4-5 September 2012, in MENA on 10-11 September 2012, in Africa (sub-Saharan) on 3-4 December 2012, in Latin America on 3-4 April 2013 and in the Caribbean on 6-7 May 2013. The DDP also held discussions at, among others, the European Women's Lobby Observatory Meeting on 17-18 June 2011 and the Asia-Pacific Feminist Forum on 12-14 December 2011 that were widely attended. It also consulted various country and regional experts individually.

g. Panel Discussions

The DDP also convened panels in conjunction with international events. Side events were convened in October 2012 in conjunction with the 67th UN General Assembly session in New York on 'Protecting Women from Violence — Bridging Policy and Practice' and in March 2013 in conjunction with the 57th session of the Commission on the Status of Women in New York on 'Due Diligence from the Ground Up: State Compliance to End Violence against Women'.

The DDP also participated in four panels in June 2013 in conjunction with the 23rd session of the Human Rights Council on (1) UN Universal Periodic Review (UPR) & Violence against Women and Girls, (2) Traditional Values, Culture, Religion — Women's Human Rights, (3) Violence against Women & Human Rights to Peace and (4) Violence Against Women — Legal Framework for Global Action & Accountability. These panels were aimed at introducing the DDP's work to State parties and CSOs attending the UN sessions, inviting their input and generating discussion on the work. The DDP was presented and discussed at a panel at the Law & Society Conference in Boston in June 2013.

Finally, as a precursor to this report, the Due Diligence Framework was also presented and discussed at a side event in conjunction with the 68th UN General Assembly session in October 2013 in New York on '*Due Diligence Framework: A Framework for Accountability in Ending Violence against Women*' as well as a roundtable discussion on '*International and Regional Standard Setting to Eliminate Violence Against Women*' with international, regional and national experts from Asia Pacific in December 2013 in Bali.

DUE DILIGENCE FRAMEWORK

The Due Diligence Framework translates the essential attributes of the due diligence principle to make them universally applicable and contextually relevant at a country level. It is a tool for States to assess their own progress in implementing human rights and formulating human rights-based public policies and programmes.

Guidelines are critical to facilitate information analyses and increase accountability. They improve decision-making for the management of ongoing programmes and projects and measure progress and achievements as understood by different stakeholders. Guidelines help achieve consistency between activities, outputs, outcomes and impacts. They ensure accountability by demonstrating progress, assess programme performance and identify the need for corrective or remedial action.

All States included in the DDP have policies and programmes to address VAW, especially domestic violence.⁵¹ Despite this, VAW remains the most prevalent human rights violation.⁵² The gap between State action and the eradication of VAW may, in part, be attributed to implementation.

The following framework is a culmination of the DDP's global strategies which included global expert consultations, literature review and regional strategies (regional expert consultative meetings, questionnaire responses and six regional reports commissioned by the DDP). Exemplars used in this report to illustrate State practices were drawn from the expert consultative meetings, questionnaires and the regional reports.⁵³ Often, a more elaborate discussion

of the exemplars is available in the regional reports. We present State practices identified by country and regional experts in *italics* in indented paragraphs. Particularly promising practices are presented in boxes. The DDP has not, however, independently verified/authenticated these practices or assessed their sustainability.

The Due Diligence Framework was formulated to assess State action (and *not* to rank States). It serves as contextually relevant and useful guidelines for State action to address and end VAW. The objective of developing these guidelines is to encourage States to use them to assess progress in implementing women's human rights: formulating policies, programmes and laws based on human rights and highlight violations and factors that increase the risk of violations. For CSOs, these guidelines may provide precise information for monitoring human rights policies, programmes, laws and mechanisms.

The Due Diligence Framework is applicable to situations that include State obligation on the five P's with respect to VAW. These P's are interlinked, with overlapping issues. For example, respondents to the DDP survey noted that fear of repercussions from the perpetrator is the biggest hindrance to women taking action against VAW. Therefore, the State should look into making *protection* of victims/survivors a priority, effectively *prosecute* perpetrators to remove impunity, ensure *punishment* is commensurate with the offence and capable of preventing recidivism and deterring others, *provide adequate reparations* to victims/survivors to enable them to rebuild their lives away from the perpetrator, if required, and address women's fears effectively in *prevention* campaigns.

The due diligence principle is one of means and not end. States are obligated to establish holistic, systemic processes to prevent, protect, prosecute, punish and provide redress and reparations for VAW.⁵⁴ The

⁵¹ DDP questionnaire survey.

⁵² UNFPA (undated) Ending Widespread Violence Against Women, available online at <http://www.unfpa.org/gender/violence.htm>; Bunch, Charlotte (1997), The intolerable status quo of violence against women and girls. In *The Progress of Nations*, UNICEF. Available at <http://www.unicef.org/pon97/women1.htm>.

⁵³ The six regional reports were prepared by 11 consultants based on the DDP's research, data and findings as well as the authors' own research. The consultants are: Karen Stefiszyn, University of Pretoria and Brenda K. Kombo, (Sub-Saharan Africa); Noraida Endut, Universiti Sains Malaysia and Puja Kapai, University of Hong Kong (Asia-Pacific); Colette de Troy, European Women's Lobby and Genoveva Tisheva, Bulgarian Gender Research Foundation (Europe); Afaf Jabiri, Jordanian Women's Union (MENA); Anya Victoria Delgado and

Lebrechtta Nana Oye-Hesse Bayne, Directorate of Gender Affairs, Antigua and Barbuda (LAC); and Julie Goldscheid, City University of New York and Debra Liebowitz, Drew University, USA (CANZUS). The regional reports are available on the DDP website at <http://www.duediligenceproject.org/Resources.html>.

⁵⁴ Rashida Manjoo, (2013) Report of the Special Rapporteur on violence against women, its causes and consequences, *supra* n.6 paras 70 and 71.

principle does not hold States accountable for VAW if the State has such systemic processes and safeguards in place.⁵⁵ Once these processes are functional, the State is obliged to ensure that they are a) extended to all individuals and b) that all individuals can access them, especially when the State knows or ought to know that an identified individual(s) is at 'real and immediate risk'.⁵⁶

Finally, the report also acknowledges that human rights obligations may be divided into those that need to be given immediate effect and those that may be subject to progressive realization. Some guidelines in the Due Diligence Framework may call for additional financial and human resources, yet the DDP strives to ensure that these can be implemented by States, taking into account different economic, financial and human resources. Often, this involves the political will

to take steps to eliminate VAW, prioritizing it as a critical State concern and allocating sufficient budget and other resources to realize the objective of eliminating it.⁵⁷

In formulating the Due Diligence Framework, the DDP aims to provide comparable information that is universally and impartially applicable while acknowledging regional specificities. While regional specificity may encourage States to move forward with women's human rights, the DDP is conscious that it may also be used as an argument for challenging the applicability of these rights. The DDP endeavours to be sensitive to each region's history, social structure, wealth and political agenda without compromising the universal application of the guidelines.

⁵⁵ The exception is if State actors themselves commit VAW where the State can be held vicariously liable. Another oft-asked question concerns the applicability of the due diligence principle in a fragile State, conflict-affected countries, when there is no State (political actors recognized by the international community as the political governing body) or when swathes of land are controlled by different political parties or militia groups. In such situations, the individuals (or group of individuals) in de facto control of a specific area or over a specific community are recognized as 'the State' for applicability of the due diligence principle.

⁵⁶ *Osman v. the United Kingdom*, ECHR, § 115, Reports 1998-VIII, ECHR Judgment dated 28 October 1998, *supra* n. 9; *Case of Opuz v. Turkey*, ECHR, Judgment of 9 June 2009, *supra* n. 9

⁵⁷ WHO 2013 Report, *supra* note 35.

1. PREVENTION

Prevention includes government measures to thwart the occurrence of VAW. Good prevention programmes provide awareness of VAW and of information services and legal protection available post the incident. They also target underlying risk factors and causes of VAW and often include training and education campaigns.

Under the due diligence principle, States are obliged to prevent violence and eliminate all types of discrimination including socially constructed gender-based discrimination. Crucial to reducing VAW, prevention programmes must a) include socio-structural support such as education, employment and housing; b) address intersectional issues and risk factors that perpetuate violence, such as gender inequality, stereotypes and cultural perceptions of women, poverty, women's education and economic independence and c) formulate and implement laws that not only address specific forms of VAW but also its underlying causes.

Some States have held conferences or colloquia to raise awareness and discuss issues surrounding VAW,⁵⁸ while others have enlisted media support to promote non-violence and educate the public (for example, forums to sensitize the press on these issues).⁵⁹

To raise awareness about VAW, most States have launched campaigns⁶⁰ that usually include catchy or sensational slogans,⁶¹ posters, booklets, information

cards and/or leaflets,⁶² ribbons or bracelets,⁶³ newspaper articles,⁶⁴ television and/or radio spots⁶⁵ and seminars.⁶⁶ Some States also conduct gender-sensitization training for the media and develop a media code of conduct.⁶⁷

It is important, however, to differentiate between awareness-raising and education programmes. Education not only includes programmes and curricula that promote gender equality but also those that are anti-VAW. Educational training programmes can also be conducted with health and legal professionals, counsellors, police, and any other agency that deals with VAW or with victims/survivors of VAW. Each field needs specific training so those working with victims/survivors can effectively aid in preventing VAW. States can also demonstrate the importance of preventing VAW by showing that perpetrators cannot escape punishment.

Canada's Family Violence Initiative (FVI) coordinates the work of several agencies to address violence against women specifically in intimate partner relationships.⁶⁸ It promotes public awareness as do its partner organizations,

⁵⁸ For example, France, Ontario, Canada and Bahrain.

⁵⁹ For example, Turkey and Nigeria.

⁶⁰ For example, Albania, Armenia, Azerbaijan, Bahrain, Belgium, Brazil, Canada, Czech Republic, Denmark, France, Germany, Israel, Republic of Korea, Kyrgyzstan, Lithuania, Nigeria, Spain, Switzerland, Timor-Leste, Turkey and United Kingdom. Turkey's 'Stop Violence Against Women Campaign' includes concerts, sale of memorabilia, writing competitions and enlisting celebrities such as football players and political figures. Canada's 'Annual Purple Ribbon Campaign against Violence' highlights a different vulnerable group of women each year, such as child witnesses of VAW, seniors and youth.

⁶¹ For example, 'Stop Violence; Action is what counts' (France); 'I love you. Violence seriously injures love' (Belgium); 'Bride theft — It's not a tradition, it's a CRIME' (Kyrgyzstan); 'Stop the violence against Women — Break the silence' (Denmark); 'Violence kills if you are silent! — You react as well and say stop to Domestic violence' (Albania); 'Don't stay indifferent, Stop Violence' and 'Every third woman in Lithuania suffers from domestic violence. Which one are you?' (Lithuania); 'Take the Right Stand: Oppose Violence' (Germany); 'It is possible to break the circle of violence without shattering the cycle of life' (Israel); 'Where There is

Violence, Everyone Loses' (Brazil); and 'Against Aggressors, Zero Tolerance' (Spain).

⁶² For example, the United Kingdom (posters highlighted prosecutable offenses); Prince Edward Island, Canada (30,000 information cards); Kyrgyzstan; Denmark (information cards in nine languages); Albania; Argentina (500,000 brochures and flyers) and Turkey.

⁶³ For example, the Czech Republic (black and purple bracelets to symbolize bruises); Denmark and Prince Edward Island, Canada.

⁶⁴ For example, Kyrgyzstan, Timor-Leste, the Czech Republic, Lithuania, Denmark and Armenia.

⁶⁵ For example, Timor-Leste, the Czech Republic, Lithuania, Spain (spots include victims' /survivors' and aggressors' points of view), Denmark and Armenia.

⁶⁶ For example, Israel (200 seminars with 40,000 participants), Bahrain and Armenia.

⁶⁷ For example, Tanzania mandates a range of measures to achieve gender-sensitive reporting of cases of violence against women and children without perpetuating gender stereotypes. These include training for media personnel on women's human rights and GBV. Belgium established a Working Group of media representatives responsible for developing a media Code of Conduct on reporting domestic violence.

⁶⁸ Public Health Agency of Canada (2013) Family Violence Initiative. Available at <http://www.phac-aspc.gc.ca/ncfv-cnivf/initiative-eng.php>

including on how to identify risk of abuse and measures for preventing family violence.⁶⁹

The **Republic of Korea's** Women's Development Act provides that one week per year be designated as 'Women's Week', during which commemorative events, research projects, media campaigns and internet forums calling attention to women's issues are organized.

In 2012, **Mozambique** launched a five-year campaign on VAW through newspapers, radio, television, theatre and public meetings that targeted the entire population. Anti-trafficking billboards were placed in high-visibility locations, including departure points for travellers bound for international destinations.

Legal literacy is an important component of prevention. One way to achieve this is by simplifying relevant laws and translating them into local languages as has been done in **Mozambique**. Ignorance of rights and available remedies creates an enabling environment for human rights violations.⁷⁰ Another example is **Indonesia's** 'socialization of laws' on domestic violence and trafficking, targeting community leaders and policy makers at local and district levels.

Some States have also implemented preventive education programmes with children and adolescents in schools and universities.⁷¹

Australia's primary prevention strategy, called 'Respectful Relationships', seeks to reduce sexual assault and domestic violence through educational institutions, including school curricula. Although advocates laud bringing primary prevention efforts into schools, they cautioned against not addressing the root causes of GBV.⁷²

► CSOs also highlighted programmes dedicated to gender-sensitive education as in **Spain** and **Ireland** (*Bodyright*). **TASUKO**, a programme implemented by the **Finnish** government, develops gender-sensitive education for schools and professional training programmes. It produced research on different

aspects of gender equality and intersectionality as well as tools to integrate gender-sensitive education.

► The **Council of Europe** initiated a Campaign on Domestic Violence (2006-2008)⁷³ with member States at the national level. The Campaign's messages are simple:

- 1) combating domestic violence calls for joint public action;
- 2) domestic violence is a violation of rights;
- 3) domestic violence seriously harms women and society, including future generations; and
- 4) combating VAW needs men's active participation.

► Targeting Underlying Causes of VAW

An important aspect of prevention strategy is combating underlying causes of VAW and factors contributing to it.⁷⁴ Promoting women's human rights is important in preventing VAW. Effective programmes seek to eliminate tolerance and acceptance of VAW while incorporating a human rights framework.⁷⁵ Strategies that look at underlying causes of VAW ease the burden and cost of post-incidence intervention. They may also expose the relationship between gender inequality/adherence to gender stereotypes and VAW.

Gender inequality is considered the most influential factor in perpetuating VAW.⁷⁶ A UN survey in Asia-Pacific confirmed that 'violence against women is an expression of women's subordination and inequality in the private and public spheres'.⁷⁷ The most commonly

⁷³

<http://www.coe.int/t/dg2/equality/domesticviolencecampaign/>

⁷⁴ Participants at the MENA experts' consultative meeting opined that awareness-raising programmes were ineffective in achieving substantial change as they did not address the underlying causes of violence.

⁷⁵ Cambodia's plan seeks to 'transform passive acceptance of violence into a new social norm that states clearly that violence is unacceptable and not inevitable'. Portugal's prevention plan promotes values of equality and citizenship that reduce social tolerance and the acceptance of a culture of violence: 'Eliminating stereotypes and myths, changing gender representations and the values that have perpetuated the existence of unequal relationships in the family, school, and social environment are the main challenges we propose to achieve'. Many of these plans also link VAW to gender discrimination, male dominance and unequal power and a need to transform society and empower women [see Palestine's Strategic Plan (2011-2015), Mexico's draft plan, Jordan's National Strategy (2006-2010) and The Philippines' Strategic Plan (2007-2010)].

⁷⁶ DDP questionnaire survey.

⁷⁷ UNDP (2013) 'Why do some men use violence against women and how can we prevent it', UNDP, UNFPA, UN

⁶⁹ Wanda Jamieson & Lee Gomes, (2010) *Family Violence Initiative Performance Report for April 2004-March 2008*, Family Violence Initiative, Public Health Agency of Canada, available at <http://www.phac-aspc.gc.ca/ncfv-cnivf/pdfs/fvi-perf-rprt-eng.pdf>.

⁷⁰ DDP African Regional Expert Consultation, South Africa, December 2012.

⁷¹ For example, Bolivia, Morocco, Kyrgyzstan, Denmark, Spain and Rwanda.

⁷² DDP questionnaire survey.

reported motivation for perpetrating rape was a sense of sexual entitlement.⁷⁸

By recognizing the effects of discrimination on VAW, States can promote an atmosphere where VAW is not tolerated.⁷⁹ A discrimination analysis requires casting off the patriarchal lens.⁸⁰

European CSO respondents indicated that gender inequality is likely to facilitate VAW. Advocates described VAW as the result of prevalent structural inequality in society. Some respondents pointed out that the culture of inequality is the basis of many forms of VAW; in cases of domestic violence, such inequality makes it harder for women to take action and/or leave a violent relationship. Respondents unanimously agreed that the absence of gender-equality education, such as the lack of consistent education for professionals dealing with VAW (teachers, medical and social service professionals, judicial representatives), is a serious obstacle in preventing VAW and actually perpetuates it.

States should also seek to avoid stereotypes about women in the media, especially in State-sponsored campaigns, since stereotypes give a false understanding of women. Educating the public about VAW can improve understanding of the patterns of violence and its negative societal effects. The recognition of women's rights to security and self-determination would give women control over their bodies and activities. Programmes that focus on challenging gender stereotypes and promoting healthy relationships, as opposed to those that frame the problem narrowly as violence prevention, are also more effective.

Women and UNV (September). Available at http://asia-pacific.undp.org/content/dam/rbap/docs/Research%20&%20Publications/womens_empowerment/RBAP-Gender-2013-P4P-VAW-Report.pdf.

⁷⁸ *Ibid.*

⁷⁹ The Abolition of Marital Power Act of 2004 in Botswana declares that women and men are equal in civil marriages. This is important as it addresses patriarchy, one of the root causes of VAW.

⁸⁰ Research indicates that some prevention programmes, even those run by the police, do little more than reinforce many patriarchal and paternalistic ideas about violence and women. The fairly recent focus on working with men and boys often rely on paternalism and protectionist ideas instead of gender equality. This has perpetuated patriarchal heterosexist norms. Until States depart from this mindset, violence and inequality will persist (Comments from South African organization).

➤ *Transforming Society: Changing Mindsets and Modifying Behaviour*

Preventive measures must be aimed at changing mindsets and modifying behaviour to reject VAW, its justifications and excuses, which are embedded in gender inequality, gender discrimination and negative socio-cultural and religious perceptions of women.⁸¹ The CEDAW Committee has also recognized that 'there are linkages between traditional attitudes by which women are regarded as subordinate to men and domestic violence'⁸² reinforcing hegemonic notions of masculinity and femininity and the institutions that propagate them. Such attitudes often influence, if not inform, legal systems.⁸³ Therefore, effective preventive measures go beyond specifically targeting VAW by aiming to transform social perceptions, attitudes and behaviours that cause, support and tolerate VAW.

Article 5 of CEDAW and article 2 of the African Women's Rights Protocol require States to modify social and cultural patterns of conduct through public education, information and communication strategies. The Protocol also refers to States' obligation to create public awareness on harmful practices.⁸⁴

By focusing on VAW or on VAW as a specific sub-set of GBV, States can view violence as structural discrimination against women that negatively affects them in the family, community, State and international spheres.⁸⁵ Some plans also look at multi-level

⁸¹ Research indicates that in certain circumstances police officers charged with implementing domestic violence legislations feel that intimate partner violence is socially, culturally or religiously justified. In a Malaysian study of 350 officers of agencies providing intervention for domestic violence, 36 per cent felt that in certain circumstances husbands could use violence against their wives. Slightly more than 50 per cent of the respondents also agreed that a wife could be scolded by her husband if she disagreed with him. Such studies disclose the urgent need for States to implement programmes targeted at changing the mindsets of not only the general public but State actors and enforcers.

⁸² *Goekce v. Austria*, Communication No. 5/2005, CEDAW/C/39/D/5/2005, adopted 6 August 2007, para 12.2. See also General Recommendation No. 19.

⁸³ An example of this is where women are regarded as being in perpetual need of guardians. In some jurisdictions, the law places a woman under the guardianship of a man either until she reaches a certain age (for example, in Jordan women are placed under *wilaya* until the age of 30), or lifelong (for instance, in Yemen and Saudi Arabia).

⁸⁴ The same requirement can be found in other regional treaties such as the Belém do Para Convention and the Istanbul Convention.

⁸⁵ For example, domestic violence preventive programmes that address family violence (that is, children or family at large) with no mention of women are ineffective (MENA experts' consultative meeting, Beirut, 9-10 September 2012).

strategies, focusing on individual, communal, organizational and societal relationships.⁸⁶

For example, surveys in several African nations showed that nearly 47 per cent of male and female respondents felt that it was sometimes or always justifiable for a man to beat his wife.⁸⁷ Such attitudes are compounded by the silence around VAW in the family, with domestic violence traditionally considered a family affair and, therefore, rarely discussed publicly. At times, the culture of subservience also exposes female children to the risk of incest.

Domestic violence excused in the name of culture erases from view the injury to women and actively re-inscribes it as injury to male and family honour.⁸⁸ Such reasoning sets up a false binary between domestic violence and culture, compelling both State and society to choose between honouring culture and eradicating domestic violence.⁸⁹

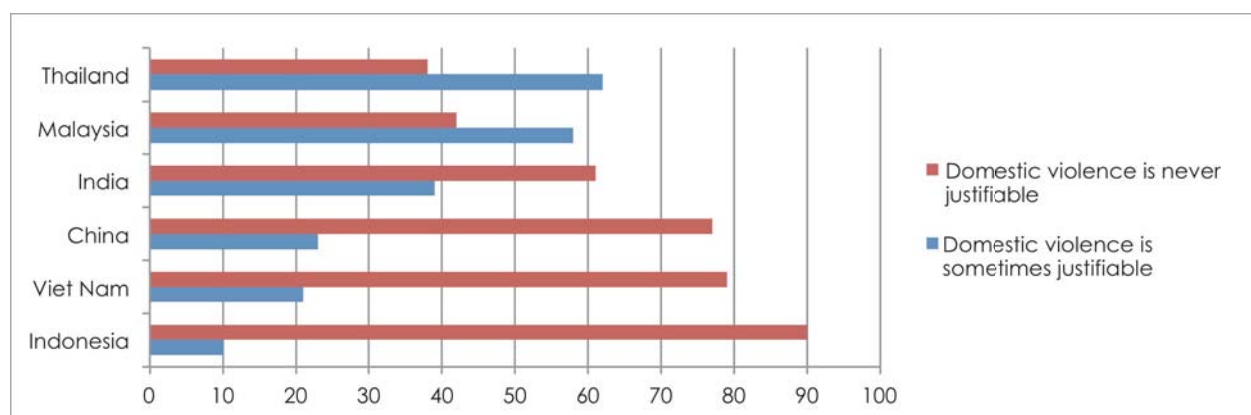
Chart 1 indicates that in Asia, Indonesia has the highest percentage of respondents who believe

domestic violence is never justifiable followed by Vietnam, China, India, Malaysia and Thailand.⁹⁰

Similarly, in **Solomon Islands**, another study found that a majority of the women studied (66 per cent) believed that a wife should obey her husband even if she disagrees with him and 73 per cent agreed with one or more justifications for partner violence.⁹¹

‘What is particularly needed at the community level is the reinforcement of positive elements of culture while raising awareness of the oppressive nature of certain practices pursued in the name of culture through a process of “cultural negotiation” involving families, intellectuals and community leaders.⁹² Such a process can create the space for new interpretations to arise and for developing good cultural practices, in particular those that are able to foster the implementation of universal human rights in various cultural contexts.’⁹³

Chart 1: Perceptions about domestic violence — Asia (percentage)⁹⁰



⁸⁶ For example, Australia, A Right to Respect: Victoria's Plan to Prevent Violence against Women, 2010-2020.

⁸⁷ UN Women, Progress of the World's Women — Factsheet: Sub-Saharan Africa, 2011. Available at <http://progress.unwomen.org/wp-content/uploads/2011/06/EN-Factsheet-SSA-Progress-of-the-Worlds-Women.pdf>.

⁸⁸ Abdul Aziz, Culture, Power and Narratives in Domestic Violence Discourse in Maznah Mohamed & Saskia E. Wieringa: Family Ambiguity and Domestic Violence in Asia, Sussex Academic Press, UK (2013).

⁸⁹ *Ibid.*

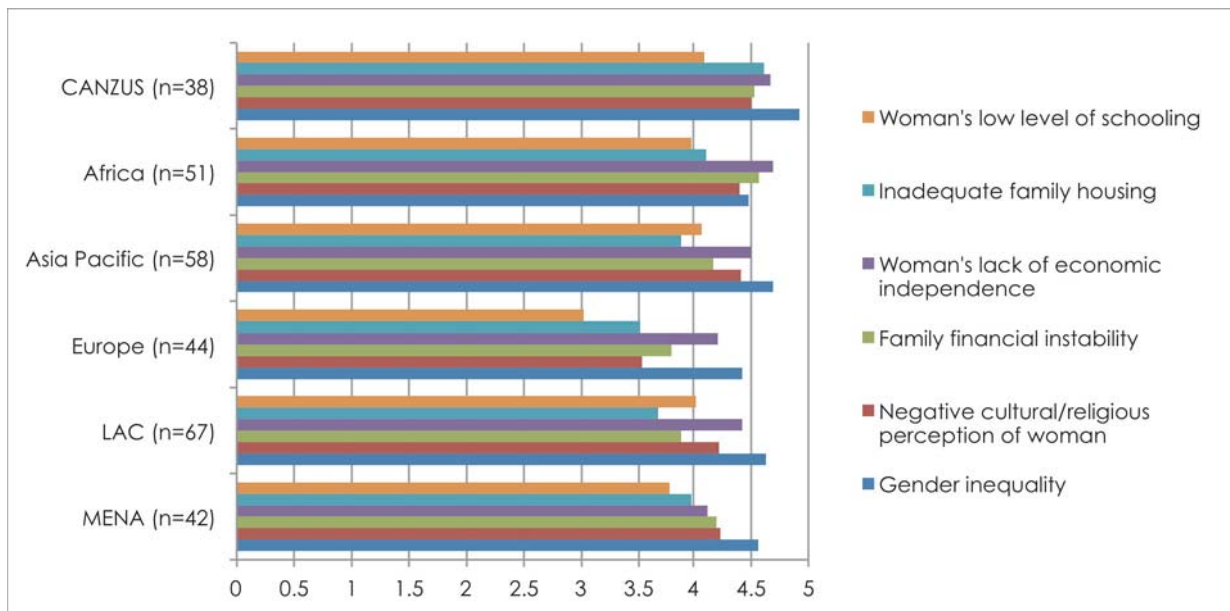
⁹⁰ As summarized from UN Women (2011b). Progress of the World's Women 2011-2012. In pursuit of Justice. Available at <http://progress.unwomen.org/pdfs/EN-Report-Progress.pdf>

⁹¹ Secretariat of the Pacific Community (2009) *Solomon Islands Family Health and Safety Study: A study on violence against women and children*, Secretariat of the Pacific Community for Ministry of Women, Youth & Children's Affairs, 63 (2009). Available at http://www.spc.int/hdp/index.php?option=com_docman&task=cat_view&gid=39&Itemid=44.

⁹² Referring to Yakin Ertürk, Report of the Special Rapporteur on violence against women, its causes and consequences, (E/CN.4/2004/66), para. 55 (b).

⁹³ Farida Shaheed, Report of Independent Expert in the field of cultural rights (A/HRC/14/36) 22 March 2010, para. 36. Available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G10/124/40/PDF/G1012440.pdf?OpenElement>.

Chart 2: DDP survey: Risk factors that increase prevalence of VAW — all regions (n = 300; 1 = not at all; 5 = very much)



In many cultures, victims/survivors of VAW face social stigma and further violence at the hands of their families and communities. For example, during the armed conflict of the Black Decade, Islamist armed groups in **Algeria** systematically attacked the civilian population and used sexual violence as a weapon.⁹⁴ Several thousand women and girls were raped⁹⁵ or abducted from their homes and forced into *zaouadj el mouta*, 'temporary marriages', for sex.⁹⁶ Many victims, especially those who became pregnant, were eventually murdered. Those who survived faced rejection from their families and communities, because rape is viewed as a disgrace to a woman and her family in Algerian society.⁹⁷ Women who are courageous enough to report VAW must be supported. Preventive programmes could do more to aggressively ensure that victims/survivors are free from social stigma and blame; stigma should be shifted instead to perpetrators of VAW.

⁹⁴ Amnesty International, (2009), *A Legacy of Impunity: A threat to Algeria's future* 30 March 2009. Available at <http://www.amnesty.org/en/library/info/MDE28/001/2009>.

⁹⁵ *Ibid.*

⁹⁶ See Khalida Messaoudi & Elisabeth Schemla (1998) *Unbowed: An Algerian Woman Confronts Islamic Fundamentalism*, 27-28 (Anne C. Vila trans.).

⁹⁷ Amnesty International, (2009) *A Legacy of Impunity*, *supra* n.94.

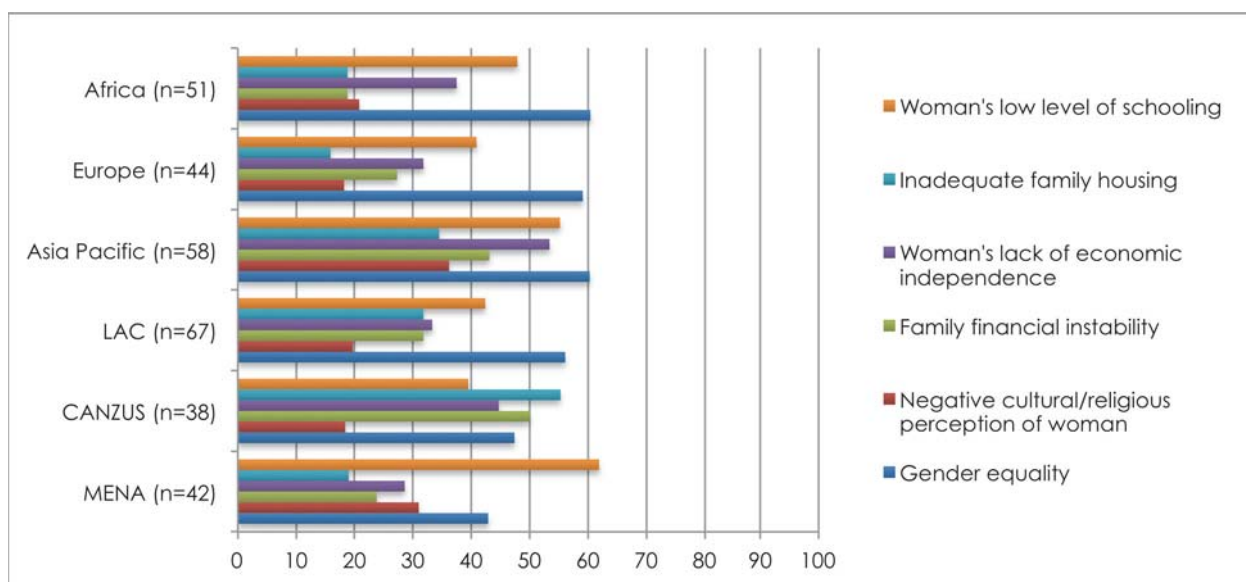
➤ *Eliminating Risk Factors*

Preventive programmes must challenge negative socio-cultural norms that support male authority and control over women and sanction or condone VAW. Strengthening women's economic and legal rights and eliminating gender inequalities in access to formal wage employment and secondary education would lay concrete foundations in preventing VAW.⁹⁸

Across the regions, CSOs cited gender inequality as the risk factor that most increased the prevalence of VAW (except in Africa where women's lack of economic independence was identified as the greatest risk). This indicates that initiatives to eliminate VAW must be underlined by intensified efforts to guarantee gender equality. European respondents to the DDP questionnaire also cited women's lack of economic independence and the financial instability of families as major risk factors for VAW. This could also be linked to the financial crisis that has gripped Europe which accelerated economic inequality between men and women. Austerity policies have had a drastic impact on women as cuts in welfare programmes and employment in the public sector

⁹⁸ See also, WHO 2013 Report *supra* n.35.

Chart 3: DDP survey: State measures to address identified risk factors — all regions
(n = 300; percentage)



has greater impact on women.⁹⁹ For this reason, they should ensure gender budgeting is conducted.

In MENA, respondents quoted negative cultural and religious perceptions of women, financial instability, women's lack of economic independence and inadequate (independent) housing as major risk factors that exposed women to VAW. Most respondents also indicated that States did not have preventive programmes that addressed these factors.

The DDP survey also found that most CSO respondents felt that States' initiatives to address the identified risk factors were insufficient (Chart 3).

⁹⁹ As women constitute on average 69.2% of public sector workers in the EU, loss of public jobs have a greater impact on women and reduced public and health care services meant that mostly, these responsibilities revert to women. See European Women's Lobby, (2012) "The price of austerity: The impact on women's rights and gender equality in Europe".. "Cutbacks in public care and health services lead to the re-privatization of care and a return to traditional gender roles. ... Limited availability of childcare (GR, PT, CZ, IT), growing childcare fees (NL, UK), reduced services for the elderly and the disabled (NL, IE), and closed hospitals (GR, PT, RO) transfer the responsibility for care from the society to households, i.e. mostly women. At the same time, governments save on measures that encourage the equal division of care between women and men, such as paid paternity leave (EE, ES, DE)."

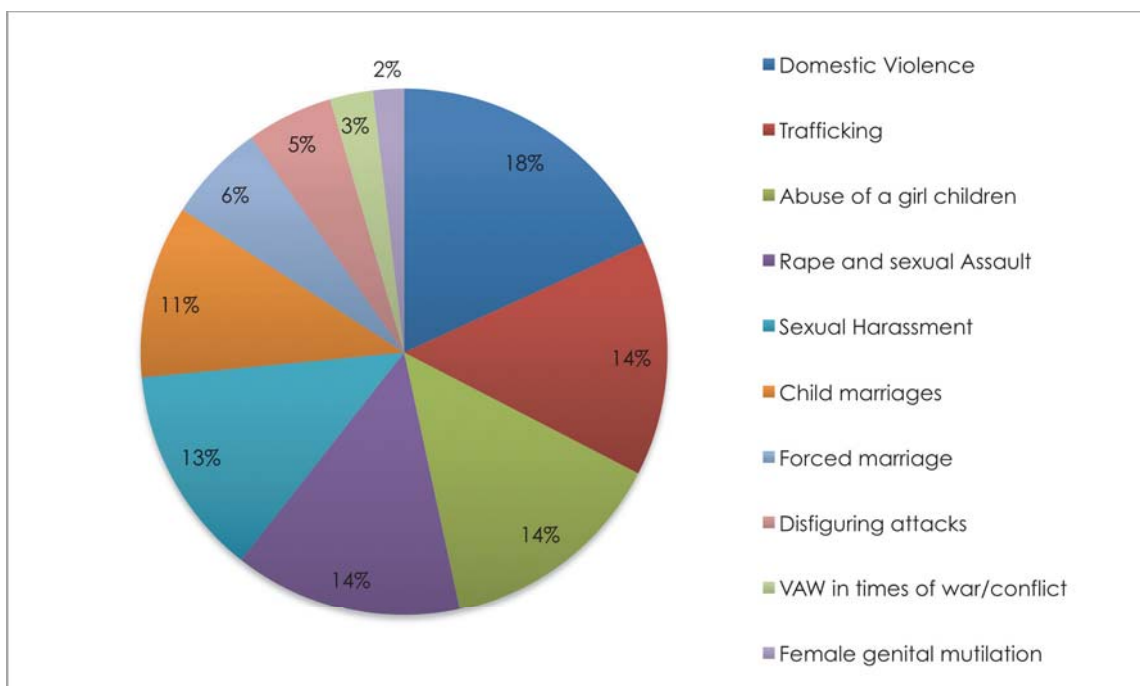
Another factor that has received attention is the proliferation of arms, which escalates VAW. Concerns over the impact of easy access and availability of arms have also been raised by the Human Rights Committee, in particular on 'the number of victims of gun violence, including in the context of domestic violence, and on steps taken to better protect people against the risks associated with proliferation of firearms'.¹⁰⁰

➤ *Providing Outreach and Ending Isolation*

VAW thrives in social isolation and seclusion, either by isolating or secluding the victim/survivors or hiding the abuse from society. Female victims of violence, particularly at the hands of family members, are often isolated from society by perpetrators. Further, victims/survivors themselves may believe that they would be transgressing social and cultural norms if they sought assistance. 'Outsiders' are warned not to interfere in 'family matters'. Victims/survivors of sexual violence are isolated and silenced by the stigma, shame and the practice of blaming them for provoking the assault.

¹⁰⁰ List of issues in relation to the fourth periodic report of the United States of America (CCPR/C/USA/4 and Corr. 1), adopted by the Committee at its 107th session (11–28 March 2013), CCPR/C/USA/Q/4 dated 29 April 2013.

Chart 4: DDP questionnaire survey: Existence of preventive programmes for different forms of VAW — Asia-Pacific (n = 58)



Advocates note that the availability of a social network increases women's autonomy and their ability to seek support and assistance to stop the violence. Mobility alone, however, does not serve this purpose if it is merely functional or related to household chores, for example, grocery shopping or fetching water.

Outreach programmes that can end the isolation of and remove the stigma suffered by victims/survivors are required. Society must also be involved in the struggle against VAW, to imbue a sense of vigilance against and a willingness to show disapproval of the same.¹⁰¹

➤ *Broadening the Scope of VAW Programmes*

In all regions studied, most government programmes on VAW mainly address domestic violence. Trafficking, abuse of female children, sexual harassment and child marriages are prioritized by select governments. Available literature, however, does not definitively record the prevalence of different forms of VAW, except domestic violence which is acknowledged to

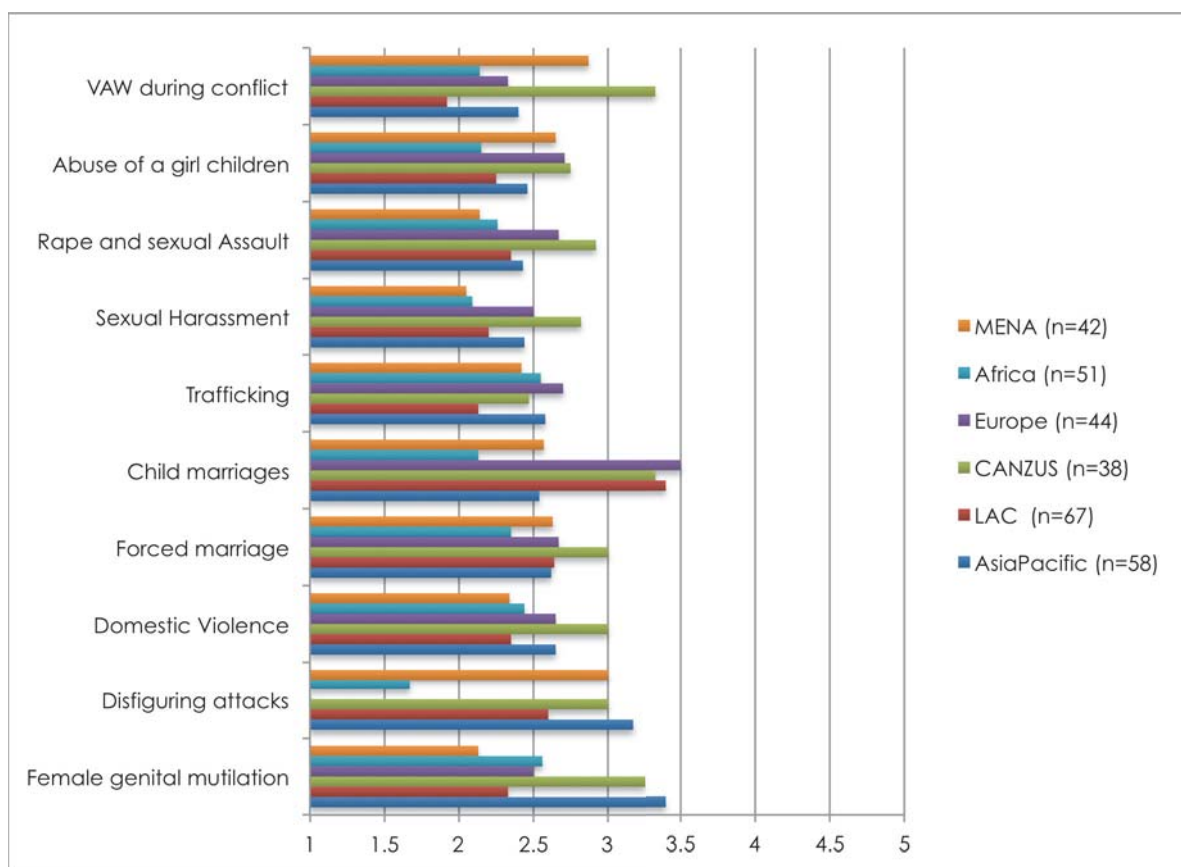
be its most common form. This hinders studies on whether the focus on specific types of VAW is justified.¹⁰²

Chart 4 describes DDP findings on the existence of preventive programmes for different forms of VAW. Most Asia-Pacific preventive programmes focus on domestic violence with only 2 per cent of CSO respondents agreeing there were programmes on FGM in their countries. Asia-Pacific CSO respondents also indicated in the DDP survey that preventive programmes focusing on female genital mutilation (FGM) and VAW in times of war/conflict are few. Although FGM exists in Asia-Pacific, 62.7 per cent of respondents claimed that their governments did not have preventive programmes to deal with the problem. This may be because FGM is perceived as part of acceptable and widespread cultural practices that do not consider it a violent act. Many countries where female circumcisions are practised argue that it is a minor, non-hurtful cutting of female genitalia.

¹⁰¹ For example, the 'Bell Bajao' (Ring the Bell) campaign to end domestic violence, started in India, has been adopted in other countries. See <http://www.bellbajao.org/>.

¹⁰² WHO Report (2013), *supra* note 35.

Chart 5: DDP survey: Effectiveness of different preventive programmes for VAW — all regions (n = 300; 1 = not at all; 5 = very much)



Surprisingly, programmes on disfiguring attacks (such as acid attacks) are also few, possibly because these are subsumed as part of domestic violence or general assault.

The DDP questionnaire also asked respondents to indicate the effectiveness of each type of preventive programme (see the Chart 5). In spite of only few programmes dealing with FGM, Asia-Pacific respondents claimed that the most effective preventive programmes were those targeting FGM (which scored a mean of 3.40 in terms of effectiveness on a Likert scale of 1-5 with the highest value being 5). Respondents in Europe did not rate the effectiveness of preventive programmes on disfiguring attacks, possibly because of the lack of such programmes.

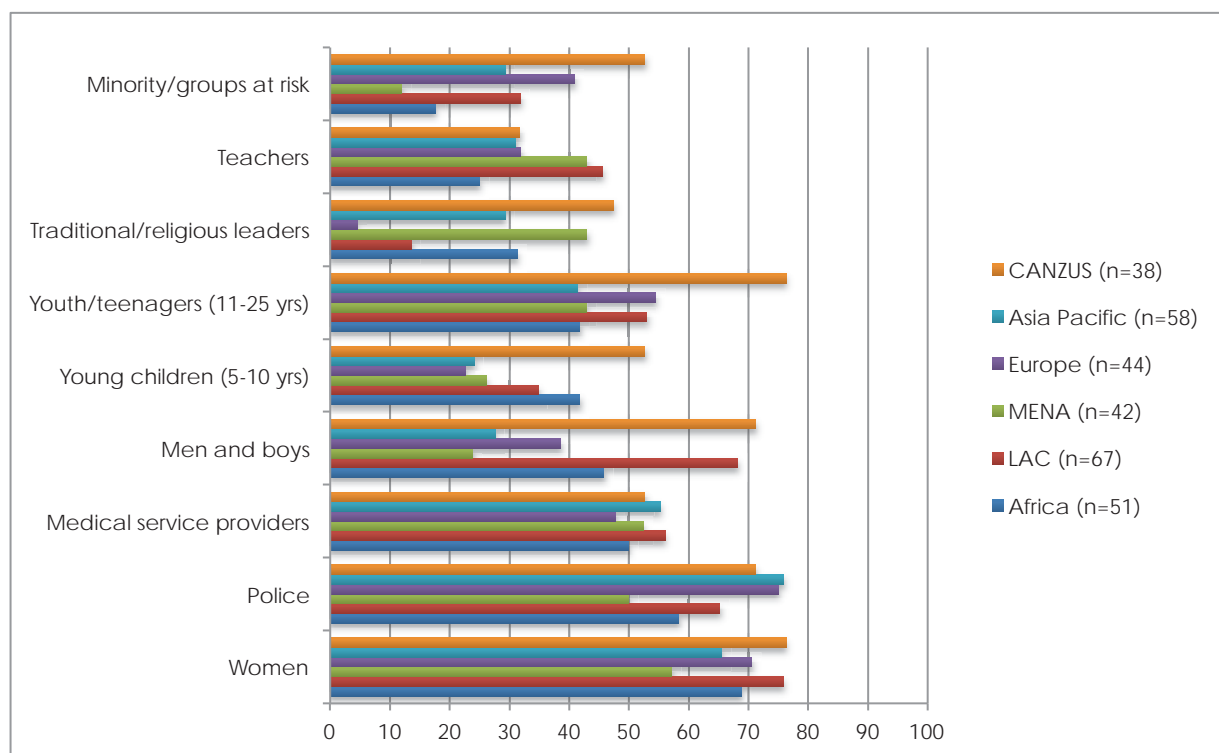
In Europe, apart from domestic violence, prevention programmes on trafficking are also common. This is not surprising as almost all European countries are today either trafficking destinations or transit points. However, rape and sexual assault are not as often

subjects of prevention programmes. Less than 40 per cent of DDP's European respondents knew of State prevention programmes on rape and sexual assault suggesting that these were indeed 'forgotten issues'.¹⁰³

The DDP survey identified many stakeholders and beneficiaries in programmes aimed at eradicating VAW. The success of governments' preventive programmes can be evaluated by verifying if programmes for specific beneficiaries or target groups exist and whether they have benefitted intended target groups. The DDP survey asked respondents if preventive programmes catering to various target

¹⁰³ Awareness-raising and/or prevention campaigns on sexual violence were launched in only 11 of the 27 EU Member States in the past five years. Victims/survivors of sexual violence have far fewer specialized support services than those of domestic violence. Ireland is an exception. The Department of Health and Children Support funds services for rape victims/survivors operated by local health boards and rape crisis centres.

Chart 6: DDP survey: Existence of preventive programmes targeting different groups — all regions (n = 300; percentage)



groups existed in their countries and to rate the effectiveness of such programmes.

Chart 6 describes the DDP findings on the existence of preventive programmes targeting different groups. On average, women and the police are the most commonly targeted groups; fewer programmes target young children (0-5 years) and traditional/religious leaders.

According to the DDP survey, the key roles of customary, traditional and religious leaders in preventing VAW were acknowledged and relevant programmes were developed in the CANZUS and MENA regions, followed by Africa and Asia-Pacific.

In Jordan, the National Committee for Women and the Ministry of Islamic Affairs conduct programmes with 'religious community leaders such as the Imams'.¹⁰⁴ However, advocates consulted by the DDP have questioned the

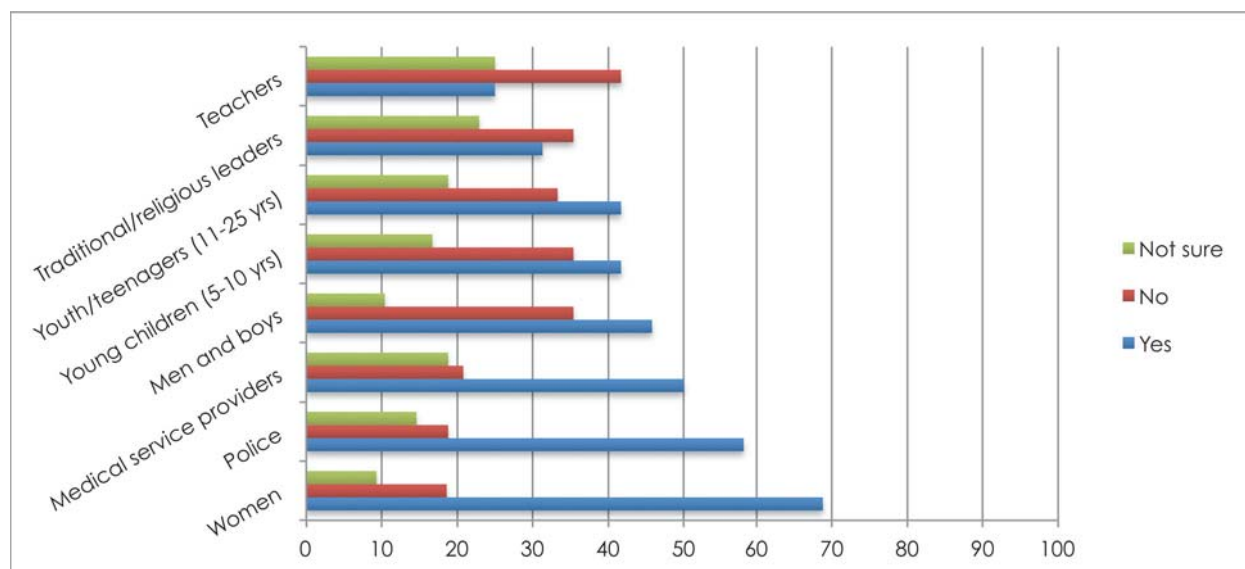
effectiveness of such programmes as they rarely aim to change customary and religious perceptions of women.¹⁰⁵

On a regional level, CSO respondents from Africa, for example, suggested that gaps still existed in the training of police, legal practitioners, medical personnel, community workers and other social service providers with regard to responding effectively and sensitively to VAW (Chart 7). Among countries surveyed, the **Democratic Republic of Congo (DRC)** had the highest percentage of positive responses on existence of programmes for the police and medical service providers — 100 per cent and 66.7 per cent, respectively, followed by South Africa, with 75 per cent and 62.5 per cent. However, CSO respondents demonstrated limited knowledge of programmes for teachers.

¹⁰⁴ DDP MENA regional experts' consultative meeting, Beirut, 10-11 September 2012.

¹⁰⁵ *Ibid*, for example, Algeria, Egypt, Jordan and Morocco.

Chart 7: DDP survey: Existence of preventive programmes targeting different groups — Africa (n = 51; percentage)



In the CANZUS region, 36.8 per cent of CSO respondents were unsure of the existence of programmes targeting teachers, 31.6 per cent about programmes targeting medical service providers, 23.7 per cent about programmes for traditional/religious leaders and 21.1 per cent about programmes for young children. If such programmes exist, then the findings indicate that States should disseminate more information about them to ensure optimum impact.

South Africa offers a family violence, child protection and sexual offences course (four weeks) to train specialized investigators to effectively scrutinize sexual offences and related crimes. The target of training 250 special investigators a year has been met each year since the course was started.¹⁰⁶ Other courses include a two-day domestic violence workshop, a week-long domestic violence learning programme, a two-week sexual offences course for investigating officers and a first responder to sexual offences learning programme.¹⁰⁷ The *Mozambican* government has worked with CSOs to introduce women's rights courses into Police Academy training. The *Zambian* Police Training

College has also integrated gender violence training into its curriculum.

A Campaign Against Prostitution & Trafficking, 'Real Men Don't Buy Girls!', was launched by the Immigrant Council of Ireland (ICI) to highlight sex-trafficking and the early age at which many girls enter prostitution. The campaign features high profile male celebrities from Irish music, sports and the arts trying to generate anti-trafficking awareness amongst young men.¹⁰⁸

Preventive programmes with children are important as stereotyping and gender roles are learnt from an early age. In many instances however, such programmes require supportive school boards. An innovative example of a prevention programme that works with boys is a high-school football programme in the **American** state of Texas, called *Coaching Boys into Men* (CIMB).¹⁰⁹ CIMB, jointly developed with the High School Coaches Association, strives to teach these young men how to respect women and not use violence from an early age.

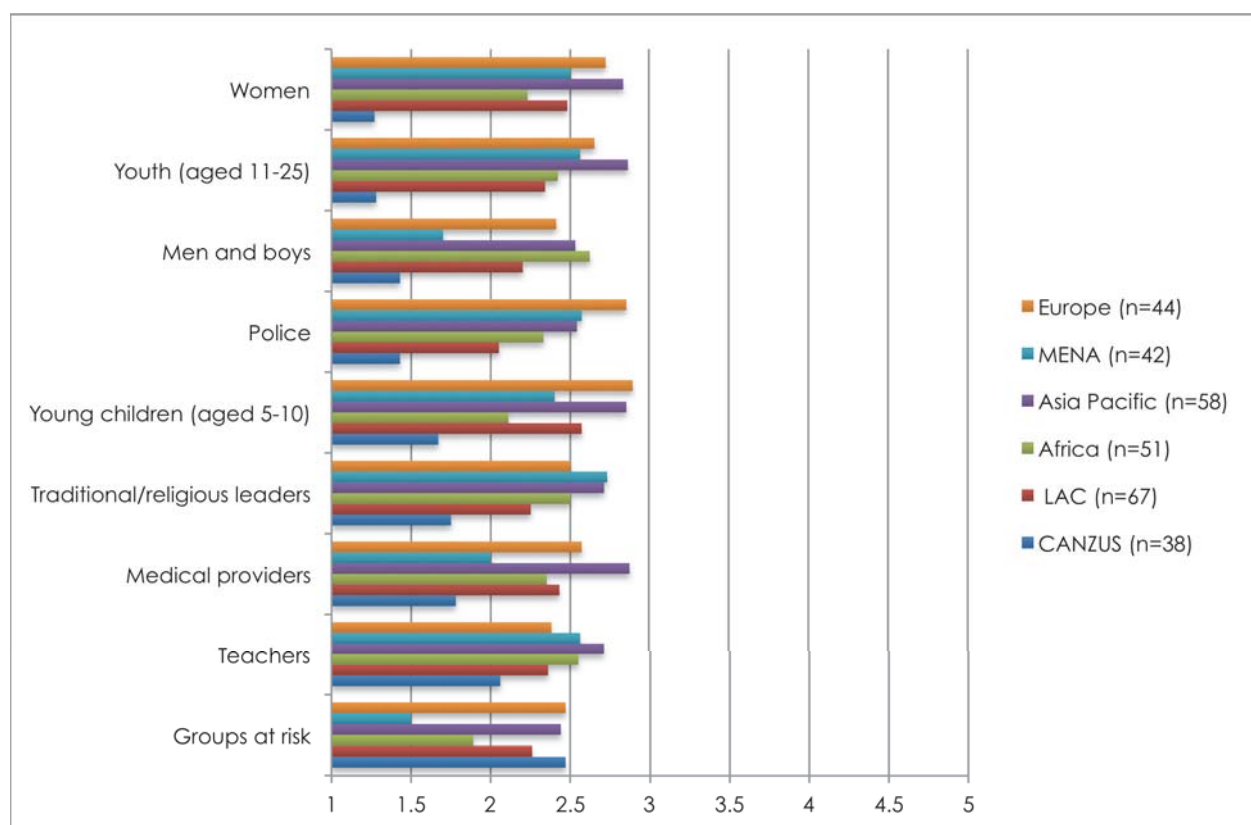
¹⁰⁶ See Republic of Zambia, (2008) National Action Plan on Gender-Based Violence 2008-2013, Gender in Development Division, Cabinet Office, Lusaka, Available at countryoffice.unfpa.org/zambia/drive/GBV-NAP_2008-2013_FINAL.pdf.

¹⁰⁷ SAPS presentation to the Parliamentary Committee Police, August 2012.

¹⁰⁸ Immigrant Council of Ireland (2013) 'Real Men Don't Buy Girls' Irish Men Unite Against Sex-trafficking', Statement issued to the Press, Available at <http://www.immigrantcouncil.ie/media/press-releases/664-real-men-dont-buy-girls-irish-men-unite-against-sex-trafficking-statement-by-immigrant-council-of-ireland>.

¹⁰⁹ DDP questionnaire survey: USA. See also <http://www.tcfv.org/archives/912>

Chart 8: DDP survey: Effectiveness of preventive programmes — all regions
(n = 300; 1 = not at all; 5 = very much)



Across regions, most respondents awarded low ratings to preventive programmes' effectiveness. Furthermore, only few States seem to have built-in systems to evaluate their plans or the results achieved.¹¹⁰

➤ *Formulating Comprehensive Laws and Constitutional Guarantees*

Enacting legislation is critical to the State assuming accountability for VAW. It is through laws that the necessary components of due diligence and implementing measures are articulated.¹¹¹

¹¹⁰ Inter-American Commission of Women. Follow-up Mechanism to the Belém do Pará Convention (MESECVI), Second Hemispheric Report on the implementation of the Belém do Pará Convention, OEA/Ser.L. (2012), p.50.

¹¹¹ States that have passed new laws on VAW include Afghanistan (Law on the Elimination of VAW 2009) which specifically mentions chemical (e.g., acid) attacks, deprivation of inheritance, coerced prostitution, marrying a woman in retribution for murder. Saudi Arabia's 'Protection from Abuse' law was approved by the cabinet on 26 August 2013. Aljazeera (2013) 'Saudi Arabia outlaws domestic

Holistic and comprehensive laws encompass the duty to prevent VAW. Their competent implementation is an effective prevention strategy, particularly if perpetrators are certain that their actions will be punished. Laws can also create specific institutional mechanisms, systems, programmes and measures to prevent VAW, protect victims, investigate, prosecute and punish perpetrators, and provide redress for victims/survivors. While changing mindsets and tackling underlying causes of VAW may take a long time, the presence of laws prohibiting VAW and backed by a range of sanctions could transform mindsets and attitudes.

However, several challenges hamper the effectiveness of laws and policies on VAW. Laws relating to VAW are often inadequate and discordant with human rights. As the former Secretary General noted in his in-depth study on VAW, human rights treaty bodies have expressed concerns about

violence' 30 Aug 2013, Available at <http://www.aljazeera.com/news/middleeast/2013/08/20138290272119559.html>.

the scope and coverage of existing legislation.¹¹² He referred in particular to: definitions of rape and domestic violence; provisions mitigating sentences if rapists marry their victims; inadequacy of protective measures for trafficked women and their treatment as criminals rather than victims; termination of criminal proceedings upon withdrawal of cases by victims/survivors; penalization of abortion in rape cases; laws that allow early or forced marriage and inadequate penalties for VAW and discriminatory penal laws.¹¹³ The link between VAW and economic deprivation must also be established and addressed. Economic VAW includes denial or neglect of financial and economic/provision and deprivation of land and property including inheritance.¹¹⁴ The lack of harmonization in national legal systems may also hinder women in particular regions or communities from accessing justice.¹¹⁵

*CSO reports indicate that while Mexico's General Laws of Access for Women to a Life Free of Violence (GLAWLFV) and the System to Prevent, Provide Care, Punish and Eliminate Violence against Women are good, they lack inter-institutional coordination, and policy gaps prevent their successful implementation.*¹¹⁶

¹¹² United Nations (2006) Ending Violence against Women: from words to action, Study of the Secretary-General (A/61/122/Add.1 and Corr.1, p 96. Available at <http://www.un.org/womenwatch/daw/vaw/publications/English%20Study.pdf>. See also Istanbul Convention which similarly calls for all forms of VAW to be criminalized.

¹¹³ *Ibid* at p.98.

¹¹⁴ The UNSRVAW noted 'Many interviewed victims explained how husbands had become abusive or had increased their abusive behaviour after deciding to start a relationship with another woman. The abuse usually starts with neglect and lack of resource provision for the first wife and her children, but can escalate to physical and sexual violence, and in some cases murder'. Also '[a]ccording to many interviewees, sorcery accusations are commonly used to deprive women of their land and/or their property'. *Special Rapporteur on Violence against women finalises country mission to Papua New Guinea*, <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=12013&LangID=E>. In 2013, the Parliament of Papua New Guinea has voted to repeal the country's Sorcery Act and reinstate the death penalty in certain cases to help stem an increase in violence against people accused of practicing black magic. Siegel, Matt (2013) *Papua New Guinea Acts to Repeal Sorcery Law After Strife*, NY Times, 29 May 2013. Available at http://www.nytimes.com/2013/05/30/world/asia/papua-new-guinea-moves-to-repeal-sorcery-act.html?_r=0.

¹¹⁵ This is so especially in States with federal systems, such as Nigeria.

¹¹⁶ Católicas por el Derecho a Decidir and Comisión Mexicana de Defensa y Promoción de Derechos Humanos, (2012) *Femicide and Impunity in México: A context of structural and generalized violence. Report presented before the CEDAW Committee*, 17 July 2012.

Constitutional guarantees on gender equality, prohibition of discrimination and protection of fundamental liberties also underline a State's commitment to combating VAW. Care must, however, be taken to ensure that these provisions do not conflict with others that may negate or restrict their application.

Egypt's constitutional stipulation of equality is reversed in article 11 which 'obligates the state to harmonize women's duties toward their families with their "work in society" while providing them with equality in political, social, cultural and economic spheres so long as the rules of Islamic Jurisprudence are not violated'.¹¹⁷ Article 60 of the Egyptian Penal Code provides that the Penal Code does not apply to any bona fide act committed in pursuance with the 'Sharia'.¹¹⁸ This provision has often been used by judges in domestic violence cases.

MENA advocates wanted States to prioritize inclusion of gender-equality provisions. This was seen as an important step towards acknowledging women's equal citizenship and eliminating discrimination that legitimizes VAW. Most constitutions in the MENA region do not guarantee substantive equality between men and women or prohibit gender discrimination.¹¹⁹

Newer constitutions tend to include gender equality and VAW provisions.

The 2006 constitution of the Democratic Republic of Congo obligates the State to 'combat all forms of VAW' and 'ensure the elimination of sexual violence'.¹²⁰ The Ethiopian constitution also addresses VAW, obligates the State to

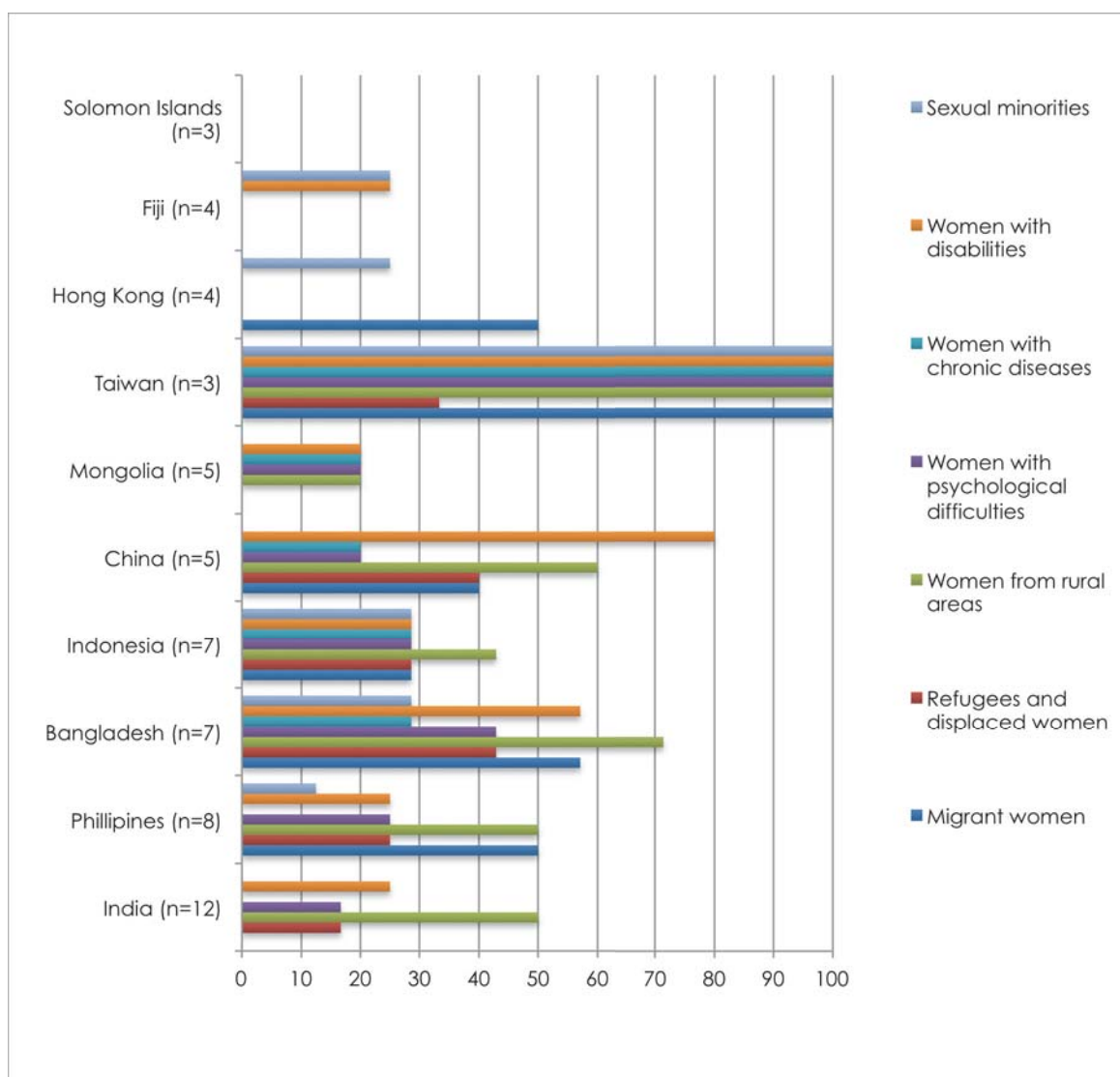
¹¹⁷ Mariz Tadros, (2010) Freedom House, *Women's Right in the Middle East and North Africa: Progress Amid Resistance-Egypt*, p. 4. Available at http://www.freedomhouse.org/sites/default/files/inline_images/Egypt.pdf.

¹¹⁸ The Egyptian Association for Community Participation, Enhancement, (2009) *Second Shadow Report for the CEDAW Coalition-Egypt*, p.63. Available at <http://www.arabhumanrights.org/publications/countries/egypt/shadowreports/cedaw-EACPE-egypt45-2010e.pdf>.

¹¹⁹ The Constitution of Algeria was approved by popular referendum and promulgated on 22 November 1976 and amended in 1996. Although article 29 stipulates 'All citizens are equal before the law. No discrimination shall prevail because of birth, race, sex, opinion or any other personal or social condition or circumstance,' Algeria has not amended discriminatory laws against women to align them with this constitutional principle of equality.

¹²⁰ Articles 14 and 15 of the Constitution of the Democratic Republic of the Congo (2006).

Chart 9: DDP survey: Preventive programmes targeting groups at risk — Asia-Pacific, by country (n = 58; percentage)



enforce the rights of women and eliminate the influences of harmful customs. It prohibits laws, customs and practices that oppress or cause bodily or mental harm to women.¹²¹ **Senegal** constitutionally prohibits FGM and forced marriage.¹²²

Apart from providing for equality between men and women and prohibiting discrimination on

the basis of sex, the constitution of **Thailand**, in article 52, claims the State is obliged to protect women and children from violence and unfair treatment and provide medical treatment or rehabilitation upon its occurrence.¹²³ Article 81 provides that the State shall ensure compliance with and fair, thorough and speedy enforcement of the law; enhance legal services, legal aid and dissemination of information to the public; and provide support for CSOs rendering legal

¹²¹ Article 35(4) of the Federal Democratic Republic of Ethiopia (1994).

¹²² Articles 7, 18 and 25 of the Constitution of Senegal.

¹²³ Available at: <http://www.asianlii.org/th/legis/const/2007/1.html#C03P04>.

assistance to the public, especially victims/survivors of domestic violence.¹²⁴

➤ **Collecting Data and Designing Programmes**

Preventive programmes must be based on comprehensive, reliable data on prevalence, causes and consequences of VAW. Data collection is important for shaping VAW interventions; data can provide insights to shape prevention measures and monitor and assess prevention programmes. States need data on discrimination, money being spent to end VAW, CSO efforts and other legal aspects. Data collection also helps assess State programmes aimed at preventing VAW and indicate areas that need further work.

Data facilitates monitoring of laws, policies, programmes and other measures. Data collected from police stations, courts, medical and other service providers and through national surveys can indicate the need for new strategies where existing ones have proved ineffective. Disaggregated data is also crucial to assess the impact of intersectionality on VAW, including disability, ethnicity, geography (urban versus rural) and immigration status. This enables more targeted preventive action, where necessary.

Evidence-based practice requires more than collecting comprehensive data. It necessitates the regular analysis of data and a mechanism for feeding it into training, policy and programmes. 'Court watch' programmes, whereby advocates attend and monitor violence against women cases, provide research data that can be used to identify needs and gaps for purpose of training and reforms in policy, procedures and practice as well as dialogues/colloquium with judges.¹²⁵

*Mis-coding of complaints by police can also lead to the hampering of data collection which was the situation with the coding of sexual assault complaints in the **American** city of Philadelphia. A situation which improved once the error was exposed by advocates. Some advocates working in immigrant and refugee communities in **New Zealand** expressed concern that the government neither records instances of female genital*

cutting and circumcision nor recognizes it as an issue in the country, which directly contradicts their experience.

Preventive programmes should ideally solicit input from women to promote their participation in the design, implementation and evaluation of policies. Programmes should aim to change mindsets on VAW. This is supported by DDP findings with advocates suggesting that the best prevention programmes are community-led and driven.¹²⁶

*In the **United States**, advocates recently succeeded in updating the federal government's definition of rape used for uniform tracking of crimes.¹²⁷ Similar efforts to ensure consistent definitions of domestic violence make national survey data more comprehensive and useful.*

➤ **Incorporating Intersectionality and Providing for At-risk Groups**

VAW does not affect all women equally. Some women are more vulnerable than others or face greater challenges in accessing the State's laws, programmes and processes. These include refugees, internally displaced, migrants, ethnic minorities, indigenous communities, sex workers, sexual minorities, the disabled, elderly, those in custodial sentences, those caught in natural disasters or the aftermath¹²⁸ and women's human rights defenders.¹²⁹ Thus, States must provide a range of responses to address the complex intersecting dynamics that shape and perpetuate VAW or

¹²⁶ Comments from CANZUS advocates.

¹²⁷ FBI (2012) UCR Program Changes Definition of Rape, Available at <http://www.fbi.gov/about-us/cjis/cjis-link/march-2012/ucr-program-changes-definition-of-rape>.

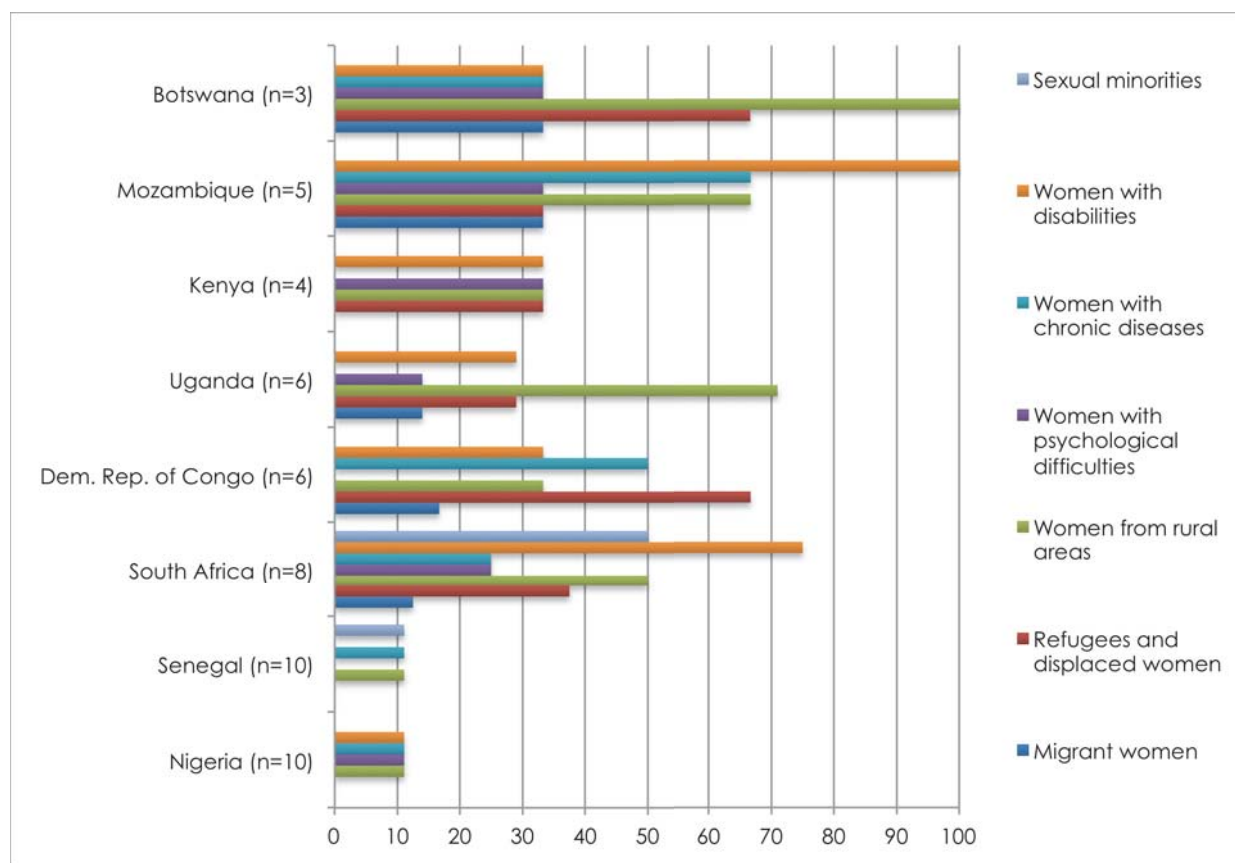
¹²⁸ Following the 2011 earthquake in the New Zealand city of Christchurch, advocates noted an increase in the number of women seeking protective services for family/sexual violence and a corresponding shortage of shelter space. It was further noted that the average stay in these shelters rose dramatically, from an average of three weeks to three months, in the wake of the earthquake.

¹²⁹ See also Rashida Manjoo, (2011) Special Rapporteur on Violence against Women, its causes and consequences, *Mission to the United States of America*, Human Rights Council, U.N. Doc. A/HRC/17/26/Add.5 (1 June) at ¶¶ 7-66 where the Special Rapporteur noted that victims/survivors in custodial settings, in the military and those who face multiple, intersecting forms of discrimination, particularly native American, immigrant and African-American women, are particularly vulnerable to GBV.

¹²⁴ *Ibid.*

¹²⁵ Participants at PHRGE Fall Institute, Northeastern University School of Law

Chart 10: DDP survey: Preventive programmes targeting groups at risk — Africa, by country
(n = 51; percentage)



prevent specific groups of women from accessing the States' processes.¹³⁰

State programmes for groups at risk usually target women from rural areas, women with disabilities and migrant women. In Asia-Pacific, 51 per cent of DDP respondents indicated that their States had preventive programmes targeting rural women and 37 per cent attested to programmes for women with disabilities. However, 70.8 per cent claimed their States did not have specific preventive measures for sexual minorities.

The Asia-Pacific DDP survey findings (Chart 9) suggest that **Taiwan** has the most VAW preventive measures with specific provisions for different groups of women, according to 90.5 per cent respondents. This is followed by **Bangladesh**, with 46.9 per cent respondents noting the existence of specific

programmes targeting different groups of women at risk. **Mongolia, Hong Kong, Fiji** and **Solomon Islands** have the fewest preventive programmes for groups at risk in Asia-Pacific.

Chart 10 illustrates the African region DDP survey findings (by country). Most African CSO respondents believe that not enough preventive programmes exist for women with disabilities, chronic diseases or psychological difficulties, for sexual minorities and from rural areas, for migrants, refugees and internally displaced women.

Conflict and war signals a breakdown of the rule of law and exposes women to heightened risk of VAW. Sexual violence in armed conflict has been acknowledged by various fora as a serious violation of international humanitarian law and international human rights law.¹³¹

¹³⁰ See Amon J, (2010) Submission on Pre-Sessional Review of Uganda by CEDAW, (16 September). Available at <http://www.hrw.org/docs>.

¹³¹ Geneva Conventions, UN resolutions, in particular 1325, and most recently, resolution 2106 and G8 Declaration on Preventing Sexual Violence in Conflict, adopted in London

'Preventing sexual violence in armed conflict is therefore both a matter of upholding universal human rights and of maintaining international security, in keeping with UN Security Council Resolution 1820. Ministers emphasised that more must be done to address these ongoing crimes, including by challenging the myths that sexual violence in armed conflict is a cultural phenomenon or an inevitable consequence of war or a lesser crime.'¹³²

Despite democratic elections and the approval of a constitution by public referendum, the **Democratic Republic of Congo** remains a grave humanitarian crisis.¹³³ Sexual violence is not restricted to zones of armed conflict and has become the defining feature of the country's turmoil, with violence perpetrated by foreign non-State armed groups, State security forces and civilians.¹³⁴

Of the 3.2 million people displaced by **Colombia's** decades-long internal conflict, 49–58 per cent are women.¹³⁵ While many women and girls escaped to avoid poverty, domestic violence, sexual violence and labour exploitation,¹³⁶ reports indicate that even in their new locations, they are exposed

to heightened GBV by paramilitary forces, guerrilla groups and the army.¹³⁷

Civil disturbances accompanied by a breakdown in policing may also place women at risk. During post-election violence in **Kenya**, between December 2007 and March 2008, women (mainly poor women), were raped, subjected to forced genital mutilation, sodomized and sexually exploited by gangs of men and security forces.¹³⁸ Most victims/survivors faced abandonment and stigmatization after their traumatic ordeals.¹³⁹

➤ *Maintaining a Sustained Strategy*

A sustained strategy is ideally institutionalized and not a seasonal response. It should involve actions across different environments that target a range of groups, including local communities, workplaces, schools and faith institutions; working with individuals or families is also crucial. Mechanisms to monitor implementation,¹⁴⁰ including qualitative surveys to ascertain the prevalence and forms of violence could further ensure that such strategies remain current and effective.¹⁴¹ NAPs and institutional mechanisms are considered good sustained strategies.

Creating action plans and institutional mechanisms

The Secretary General's 2006 in-depth study of all forms of VAW calls on States to institute plans of action. These should be monitored and updated regularly in consultation with CSOs.¹⁴² The United Nations too has urged 'States to take action to eliminate all forms of violence against women by

on 11 April 2013. See also Zainab Bangura (2012) Mandate of UN Secretary General's Special Representative on sexual violence in conflict, United Nations.

¹³² G8 Declaration on Preventing Sexual Violence in Conflict, para. 1. Available at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/185008/G8_PSVI_Declaration_-_FINAL.pdf?utm_source=smartmail&utm_medium=email&utm_campaign=PressreleaseG8Declaration120413. The Declaration commits G8 countries to develop a comprehensive protocol on preventing, protecting, documenting and prosecuting, punishing and providing redress for victims/survivors of sexual violence during conflict.

¹³³ Ertürk Y, Violence Against Women in Armed Conflict: The Case of DRC, UN Special Rapporteur on Violence Against Women, its Causes and Consequences. Available at <http://www.regjeringen.no/nb/dep/ud/kampanjer/refleks/innspill/menneskerettigheter/erturk.html?id=535163>

¹³⁴ Ibid.

¹³⁵ Women's Refugee Commission, (2001) Country Profiles from Latin America: Colombia, Guatemala, Nicaragua, (November), p. 106. Available at: <http://www.unhcr.org/refworld/docid/48aa82f6d.html>. See also IACHR, (2006) *Violence and Discrimination against Women in the Armed Conflict in Colombia*, OEA/Ser/L/V/II.124/Doc.6, (18 October); IACHR, (2009) *Follow-Up Report Violence and discrimination against women in the armed conflict in Colombia*, Annual Report (Chapter 5), para. 15.

¹³⁶ Thania López, Contexto y situación de las mujeres colombianas refugiadas en Ecuador, Lecture presented during the Second Regional Conference Migration, forced displacement and asylum [Migración, desplazamiento forzado y refugio], Universidad Andina Simón Bolívar, Quito, septiembre 1, 2 y 3 de 2004.

¹³⁷ Johanna L. Gusman, *Combating Sexual and Gender Based Violence in Ecuador's Refugee Population: A Proposal for a Gender-Focused Approach to Local Integration*, (William H. Gates Scholar, University of Washington School of Law Seattle, Washington USA). Available at

<http://www.culturaldiplomacy.org/culturaldiplomacynews/participant-papers/2011-11-lihrc/Combating-Sexual-and-Gender-Based-Violence-in-Ecuador's-Refugee-Population--Ms.-Johanna-L.-Gusman.pdf>.

¹³⁸ The Waki Report of the findings of the Commission of Inquiry into Post-Election Violence in Kenya, October 2008. Available at

<http://www.communication.go.ke/media.asp%3>.

¹³⁹ Ibid.

¹⁴⁰ For example, Slovakia (expert group) and Uganda.

¹⁴¹ For example, Morocco and Azerbaijan.

¹⁴² United Nations (2006) Ending Violence against Women: from words to action, *supra* note 112, page 137.

means of a more systematic, comprehensive, multi-sectoral and sustained approach, adequately supported and facilitated by strong institutional mechanisms and financing, through national action plans'.¹⁴³ One of the five priority outcomes for country-level action under the United Nations Secretary-General's Campaign UNiTE to End Violence against Women 2008-2015 is for all countries to have adequately-resourced NAPs adopted and underway by 2015.¹⁴⁴

Effective NAPs have a clearly defined framework for essential, strategic, coherent and co-ordinated multi-sectoral, inter-agency interventions to prevent and respond to VAW. They also have institutional mechanisms to monitor and assess implementation of laws, policies and programmes. Experts consulted by the DDP explicitly called for governments to take a more comprehensive, multi-sectoral, integrated approach to addressing gender violence. They also stressed the need for better coordination of services and referrals. Most States vest such responsibilities with a national mechanism such as the Women's Ministry. The risk in doing so is that other agencies/sectors may not prioritize implementation of VAW initiatives, allocate sufficient resources or appoint senior officials to oversee implementation.

*The Democratic Republic of Congo, with significant support from international organizations, has developed a national strategy against GBV, which is important given the nature and extent of sexual violence in the country. Senegal, Djibouti and Tanzania have also developed NAPs to deal with FGM, deemed critical in their respective countries.*¹⁴⁵

Of the 31 European countries analyzed by the experts on the European Women's Lobby VAW Observatory in 2010, only Sweden had a NAP that covered all forms of VAW. Ten others (France, Finland, Germany, Greece, Iceland Lithuania, Luxembourg, Serbia, Spain and Turkey had NAPs on specific forms of GBV against women.¹⁴⁶ In the EU, only nine member states have integrated action plans on VAW and 14

*national plans on some forms of VAW, primarily domestic violence.*¹⁴⁷

*Most Latin American countries have plans of action or national plans on VAW or are in the process of implementing one. Frequently, these plans are outlined in comprehensive laws on VAW. They map out lines of action and specify multi-sectoral responsibilities. Often, the plans are designed with CSO participation and evaluated by them.*¹⁴⁸

Australia adopted a *National Plan to Reduce Violence Against Women and their Children* (2010-22).¹⁴⁹ Though national in scope, each state and territory has its own plan. It enjoys wide bipartisan support and attempts to coordinate efforts across federal, state and local jurisdictions. It emphasizes primary prevention and articulates a framework for action to be implemented in four, three-year plans, commencing with the "First Action Plan: Building Strong Foundations" (2010-2013).¹⁵⁰ It lists expected outcomes, each with accompanying strategies and indicators for success, in the areas of prevention; service provision; justice responses; holding perpetrators to account; and reducing violence in indigenous communities.¹⁵¹

Spain's NAP includes the use of different tools and the media in awareness campaigns. It also targets schools, trade unions and sporting events. A successful campaign slogan is 'In the face of VAW, the law prevails'. The campaign slogan carries three messages:

1. Abused women have the support of a law that provides shelter, protection and the means to start a new life.
2. Perpetrators will be punished.

¹⁴³ A/RES/61/143 dated 30 January 2007, United Nations General Assembly resolution 61/143 of 2006, para 8. The World Conference on Women in Beijing 1995 following the World Conference on Human Rights (Vienna 1993) also recommended that States adopt and implement action plans.

¹⁴⁴ As above.

¹⁴⁵ UN Secretary-General's database on violence against women, Country pages <http://sgdatabase.unwomen.org>.

¹⁴⁶ EWL Barometer 2011.

¹⁴⁷ Professor Liz Kelly, keynote speech at European women's lobby conference, June 2011.

¹⁴⁸ Inter-American Commission of Women. Follow-up Mechanism to the Belém do Pará Convention (MESECVI), Second Hemispheric Report on the implementation of the Belém do Pará Convention, OEA/Ser.L (2012), p. 49.

¹⁴⁹ Council of Australian Governments, (2012) *The National Plan to Reduce Violence against Women and their Children 2010 – 2022* (May 2012). Available at http://www.fahcsia.gov.au/sites/default/files/documents/05_2012/national_plan.pdf [hereinafter National Plan].

¹⁵⁰ Council of Austl. Gov'ts, (2012) *National Implementation Plan for the First Action Plan 2010-2013: Building a Strong Foundation* (Sept. 2012), available at http://fahcsia.gov.au/sites/default/files/documents/09_2012/imp_plan_27092012.pdf.

¹⁵¹ *Ibid.*

3. Societal mobilization is required to actively fight VAW.

The **Australian** 'Same Sex Domestic Violence Interagency' is made up of a diverse group of stakeholders including police, anti-violence advocates, healthcare workers and representatives from women and queer organizations. Since its inception in 2011, this group has met once a month to review and share information on same-sex domestic violence.¹⁵² Despite its limited budget the interagency has been effective in increasing awareness of same sex-domestic violence, both within the queer communities and beyond, and in conducting and supporting projects on the same.¹⁵³

➤ *Collaborating with Women's/Feminist Organizations*

Women's mobilization over VAW has brought VAW out from the private sphere where the law and culture had set up justifications for State non-

intervention to stop VAW. Notably, the Global Campaign for Women's Human Rights, an international mobilization over the 1993 UN World Conference, women's movement became more actively involved in working with governments at the national and international levels to address and end gender-based violence against women.¹⁵⁴

Recent research by Htun and Weldon found that women's/feminist mobilization in civil society most accounts for variation in States' developing policies to end VAW.¹⁵⁵ Further "autonomous movements produce an enduring impact on VAW policy through the institutionalization of feminist ideas in international norms".¹⁵⁶

While States bear the obligation to end VAW, cutting-edge research and strategies are often undertaken by women's CSOs. Women CSOs require State support and collaboration; not only to assist States to discharge their responsibility for example by carrying out preventive programmes or providing services to victims/survivors, but also to ensure State accountability to end VAW. Collaboration between States and the women's movement has undoubtedly strengthened and will continue to strengthen the struggle to end VAW.

¹⁵² Kate Duffy, (2011) There's No Pride in Domestic Violence: The Same Sex Domestic Violence Interagency, Sydney, Australia, in Janice L. Ristock (ed.), *Intimate Partner Violence in LGBTQ Lives*, pp. 258-60, New York: Routledge

¹⁵³ *Ibid.*

¹⁵⁴ Bunch, Charlotte, (1995) The Global Campaign for Women' Human Rights: Where Next After Vienna? *St. John's Law Review*, Volume 69, Winter-Spring, Lanzon (ed.), pp.171-178.

¹⁵⁵ Htun & Weldon, The Civic Origins of Progressive Policy Change: Combating Violence against Women in Global Perspective, 1975–2005, *American Political Science Review*, Vol. 106, Issue 3, August 2012, pp 548-569

¹⁵⁶ *Ibid.*

Protection against VAW keeps victims/survivors safe from harm. It includes avoiding the recurrence of further violence and ensuring that victims/survivors receive adequate and timely services. This is sometimes called secondary prevention, as opposed to primary prevention, which aims to stop the occurrence of violence rather than recurrence.

Victims/survivors should be protected not only from perpetrators but perpetrators' families and friends (and sometimes even their own families who may assault them for violating cultural or community values by reporting or seeking to end the violence). Protection must focus on international, national, regional, community and individual levels since VAW impacts each of these areas.

➤ *Ensuring Availability of and Accessibility to Coordinated Support Services*

Medical (including psychological) interventions and social support are essential in protecting victims of VAW. Having reported incidents of violence, victims/survivors may need medical and psychological treatment, shelter or alternative accommodation and in the case of child victims/survivors, special attention from child-protection services and agencies dealing with child witnesses.

Counselling and other support services offer women options to stop the violence; prevent its recurrence; treat the trauma (mental and physical); and understand, address and challenge the factors responsible for the violence. Referrals and legal advice provide women with information on their rights and assistance in accessing these rights.

Coordinating services

Coordinating services is critical to ensuring that all gaps are filled and risks to victims/survivors are minimized. Multi-sectoral and coordinated services would focus not only on short-term but medium- and long-term needs of victims/survivors.

According to the UN Handbook for Legislation on VAW, minimum standards for support services are (1) a national free hotline; (2) a shelter for every 10,000 inhabitants; (3) a women's advocacy and counselling centre for every 50,000 women; (4) a rape crisis centre for every 200,000 women and (5) access to healthcare, including reproductive health and HIV prophylaxis.¹⁵⁷

A mapping study on sexual violence in **Europe**, however, found that only three EU countries had a national sexual violence helpline; six had rape crisis centres and eight had sexual assault referral centres that provided forensic examination, short-term counselling and advocacy.¹⁵⁸

Training

Advocates also report that service providers' personnel do not receive adequate, competent and on-going training. For example, the hotline in **Ukraine** lacks funding, specialists and volunteers; many of the employees of **Kazakhstan's** national domestic violence hotline lacked training and experience to effectively operate the service.¹⁵⁹

The DDP survey also asked CSOs about the availability of government services that could intervene in VAW cases and help victims. The range of services included integrated health services, helplines, shelter and housing, counselling and legal services.

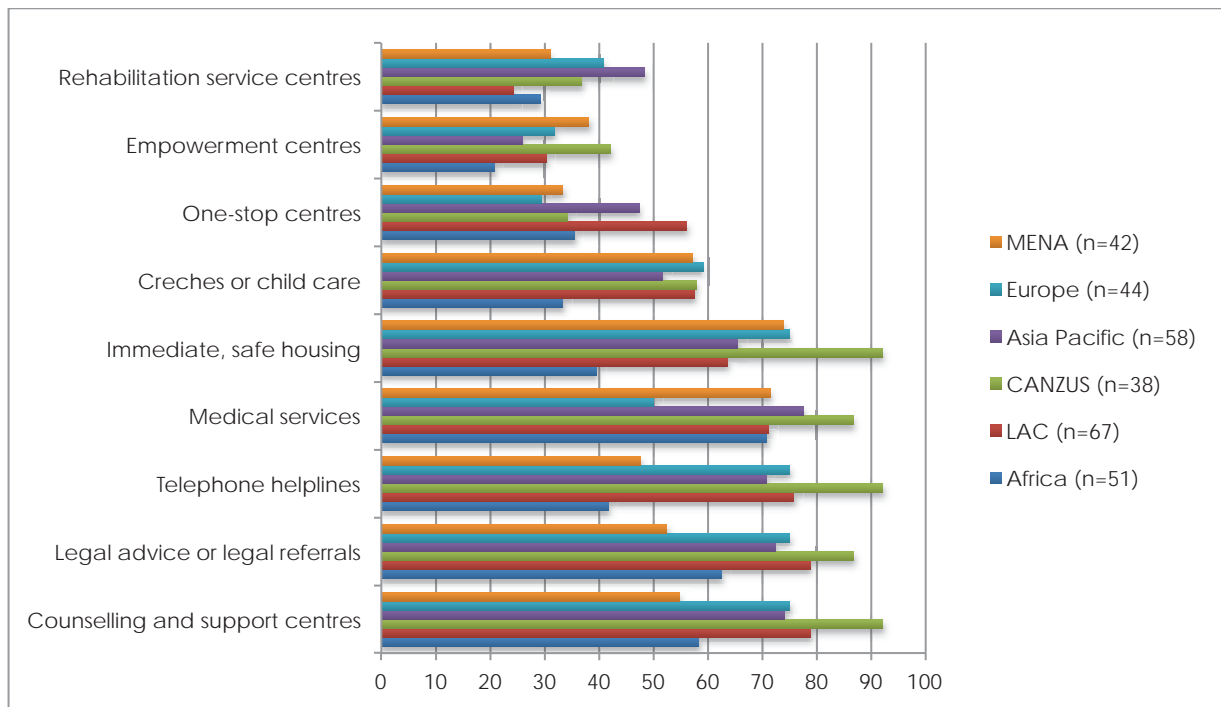
Questionnaire responses (Chart 11) reveal that counselling and support centres, legal advice and referrals and medical centres are the most available

¹⁵⁷ United Nations, (2010) *Handbook for Legislation on Violence against Women*, Department of Economic and Social Affairs and Division for the Advancement of Women, New York. Available at <http://www.un.org/womenwatch/daw/vaw/handbook/Handbook%20for%20legislation%20on%20violence%20against%20women.pdf>, section 3.6.1.

¹⁵⁸ EIGE (undated) Sexual Violence against women in the European Union, Available at http://www.eige.europa.eu/content/sexual-violence-against-women-in-the-european-union#_ftn29.

¹⁵⁹ DDP Survey: Europe

Chart 11: DDP survey: Availability of services — all regions (n = 300; percentage)



VAW services. Telephone helplines are also widely available, except in Africa, but shelters are fewer. Generally, there is a dearth of services relating to women's empowerment and rehabilitation.¹⁶⁰

a. Available services

Hotlines and helplines

Now considered almost a standard service, hotlines and helplines provide important access to information and support systems for victims/survivors of VAW. In fact, the Istanbul Convention requires governments to provide free state-wide round-the-clock hotlines.¹⁶¹

Telephone advice provides privacy and confidentiality, is generally free and is accessible to women in remote areas. The DDP survey indicates helplines should also be available in local dialects and languages, which according to CSO respondents in **Asia-Pacific** is not currently the case. This is particularly

problematic as helplines are the cheapest means of getting help.

Research indicates that more women access hotlines in countries with wide networks of crisis centres. For example, in 2009, the direct helpline of the **Dublin Rape Crisis Centre** received 14,289 telephone calls, text messages and emails. Eighty-two per cent of the calls were from women, mainly for counselling/advocacy or to schedule an appointment.

***Brazil's** Call Center for Women assists and guides victims of VAW through public utility number 180. The service was created by the Special Secretariat for Women's Policies in 2005 and has 80 attendants trained in gender issues, legislation and government policies. It is operational 24x7, including weekends and holidays when the number of VAW incidences peak. Operators are instructed to provide information on available services, take down reports and assist victims of VAW. The toll-free calls can be made from any part of the country.¹⁶²*

¹⁶⁰ Advocates at the Beirut consultative meeting opined that the question on one-stop centres in MENA was misunderstood, even by their own organizations, and clarified that to the best of their combined knowledge, there were no one-stop centres in any of their countries.

¹⁶¹ Article 24, Istanbul Convention *supra* note 4.

¹⁶² Special Secretariat for Women's Policies, (2006) *Domestic and family violence against Women*, (Presidency of the Republic: Brasilia, Brazil).

Counselling and support centres

Victims/survivors require counselling and other support services to empower them to rebuild their lives. Support groups may also serve to empower victims/survivors.¹⁶³ DDP survey responses, however, indicate that more needs to be done to address women's empowerment.

*Jordan's Family Protection Department is mandated to provide direct services to victims of family violence, children of victims/survivors and perpetrators of VAW. It investigates all types of abuse, provides forensic services, psychological and follow-up treatments, follow-up services through social workers, financial support services, awareness and counselling services, lectures and seminars and referrals to specialized centres. It also refers cases to psychological services and health centres.*¹⁶⁴

Counselling for victims/survivors of violence is available in shelters or crisis centres¹⁶⁵ via helplines¹⁶⁶ or in hospitals or health centres.¹⁶⁷

*In Guyana, psycho-social support is limited to three months, which is insufficient to build skills and confidence, according to CSO advocates. Additionally, at the time of the DDP's Caribbean regional consultative meeting meeting in May 2013, there were reportedly only 2-3 psychologists in the country.*¹⁶⁸

Empowering women may include providing capacity-building and training programmes, employment opportunities and financial assistance programmes such as micro-credit and low-interest credit programmes as well as financial aid. These services contribute to women's empowerment, autonomy and economic independence, which ultimately reduces the risk of VAW.

¹⁶³ For example, Azerbaijan's victim support groups.

¹⁶⁴ National Council for Family Affairs, (2008) *Status of Violence Against Women in Jordan*.

¹⁶⁵ Japan, the United Kingdom, Uzbekistan, the Russian Federation, the Czech Republic, Israel, Germany, Botswana and Bangladesh.

¹⁶⁶ For example, Morocco, Guatemala and Turkey.

¹⁶⁷ For example, Iceland and Papua New Guinea. Denmark's Amendment to the Act of Social Service requires municipalities to appoint advisors to victims/survivors after they are released from a shelter to help them start a new life.

¹⁶⁸ Participant, Due Diligence Project, Caribbean Experts' Meeting, May 2013.

Croatian CSOs report the availability of different types of counselling, support and empowerment centres, legal advice and referral, telephone helplines and shelters, operated by the State and by CSOs with partial support from the State. CSO responses, however, did not provide a definitive answer on the number and accessibility of these services.

Shelters

Shelters and immediate safe housing play a key role in protecting victims/survivors of VAW and their families.

Many States offer shelters to female victims of violence.¹⁶⁹ The United Nations' Committee on Economic, Social and Cultural Rights (CESCR) recommended that States provide victims of domestic violence with access to safe housing.¹⁷⁰ However, where shelters are available, they are usually insufficient.¹⁷¹ In **Ukraine**, only 5–7 per cent of victims who seek shelter can be accommodated. There are no government-operated shelters in **Kazakhstan**. There were eight shelters run by non-governmental organizations (NGOs) but many have closed down or are closing down due to lack of funding. Recently, the CEDAW noted that there were only three shelters in **Costa Rica** for female victims of domestic violence and their children and expressed concern at the lack of shelters available for trafficked women in **El Salvador**.¹⁷² In **Africa**, many shelters have been

¹⁶⁹ For example Iceland, Switzerland, Bangladesh, Brazil and Mexico. Bangladesh's Safe Custody Home for Women, Children and Adolescent Custodians provides free accommodation, psycho-social counselling, life skills training, primary education and safe transport to court for hearings.

¹⁷⁰ CESCR, (2005) General Comment, N. 16 Article 3: the equal right of men and women to the enjoyment of all economic, social and cultural rights, Thirty-fourth session, Geneva, 25 April–13 May, para 27.

¹⁷¹ Council of Europe Taskforce Recommendations state that there should be about 82,500 women's shelters in Europe, about 52,500 more than the current number of shelters. See Women Against Violence Europe (WAVE) country report 2012. Available at <http://www.wave-network.org/content/wave-country-report-2012-now-online>.

¹⁷² UN Committee on the Elimination of Discrimination against Women, (2011) Concluding observations CEDAW/C/CRI/CO/5-6 (Costa Rica), 2 August, para. 20. UN Committee on the Elimination of Discrimination Against Women (CEDAW), Concluding observations CEDAW/C/SLV/CO/7, (El Salvador), 7 November 2008, para. 25. Amnesty International also addressed the insufficient number of shelters available in Nicaragua for girls subjected to sexual violence. Amnistía Internacional, *No más violación ni violencia sexual contra niñas en Nicaragua* Amnesty International Central America.

established with foreign aid, with only 41.9 per cent of CSO respondents reporting the availability of State-run safe housing for victims/survivors.¹⁷³ CSOs in all four countries in the **CANZUS** region reported that demand for shelter exceeded availability. In **New Zealand**, advocates reported that women were forced to pay for hotel rooms due to inadequacy and shortage of shelters.¹⁷⁴

In some countries, owing to acute shortage or unavailability of shelters, women are placed in custodial institutions for ‘protection’. Jailing women to protect them is unacceptable. Perpetrators of violence (and those determined to harm victims/survivors) should be punished and stripped of their freedom, not victims/survivors. States should not punish women for reporting domestic violence but provide housing that is safe and free from punishment and social stigma.

Shelters should also meet women’s needs in terms of building and programme design, staffing and resources. Having women participate in the design of the shelters themselves can assist in ensuring their particular needs are met.

*Advocates informed that as some shelters in **Canada** are designed by women they are tailored to meet the needs of victims/survivors of VAW.*

Some government-run shelters allow access to female victims/survivors of domestic violence only after they have undertaken to reconcile with perpetrators,¹⁷⁵ while others do not accept women who have had death threats made against them¹⁷⁶ or have no protection orders.

Shelters should not serve as a punishment for women; they should be a safe haven for victims of VAW. For greater accessibility, States must nullify any stigma or negative social and cultural perceptions associated with shelters and women accessing them;¹⁷⁷ ensure

¹⁷³ Nigeria has two shelters in Lagos, one of which is State-run. South Africa established 60 shelters throughout the country. Botswana has two shelters that are partially funded by the government. In the Caribbean, State subsidy of shelters varies and, if it exists at all, is very limited (Caribbean regional experts’ consultative meeting, Nassau, Bahamas 10 May 2013).

¹⁷⁴ DDP survey.

¹⁷⁵ Advocates at the Beirut consultative meeting

¹⁷⁶ Advocates at the Beirut consultative meeting

¹⁷⁷ In many countries in MENA and Asia, shelters are regarded as places for ‘fallen women’. Consequently, victims/survivors are reluctant to access them, which is then equated to a lack of demand, when the solution is to remove such stigma rather than not providing or closing shelters.

that operating hours are extended; demonstrate sensitivity in guaranteeing confidentiality (particularly in small communities where anonymity is difficult);¹⁷⁸ simplify admission procedures; remove barriers to accessibility such as language, cost and transportation; and make shelters children-¹⁷⁹ and disabled-friendly (and where desirable, provide childcare/crèche facilities).¹⁸⁰

The availability of these services must be publicized while maintaining confidentiality to protect victims/survivors from harassment.¹⁸¹

Women from underserved communities are particularly vulnerable to being turned away from shelters because their needs are too complicated — for example, women suffering as a result of mental illness or substance abuse, older women, women with disabilities, sex workers, migrant women (who are probably dependent on their spouses for visa status and not eligible for public housing), women from minority or indigenous communities¹⁸² and lesbians and transsexuals.¹⁸³

Housing and financial independence

Most shelters provide temporary relief, restricting the duration of stay for each victim/survivor, after which they are expected to fend for themselves. Longer-term solutions are needed to help victims of VAW.

The DDP survey asked CSOs to list factors that increased the prevalence of VAW. In Africa and Europe, the top three responses (in differing order)

¹⁷⁸ In the Caribbean, some countries shelter VAW victims/survivors on islands other than their own.

¹⁷⁹ In Bahamas, only one shelter takes boys over eight years of age, in Guyana one shelter takes boys up to the age of 14 and in Trinidad some take whole families (Caribbean expert consultative meeting, May 7-8, 2013, Nassau, Bahamas).

¹⁸⁰ See *AT v. Hungary* *supra* note 7, where the State was held accountable for not providing shelter to a severely disabled child of the victim/survivor. Some shelters do not accept male children above a specified age (for example, eight years).

¹⁸¹ For example, Mexico’s Support for Strengthening a Network of Temporary Shelters for Victims of Domestic Violence Project supports existing shelters, publicizes their existence without disclosing their location and promotes the creation of new ones.

¹⁸² Victims/survivors are often confronted with services that are not culturally sensitive. Advocates in New Zealand’s Māori community report a lack of access to services in some areas; there are waiting lists for counselling services.

¹⁸³ Canadian advocates from British Columbia discussed a low-barrier housing programme that can provide stability to women fleeing violence. The programme is unusual because access is not limited to those who are physiologically female but is available to all who identify themselves as women including male to female transsexuals and transgendered persons.

were lack of economic independence, financial instability and gender inequality. It follows that these would be the concerns that States must address as part of protection services.

Sometimes, victims/survivors of violence are evicted from their homes or discriminated against in housing applications.¹⁸⁴ Even where there is no discrimination, procedures for processing applications are complicated as there is insufficient public housing. However, in some States, victims/survivors are given priority in public housing¹⁸⁵ while in others, services are provided to support those who wish to remain in their homes. Such steps are examples of temporary special measures provided under CEDAW,¹⁸⁶ which can and should be used to correct discrimination faced by female victims/survivors.

*The United Kingdom provides housing-related support services to victims/survivors of VAW and some legal provisions in the United States provide some protection from eviction for victims/survivors of domestic violence and sexual abuse.*¹⁸⁷

*Canada has a wide array of services, such as those providing housing, shelters, and safe home networks, at both the provincial and regional levels.*¹⁸⁸ *One programme in particular gives 'street-entrenched' women priority in housing.*

*The government in Guyana partnered with the Guyana Bank for Trade and Industry (GBTI) to establish a loan to assist female single parents in establishing and expanding small businesses.*¹⁸⁹

The programme benefits women who choose to be single parents and also those women who are single parents due to adverse circumstances, including violence.

In **Mexico City**, the government instituted the Programa del Seguro contra la Violencia Familiar which provides women with financial support, life insurance, special counselling, scholarships for their children, free public transport, housing loans, medical services, job training and financing for productive projects.

Colombia's Law 1258 of 2008 includes article 22 which states that, to allow female victims/survivors to rebuild their lives, authorities must provide preferential access to technical or higher education, including food subsidy programmes, tuition, lodging and transportation. Parents must re-enrol minor victims into the education system and authorities must provide these victims access to extracurricular activities and to schools and semi-boarding schools.

The National Institute for Women (INMUJERES) in **Uruguay** coordinates the Housing Solutions Project (*Proyecto Soluciones Habitacionales*) targeting women breaking free from violence. The project is the result of an agreement between INMUJERES and the Ministry of Housing, Territorial Planning and Environment. Under this programme, the government provides transitional housing solutions for women who are exiting a violent relationship, offering low rental housing for up to two years.¹⁹⁰

Medical services

Medical facilities require basic infrastructure to offer comprehensive and confidential care, even in emergency units. In cases of sexual violence, voluntary and confidential STI/HIV testing, emergency contraception and legal interruption of pregnancy may be required. However, medical intervention should respect the privacy of victims/survivors. For

¹⁸⁴ In *Krell v. Canada*, CEDAW/C/51/D/19/2008 (27 April 2012), the CEDAW committee held that an aboriginal (first nation) woman was discriminated against and had her property rights prejudiced when a public authority acting with her partner removed her name from her public housing apartment lease.

¹⁸⁵ For example, Canada.

¹⁸⁶ See CEDAW Article 4.1.

¹⁸⁷ See for example Title VI, 2013 VAWA Reauthorization. See also, for example, n.d. National Housing Law Project, *Housing rights of Domestic Violence Survivors: A State And Local Law Compendium*,

<http://www.vaw.umn.edu/documents/dvcompendiumfinal/dvcompendiumfinal.pdf>.

¹⁸⁸ See Int'l Directory of Domestic Violence Agencies, (2013) *Canada*,

<http://www.hotpeachpages.net/canada/canada1.html> (last modified 9 February). See also See Marta Burczycka & Adam Cotter, (2011) *Shelters for Abused Women in Canada*, 2010, *Statistics Canada* 85-002-X (27 June). Available at <http://www.statcan.gc.ca/pub/85-002-x/2011001/article/11495-eng.pdf>.

¹⁸⁹ See Microcapital brief: Guyana Bank for Trade and Industry Limited (GBTI) Launches Women of Worth (WOW) Program to Help Single Mothers Access Microloans. Available at <http://www.microcapital.org/microcapital-brief-guyana-bank-for-trade-and-industry-limited-gbti-launches-women-of-worth-wow-program-to-help-single-mothers-access-microloans>.

[bank-for-trade-and-industry-limited-gbti-launches-women-of-worth-wow-program-to-help-single-mothers-access-microloans](http://www.microcapital.org/microcapital-brief-guyana-bank-for-trade-and-industry-limited-gbti-launches-women-of-worth-wow-program-to-help-single-mothers-access-microloans).

¹⁹⁰ UNWOMEN/UNODC, *Respuestas para la violencia basada en género en el Cono Sur: avances, desafíos y experiencias regionales [Responses to gender-based violence at the South Cone: progress, challenges and regional experiences]*, July 2011, p. 62. To enter this programme, women must be exiting a violent relationship and have the financial capacity to sustain themselves independently. However, calls have been made for the government to review the criteria and provide access to this programme to women who do not have income sources.

example, virginity tests should not be conducted on runaways, even if it is requested by their families.

In Uganda, post-exposure prophylaxis (PEP) is provided free by statute and all antiretroviral providers can administer it.

The Law on Domestic Violence Perpetrated against Women (2009) in Mozambique includes medical responses to GBV.¹⁹¹

Many countries also have medical personnel, police and social workers trained in gender issues so that integrated services can be offered to victims/survivors in a friendly atmosphere. Medical and psychological intervention is crucial to ensure victims/survivors of VAW are able to participate in formal legal processes. Victims may be better able to deal with legal processes if accompanied by medical personnel or social workers. Hospitals are best suited to set up specialized services, disseminate information and raise awareness about women's medical rights.

In many countries, a certificate issued by a medical professional is an essential step in the legal process. In **Senegal**, obtaining such a certificate costs between 10,000 and 15,000F, which victims/survivors and the general population find costly, according to a UN Women report.¹⁹² A recent report from **Sierra Leone** suggests that legal costs, fines, bribes and travel costs make it difficult for women to access courts.¹⁹³ Obtaining medical services should not be dependent on women reporting VAW or the prosecutor ordering a check-up.

In **Argentina**, Resolution No. 304 established the protocol on 'Detection and attention for women victims of violence'. It outlines the procedure when attending to female victims of violence and for detecting VAW if the woman is unable to talk about it. The protocol helps medical personnel identify the physical and psychological signs of VAW. It requires interviews to be conducted with victims/survivors alone; noting that risks should not be underestimated,

information should be recorded and patients should be informed about the importance of reporting violence to the police while emphasizing that to do so or not is the decision of victims/survivors. Medical personnel should determine if there is imminent risk for victims or if the act constitutes a crime. If the risk is immediate, medical personnel should immediately report the crime. If not, 'the woman and the health personnel should draft a security strategy and an escape plan' if necessary. The protocol also proposes ways in which a woman can leave her home to reduce exposure to danger. As a first step in its implementation, the programme provides training on VAW to nurses, emergency personnel and workers in mental health, obstetrics and gynaecology.¹⁹⁴

In 2011, **Poland** developed a procedure for police and medical workers attending to victims of sexual violence. It includes regulations and recommendations on forensic and investigative processes that prioritize the rights of victims/survivors. The procedure has not been officially approved or implemented yet.

One-stop (integrated) service centres

'One of the best-known good practices in service provision involves bringing together services in one location, often called the "One-stop centre", an interagency unit for victim/survivors of domestic or sexual violence.'¹⁹⁵ Yet, advocates in some regions are unaware of this practice, and only about 10 per cent of the DDP survey's European respondents indicate that one-stop centres have been established in their countries.

The one-stop centre was first introduced in **Malaysia**. Separate examination rooms at hospitals are provided to ensure the victims/survivors do not have to visit general accident-and-emergency facilities. These rooms provide privacy and confidentiality. Medical examination and treatment is followed by counselling and emotional support within 24 hours or a referral to a social worker later. A police unit stationed at the hospital can immediately start investigations upon receipt of the complaint. Arrangements can also be made for shelter, if needed, or the victims/survivors could opt for overnight admission.

¹⁹¹ Pambazuka News (2009) 'Mozambique Assembly passes Amended Domestic Violence Bill' www.pambazuka.org/en/category/features/58077.

¹⁹² ONU Femmes (Bureau Régional de l'Afrique de l'Ouest), (2012) 'La Situation de violences faites aux femmes: le mode de réponse et soutien aux survivantes dans les régions de Dakar, Diourbel, Fatick, Kaffrine, Kaolack, Louga, Saint-Louis et Thiès', Avril, p. 67.

¹⁹³ Lisa Denney and Aisha Fofana Ibrahim, (2012) 'Violence against women in Sierra Leone – How women seek redress' (December), London: Overseas Development Institute, p. 12. Available at <http://www.odi.org.uk/sites/odi.org.uk/files/odi-assets/publications-opinion-files/8175.pdf>.

¹⁹⁴ Protocolo de Detección y Asistencia a Mujeres Víctimas de Maltrato [Protocol for detection and care for women victims of violence]. Available at http://www.feim.org.ar/pdf/blog_violencia/PROTOCOLO-DETECCION.pdf.

¹⁹⁵ UNSG Study report, *supra* n. 112 at p 116.

Kenya has integrated services that include medical and legal assistance, counselling and the administration of PEP in sexual violence response centres. However, these services are restricted to urban areas.

Maintaining one-stop centres requires ongoing training of medical and social workers and law-enforcement officers. It also needs adequate budgetary allocations, in urban and rural areas.¹⁹⁶

Article 17 of the Law against Femicide and other Forms of Violence against Women (2008) requires **Guatemala's** government to guarantee access to integrated service centres for victims of violence. The new Centres for Assistance to Victims of Violent Crimes in the prosecutors' offices of the Judicial Centre for Paloquemao and Bucaramanga in **Colombia**¹⁹⁷ offer comprehensive services to victims/survivors.

Kenya's Gender Violence Recovery Centre (GVRC) at the Nairobi Women's Hospital offers free medical and psychosocial support to victims/survivors of VAW. It trains police to better manage gender desks at police stations, so that they can better respond to VAW cases. The Centre also provides technical support to establish similar centres in different regions of the country.¹⁹⁸

In **Cape Verde**, 34 institutions formed a 'care network' in 2000. They work in five municipalities and offer free care for survivors of GBV. This includes medical and psychological services, legal and social services and police assistance.¹⁹⁹

Thutuzela centres in **South Africa** are often cited as a promising practice. The South African government, with support from United Nations Population Fund (UNFPA), developed a model multi-sectoral approach to address sexual violence by establishing Thutuzela

Care Centres in hospitals. These centres offer holistic care for rape survivors and aim to reduce secondary trauma, improve perpetrator conviction rates and expedite legal action. Reporting and management of rape cases is removed from police stations to a 'one-stop' centre in the hospital where emergency medical services, including administration of PEP, trauma counselling and legal services are integrated and provided by specially trained staff. Healthcare providers work closely with the police and prosecutors. The model, in effect since 2000, has already improved the process of reporting and prosecuting rape and other sexual offences.

Mauritius' 'Protocol of Assistance to Victims of Sexual Assault' 2006²⁰⁰ elaborates the roles of the Ministry of Women's Rights, health workers, the police and other stakeholders. Victims can call the police or go to one of five regional hospitals where they would be examined by police medical officers and receive psychological and legal counseling. The Ministry then follows up through its Family Support Bureau. Such services are audited as required by the National Action Plan to Combat Domestic Violence, with the most recent audit conducted in November 2009.²⁰¹

b. Accessible services

Making services available is just one step in helping victims/survivors. Services must also be accessible in terms of cost, location (where relevant), etc. Women should also be provided information (on their rights among other things) and understanding of the processes involved.

CSOs were asked whether services, when available, were accessible in terms of cost, public transport, geography (rural) and local languages/dialects. Most CSO respondents in the CANZUS region (save for USA) thought that cost was not an obstacle although many felt that services, even when available, were not accessible to women. Shelters are a critical component in ensuring an effective protection strategy and should therefore be made available and accessible to victims/survivors at no cost.

¹⁹⁶ Advocates in Indonesia report that one-stop centres are not allocated adequate funds and are only established in urban centres.

¹⁹⁷ World Bank, *Crime and Violence in Central America: A Development Challenge 2011*, (World Bank, Sustainable Development Department and Poverty Reduction and Economic Management Unit, Latin America and the Caribbean Region, 2011), p. 30. The Guatemalan law is available at www.oas.org/dil/esp/Ley_contra_el_Femicidio_y_otras_Formas_de_Violencia_contra_la_Mujer_Guatemala.pdf.

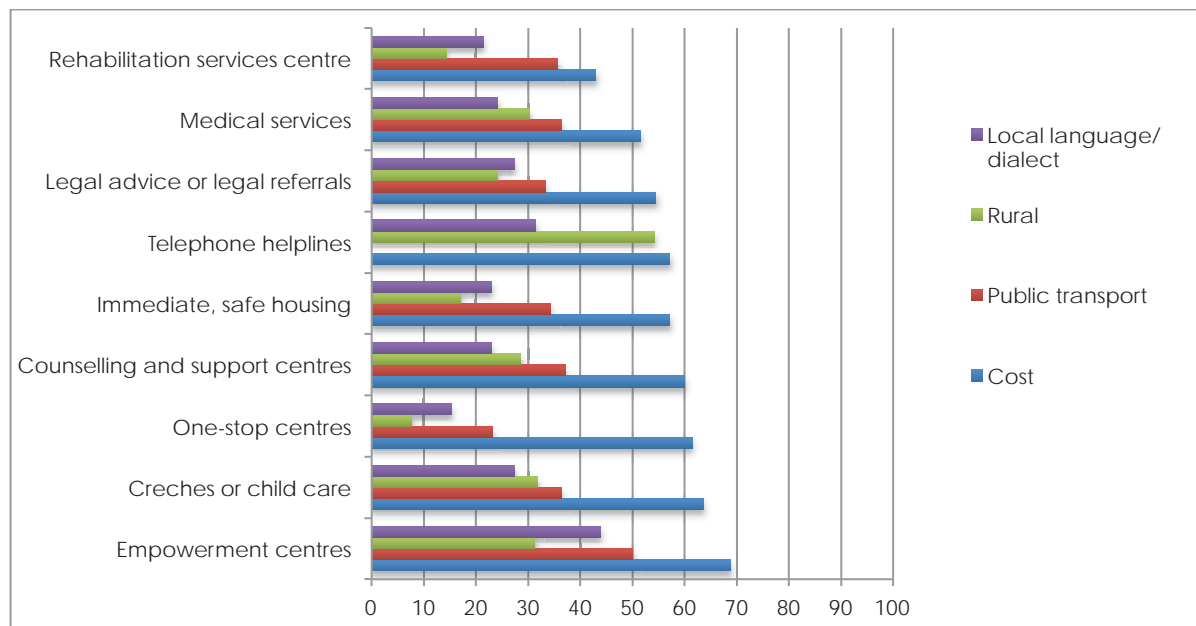
¹⁹⁸ ACORD, (2009) *Kenya: an audit of legal practice on sexual violence*, Available at <http://www.acordinternational.org/silo/files/kenya-an-audit-of-legal-practice-on-sexual-violence.pdf>.

¹⁹⁹ UN Secretary-General's Database on violence against women <http://sgdatabase.unwomen.org/searchDetail.action?measureId=3517&baseHref=country&baseHrefId=318>.

²⁰⁰ Mauritius' *Protocol of Assistance to Victims of Sexual Assault 2006* available at <http://sgdatabase.unwomen.org/searchDetail.action?measureId=31724&baseHref=country&baseHrefId=857>

²⁰¹ *Ibid.*

Chart 12: DDP survey: Accessibility of available services in terms of cost, public transport, geographical placement (rural) and local languages — CANZUS (n = 38; percentage)



Most female victims of violence in rural and remote areas lack access to the services listed in the DDP survey (save for telephone helplines). Even helplines and medical services are available only to some women in these areas.

CSO respondents report that in **Mongolia** most services are urban-centric and rural women are unaware of available services. In the **Philippines**, services are not available in remote areas. Rural areas in **Taiwan** are poorly serviced compared to cities. The remoteness of some **Indian** areas makes State services inaccessible to victims living there. Services in **Solomon Islands** are few and inaccessible to most of the rural populace. Communication in local languages/dialects and transport is also a problem.

Although NGOs play an important role in assisting victims, inadequate funding hinders comprehensive service provision. According to experts, in some European countries, only 10 per cent of the funding for services comes from the government. Inadequate government support for services could result in a piecemeal approach, unsustainable and inconsistent levels and types of services.²⁰²

²⁰² The law in Kazakhstan envisions local government funding for local service organizations, but, according to advocates, 80 per cent of funding for NGOs comes from private donors.

*The Ghanaian Domestic Violence Act 2007 includes the establishment of a Domestic Violence Support Fund aimed at assisting survivors.*²⁰³

Advocates also report that service providers do not adequately inform victims/survivors about protection services and legal measures. Women cannot access services unless information on their availability is disseminated widely and reaches those most in need. If victims/survivors of VAW are unable to seek assistance (due to fear, lack of opportunity or knowledge), teachers and healthcare providers, for instance, could be trained to identify behavioural indicators in victims/survivors or their children.

Advocates further report that authorities fail to coordinate their services to provide quick, comprehensive and effective intervention. They relate incidences of medical staff in some countries not registering injuries as VAW to avoid being summoned if the case goes to court.²⁰⁴

²⁰³ The Parliament of the Republic of Ghana (2007) *Ghana Domestic Violence Act, 2007, ACT 732*, Available at http://www.africalegalaid.com/IManager/Download/474/21493/4321/117790/EN/4321_117790_2j6z_Ghana_Domestic_Violence_Act_2007.pdf

²⁰⁴ This situation was reported by the Guatemalan NGO Mujeres Chimultecas, March 2012.

Customizing services for underserved groups

Some women are more vulnerable to GBV because of the lack of legal protection for their group or community (for example, immigrants, lesbians, transgender persons); they need customized services.

The number of underserved immigrant women is daunting. Yet few, if any, State resources have been dedicated to extend services to them. Many immigrant women are afraid to report violence for fear of deportation; in many countries, migrant women could lose their residence permit or be denied permanent residence if they leave their violent husbands.

For example, in **Finland**, police reports show that women with an immigrant background encounter three times the domestic violence that the non-immigrant population does. Yet, CSO respondents note that the State's efforts to combat VAW in immigrant communities are insufficient.²⁰⁵

➤ *Ensuring Availability of and Accessibility to Protection Orders*

The first priority for victims/survivors is an immediate end to the violence. Restraining and expulsion orders are crucial in immediately stopping the violence and dissipating the fear and tension.

Laws that facilitate protection or restraining orders to help women escape violence underscore their right to live free from violence. This is especially important as the DDP survey found that most victims/survivors felt that fear of repercussions by the perpetrator (or his family) and loss of housing were the most significant deterrents to their seeking assistance to end the violence; both these concerns can be alleviated by broad and effective protection orders.

It is crucial that such laws define VAW broadly and include availability of protection orders in cases of domestic violence. Protection orders, including how these are served by the police, need to better regulated.²⁰⁶

To be effective, protection orders must allow victims/survivors to continue to stay in their homes (occupation orders, which may include the continued use of vehicles) protect them at home and at their workplaces and allow them to continue with their daily life.²⁰⁷ They should, where appropriate, also protect victims/survivors from cyber (for example, social media) attacks including cyber stalking and dissemination of intimate images of victims/survivors without their consent on the internet.

In most jurisdictions, protection orders may only be issued by courts. In select countries, the police are empowered to order perpetrators to leave their houses and refrain from further violence against victims/survivors. This can help diffuse the tension, aggression or violence.²⁰⁸ Orders must also have a quick turnaround time.

For protection orders to be issued immediately, the police must respond to and investigate VAW promptly, co-ordinate with other agencies and together with prosecutors assess the imminent danger to victims/survivors. Judges, too, must issue protection orders promptly. In Europe, MENA and LAC, CSO respondents were dissatisfied with (or unsure about) coordination between prosecutors and other agencies that would ensure speedy issuance of such order.

A slight majority of CSO respondents in **LAC** were satisfied with the turnaround time in application for protection orders. In **Africa, Asia Pacific, Europe** and **MENA**, a majority of respondents were dissatisfied or unsure (see Chart 14).

²⁰⁵ Finnish NGO's parallel report to CEDAW Committee, July 2010, 15, Available at http://www2.ohchr.org/english/bodies/cedaw/docs/ngos/JointNGOReport_Finland.pdf (last visited 11 March 2012).

²⁰⁶ In Trinidad, it is mandatory for the police to serve protection orders. DDP Caribbean consultative meeting, Caribbean regional experts' meeting, 7-8 May 2013, Nassau, Bahamas.

²⁰⁷ Under a new European Union regulation, victims/survivors of domestic violence, harassment and stalking who have been issued protection orders in their home countries will be afforded the same protection in every EU country upon submission of a form.

²⁰⁸ For example, Austria and Australia.

Chart 13: DDP survey: Coordination between prosecutors and other agencies — all regions
(n = 295; percentage)²⁰⁹

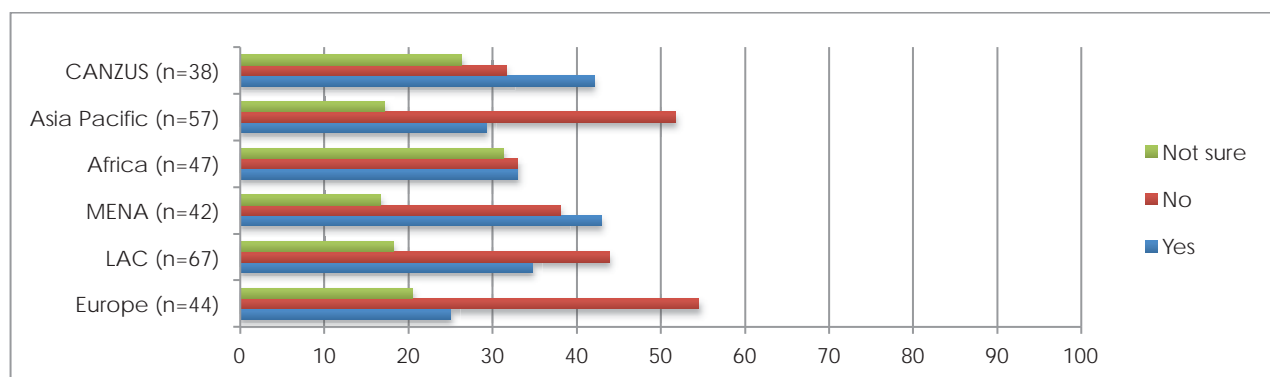


Chart 14: DDP survey: Quick turnaround time in prosecution's application for protection orders — all regions
(n = 295; percentage)²¹⁰

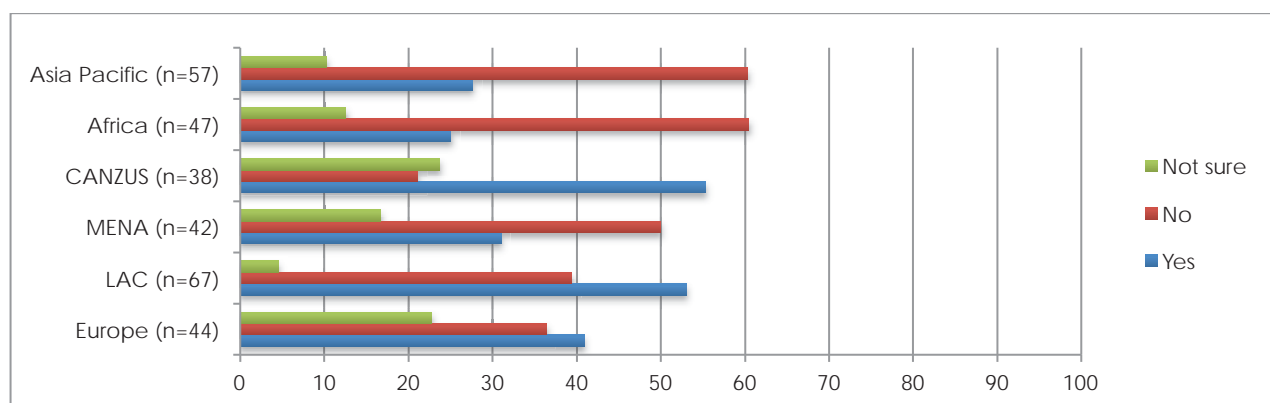
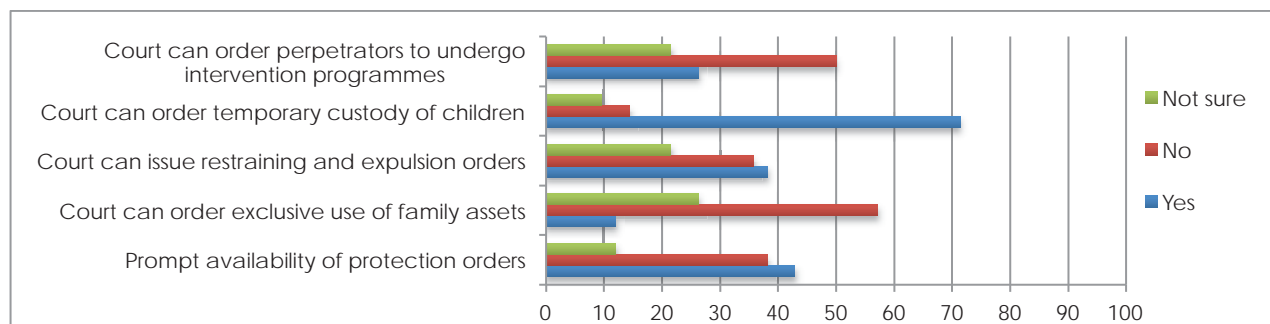


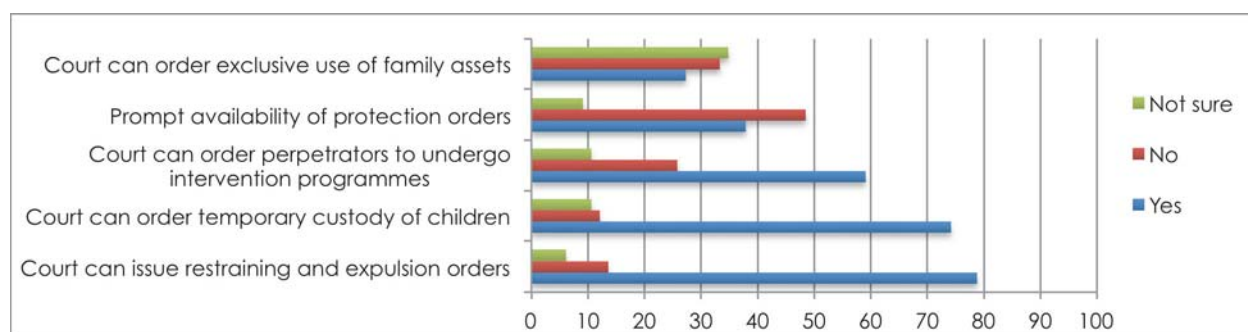
Chart 15: DDP survey: Judicial response in MENA (n = 42; percentage)



²⁰⁹ Five out of 300 CSOs did not answer this question in the DDP survey.

²¹⁰ Five out of 300 CSOs did not answer this question in the DDP survey.

Chart 16: DDP survey: Judicial response in LAC (n = 67; percentage)



In MENA and LAC, the DDP survey (see Charts 15 and 16) found that only 40 per cent of CSO respondents felt that courts issued orders promptly. The least available judicial power was allowing victims/survivors (and their children) exclusive use of family assets (including cars and the matrimonial home). Exclusive use ensures that perpetrators instead of victims/survivors (or their children) are punished for VAW and the lives of other family members remain uninterrupted (for example, children can stay at home and attend school as usual).

Advocates also suggest that procedures be established to allow victims/survivors to be represented by legal counsel during protection order applications. Victims/survivors should also be given access to other available remedies when applying for protection orders, such as interim maintenance, reimbursement of related costs (such as medical, accommodation) and interim custody.

Some countries have also provided for civil protection orders. This includes order issued by family courts although this practice has received much criticism. Applying for and enforcing civil protection orders can be costly.

➤ Upholding the Duties of First Responders

a. Police

The police are frequently the first point of contact for survivors of VAW who are seeking help. On learning of

an occurrence of VAW, the police must act swiftly and immediately to comply with their due diligence obligation. Their ability to respond urgently and effectively greatly reduces the risk of further harm to victims/survivors. This requires addressing and tackling patriarchal values, especially in State agencies. A patriarchal system belittles women, which means the police might not take women's complaints seriously. If victims/survivors are distrustful of or lack confidence in the police, they will refrain from reporting acts of VAW. States should aim for zero tolerance of violence and ensure that this attitude permeates throughout State agencies.

UN General Assembly Resolution 52/86 on *Crime Prevention and Criminal Justice Measures to Eliminate VAW* urges member States to ensure that the police take into account the need for the safety of victims/survivors, are empowered to respond promptly to incidents of violence and exercise their power according to the rule of law.²¹¹

The DDP survey reveals that in the case of police first-response intervention, many States have invested the police with the power to accompany victims/survivors of VAW to their homes to retrieve belongings and expel perpetrators. However, response time in the exercise of these powers does not meet the expectations of CSO respondents.

In **Europe** too, the most common police intervention is to accompany victims/survivors to retrieve belongings, but response time is considered inefficient. The least common intervention is the authority to expel perpetrators from the premises (an average of 25 per cent).²¹²

²¹¹ UNGA Res 52/86, art. (8) paragraphs (C, D, E).

²¹² DDP survey.

Chart 17: DDP survey: Availability of different police interventions — Asia-Pacific
(n = 58, percentage)

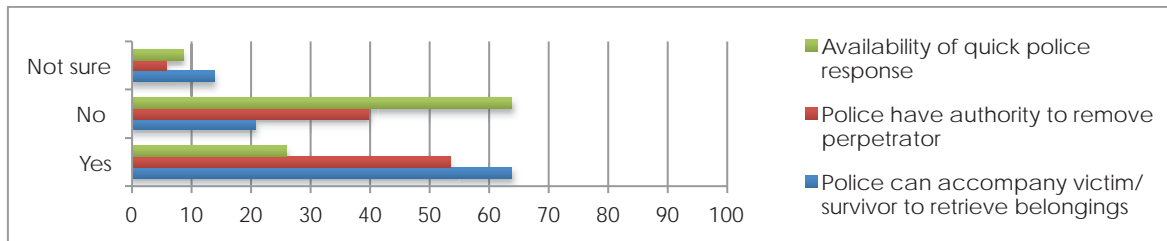
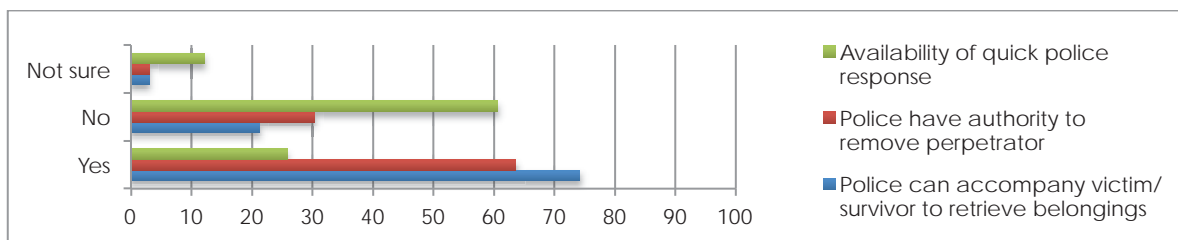


Chart 18: DDP survey: Availability of different police interventions — LAC
(n = 66, by percentage)



Sluggish responses to VAW reports, such as late arrival at the scene, not only endanger victims/survivors (by inability to prevent further VAW or diffuse tense and life-threatening situations), but also seriously jeopardize evidence gathering and subsequent prosecution.

*Advocates report that the **Jamaican** police are reluctant to intervene in domestic disputes. Consequently, women feel or are made to feel that they are wasting the police's time in reporting domestic disputes.²¹⁵*

The State's inability to convince victims/survivors and the community of its ability and professionalism in responding to VAW could result in vigilantism. While vigilantism might fill the vacuum when the police do not respond, it perpetuates violence which has a negative impact on the community and on global efforts to end not only VAW but all forms of violence.²¹³

Often, victims/survivors are reluctant to disclose abuse either because of stigma or fear of perpetrators and their families. In such cases, the ability of medical personnel to identify victims/survivors of violence is crucial in arresting the violence. Clinical guidelines for risk assessments and referrals have been issued in several jurisdictions and by the World Health Organization as part of broader multi-sectoral strategies on reducing violence through victim/survivor identification, care and support programmes that seek not only to support victims/survivors but also to alter individual relationships and societal factors, particularly on interpersonal and sexual violence.²¹⁶

*The police assume a broad role under **Kazakh** law — they can undertake a range of measures to prevent further violence, from discussion with perpetrators called 'beseda' (akin to debating with them) to arresting them or issuing a restraining order and accompanying victims.²¹⁴*

²¹³ For example, among specific communities in South Africa. This is more likely if the community harbours historical distrust of the police.

²¹⁴ It must be noted that police 'discussing' the issue instead of removing or arresting perpetrators is problematic and could result in police tolerating VAW instead of eliminating it. See *Watson v Kansas City* (1988, CA10 Kan) 857 F2d 690, see also *Thurman v Torrington* (1984, DC Conn) 595 F Supp 11521.

²¹⁵ Caribbean regional experts' meeting, 7-8 May 2013, Nassau, Bahamas.

²¹⁶ World Health Organization (2009), *Violence prevention: The evidence - reducing violence through victim identification, care and support programmes*, World Health Organization (2009). Also available at http://whqlibdoc.who.int/publications/2009/9789241598477_eng.pdf.

Chart 19: DDP survey: Immediate availability of medical, psychological/emotional services —Africa
(n = 51; percentage)

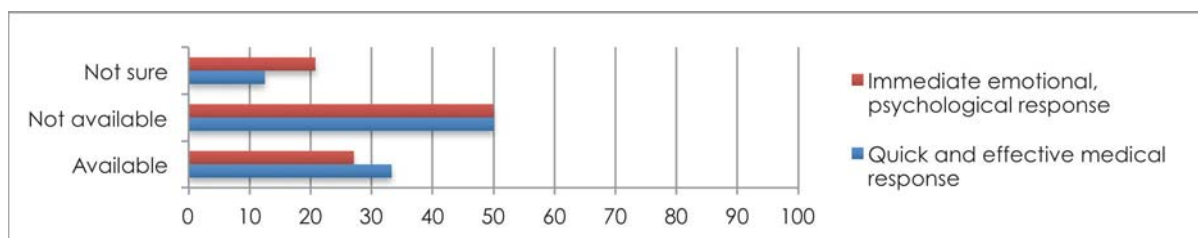
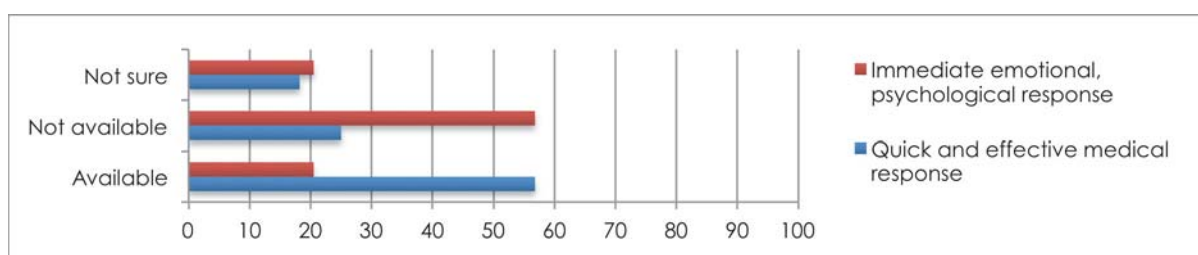


Chart 20: DDP survey: Immediate availability of medical, psychological/emotional services —Europe
(n = 44; percentage)



The DDP survey found that while less than 30 per cent of African CSOs felt that immediate medical intervention was available, many Asian and European CSOs agreed that immediate psychological and emotional support was provided by States to victims/survivors of violence. The responses for Africa and Europe are as indicated in Charts 19 and 20.

The DDP survey also found that all of the CSO respondents in **Australia** and **New Zealand** and most in **Canada** and the **USA** believed that medical response was quick and effective with a majority agreeing that emotional and psychological on-scene intervention was available.

b. Other first responders

To encourage victims to come forward, States could consider assigning non-police 'responders to VAW' who are trained not only in criminal law but also in human rights and in addressing the needs of victims/survivors. Some States have adopted this alternative as relying solely on the criminal justice system's culture of focusing on arrest and convictions may not necessarily meet the needs of victims/survivors.

*Trained and unarmed community volunteers are the first responders in domestic violence incidents in Chile.*²¹⁷

In other countries, specific duties are also assigned to social workers.²¹⁸ About half the LAC and CANZUS respondents claimed that social service assistance was available at the scene for VAW calls (see Chart 21 below).

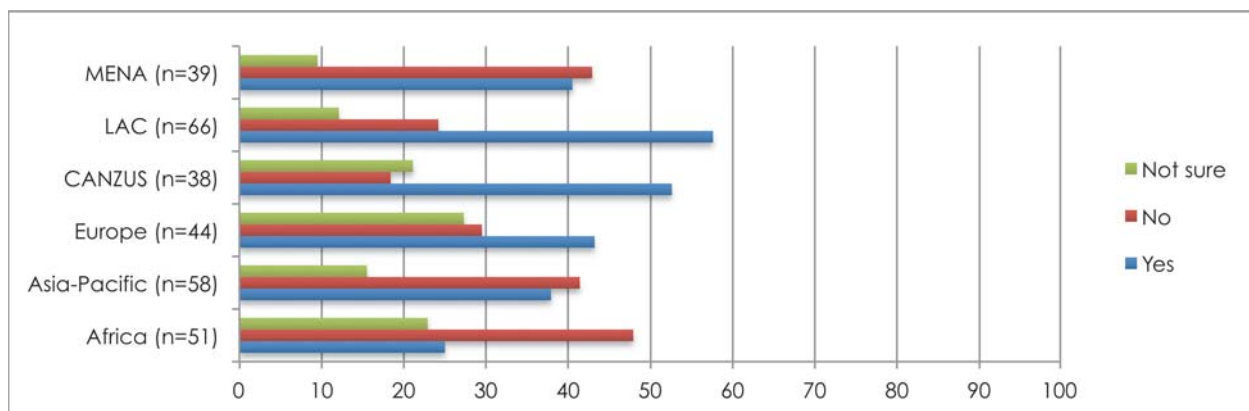
Social service intervention should, however, be executed with cognizance of victims'/survivors' fear that their children might be parted from them for endangerment.²¹⁹

²¹⁷ The VAW Prevention National Plan was launched in July 2013. The plan involves training individuals and members of social organisations (such as neighbourhood associations) and other State agencies in the prevention of VAW. These actors receive training and tools to detect and adequately address first violence signs. Servicio Nacional de la Mujer (SERNAM): SERNAM lanza Nuevo Plan Nacional de Prevención de Violencia contra la Mujer. Available at <http://portal.sernam.cl/?m=sp&i=3909>.

²¹⁸ For example, Malaysia's Domestic Violence Act 1994 provides that police officers and social workers shall serve as enforcement officers to assist victims/survivors of domestic violence.

²¹⁹ CANZUS DDP survey.

Chart 21: DDP survey: Availability of on-scene social assistance — all regions
(n = 296; percentage)



➤ *Fostering Positive Attitudes and Sensitization through Sustained Training*

It is crucial to equip first responders with skills to effectively intervene in cases of VAW. They must be trained to assess risks for victims, identify early signs of violence before it escalates and conduct coordinated risk assessment of the crime scene before adopting protective measures. Victims/survivors and witnesses, including children, must be interviewed separately to encourage open and free discussions. In addition, detailed records of complaints must be maintained; advice provided on rights and legal options; assistance offered in completing official complaints or reports; transport arranged to the nearest medical facility; assistance provided in making arrangements for children or dependents and protecting VAW informants.²²⁰

Police officers with the authority to expel perpetrators must exercise discretion in favour of the personal safety and security of victims/survivors in accordance with non-tolerance of VAW.²²¹ These orders should be made mandatory where aggression has escalated, to minimize the likelihood of an inaccurate risk

assessment and ensure the personal safety and security of victims/survivors, particularly in cases of domestic violence, which is usually a repetitive offence. Expulsion and non-return orders are temporary and can be challenged. However, failure to adequately intervene could result in further injury or death.

'[L]egislation, criminal and civil-law remedies, awareness-raising, education and training, shelters, counselling for victims of violence and work with perpetrators' will not result in the practical realization of the human rights and fundamental freedoms of victims/survivors unless the political will expressed in these initiatives is 'supported by State actors, who adhere to the State party's due diligence obligations'.²²²

Official 'risk' assessments must reflect the realities of VAW. **Australian** advocates point out that inaccurate risk assessment by law enforcement personnel occur all too often and result in denial of requests for orders. Intervention and protection should not further traumatize victims/survivors but empower them. It should include co-ordination among different agencies and service providers and be subject to periodical evaluation and assessment.

The Democratic Republic of Congo has set up special police units to provide protection for women. Victim-protection units such as Centres

²²⁰ UN Handbook (2010) Legislation, *supra* note 157, p. 40. [http://www.un.org/womenwatch/daw/egm/vaw_legislation_2008/Report%20EGMGLVAW%20\(final%2011.11.08\).pdf](http://www.un.org/womenwatch/daw/egm/vaw_legislation_2008/Report%20EGMGLVAW%20(final%2011.11.08).pdf).

²²¹ 'Although, the State party rightly maintains that, it is necessary in each case to determine whether detention would amount to a disproportionate interference in the basic rights and fundamental freedoms of a perpetrator of domestic violence, such as the right to freedom of movement and to a fair trial, the Committee is of the view, as expressed in its views on another communication on domestic violence, that the perpetrator's rights cannot supersede women's human rights to life and to physical and mental integrity.' Goekce v. Austria, CEDAW, *supra* note 82, para 12.1.5.

²²² *Ibid.* In the case of X v. Y, the CEDAW committee commended Austria on its provision of a comprehensive system to combat domestic violence but noted that the system failed due to poor implementation by State actors.

for Assistance also exist in Mozambique²²³ and Zambia.²²⁴ In Khartoum, the establishment of a child and protection unit has increased conviction rate by 50 per cent.

Sustainable and standardized training programmes are essential to address staff turnover or transfers and to ensure that officials are kept abreast of legislations, policies, programmes and current knowledge. Programmes should also target different stakeholders. However, limited budgetary allocations for training often pose a challenge.

Caribbean experts report that rotation of personnel is a problem, as trained officers are transferred to other duties.²²⁵ **CANZUS** advocates also report inconsistent and 'patchwork' training with significant disparity in quality and gaps in training on response to at-risk groups. To set clear expectations of behaviour and attitudes, policies and procedures for first responders must include taking action against those who fail to implement these standards. This could result in a change of behaviour before a change in attitude, but the positive behaviour may spur a beneficial change in attitude.

States should also strengthen training programmes and education on domestic violence for judges, prosecutors and lawyers. Where protection requires court orders, it is crucial that prosecutors and judges are sensitized to the needs of victims/survivors.

➤ *Implementing a Multi-sectoral Approach and Coordinating Services*

The delivery of protection services provided by the government is enhanced through multi-sectoral approaches with co-ordinated responses and delivery of services. Swift action by the police, medical and social services as soon as a case of VAW is reported

helps victims/survivors deal with the legal process and increases prosecution rates. Women are empowered to break the chain of violence and seek assistance if they are provided not only shelters but also coordinated services including counselling, medium- and long-term housing and protection from perpetrators.

Auckland's (New Zealand) HELP: Support Services for Sexual Abuse Survivors programme facilitates interaction on an equal footing based on written memorandums of expectations, ethics and practices between police, specialized medical and counselling services. Advocates praise this type of coordinated approach and highlight the need for more funding and for extending this crisis intervention and protection service to minority, immigrant and indigenous communities. For instance, advocates note the need for a tripartite relationship between sexual violence services, police and medical services in the Māori community.²²⁶

Poland's Blue Card procedure²²⁷ mandates cooperation of different services at the local level. As a result, teams of social workers, police and NGOs co-ordinate to fight domestic violence.

Ireland established connected support services in the Dublin Family Courts system. Special Domestic Violence Courts have judges trained in and sensitized to domestic violence; all related matters, including child custody and maintenance, are simultaneously heard and adjudged. The Women's Aid Court Accompaniment Service has trained experts in law and domestic violence to provide support for women seeking legal options to stop intimate partner violence.

²²³ (UNIFEM VAW in Mozambique pg 5 and 10); United Nations office on Drugs and Crime, 'Handbook on improving access to legal aid in Africa' 2011, p 85. Available at: http://www.unodc.org/pdf/criminal_justice/Handbook_on_improving_access_to_legal_aid_in_Africa.pdf.

²²⁴ United Nations office on Drugs and Crime, 'Handbook on improving access to legal aid in Africa' 2011, p 80. Available at: http://www.unodc.org/pdf/criminal_justice/Handbook_on_improving_access_to_legal_aid_in_Africa.pdf.

²²⁵ Caribbean regional expert consultative meeting, 7-8 May 2013, Nassau, Bahamas.

²²⁶ For more information see <http://helpauckland.org.nz/get-help>

²²⁷ See <http://eige.europa.eu/content/blue-card-police-procedure>. See also <http://sgdatabase.unwomen.org/searchDetail.action?measureId=2742&baseHref=country&baseHrefId=1046>

3. PROSECUTION

An important indicator of State compliance on the due diligence obligation is the action it takes to *investigate* and *prosecute* acts of VAW. These allow victims/survivors to seek assistance to stop VAW without fear of repercussions. Consistently efficient and thorough investigation and reasonably immediate prosecution reassures victims/survivors of VAW, encouraging them to take steps to stop the violence or leave the location where violence is perpetrated, without fear of repercussion.

➤ *Addressing Victims' Needs and Fears*

Good prosecution and enforcement policies should take into account the perceptions, needs and desires of victims/survivors and the State's need to enforce law and order, eliminate VAW and comply with its international and, where applicable, constitutional obligations to guarantee fundamental liberties.

Effective State measures respond to VAW as a crime and a violation of human rights. This understanding could assist investigators and prosecutors in anticipating the reaction of victims/survivors and prioritizing their safety.²²⁸

Barriers to investigation and prosecution occur at all stages, from the initial reluctance or fear of victims/survivors about reporting violence to police responses, investigation, preferring charges, trial and sentencing.²²⁹ Most incidents of violence go unreported; when reported, adequate investigation, charges, conviction or appropriate sentences may not follow. Victims/survivors may be further traumatized by the system and subjected to more violence. To reduce their trauma and sense of helplessness, States should keep women informed of investigative processes so they can provide appropriate information. For example, many women do not know the importance of preserving evidence; often, women who have been raped will not save their clothing or will wash immediately after the incident.

²²⁸ This is particularly acute in domestic violence, trafficking and violence committed during conflict.

²²⁹ Report on Expert Group Meeting on Good practices in national action plans on violence against women (http://www.un.org/womenwatch/daw/vaw/egm/nap2010/MF_FINAL_FINAL_23_May.pdf).

Numerous surveys, studies and CSOs' practical experience stress that for various reasons victims/survivors often do not report VAW. Several surveys conducted in European countries disclosed that reporting rates range between 2-10 per cent (**Finland**) and 25 per cent (**Denmark**).²³⁰ Research estimated that 17-35 per cent of **Colombian** women have been subjected to sexual violence; however, nearly 90 per cent of them did not file a complaint.²³¹ A **Guatemalan** study estimated that over 75 per cent of gender-based crimes go unreported due to the stigma attached to female victims and sexist stereotypes.²³²

Victims may experience guilt, frustration, powerlessness, post-traumatic stress, insecurity and fear of rejection and stigma. Others may lack sufficient support and could encounter distrust and negative attitudes from those around them. The DDP survey asked CSOs whether women had complained about specific factors that prevented them from reporting the violence. Unsurprisingly, one of the most frequent complaints is fear of repercussions from perpetrators. Repercussions can also be wrought by perpetrators' families and friends.

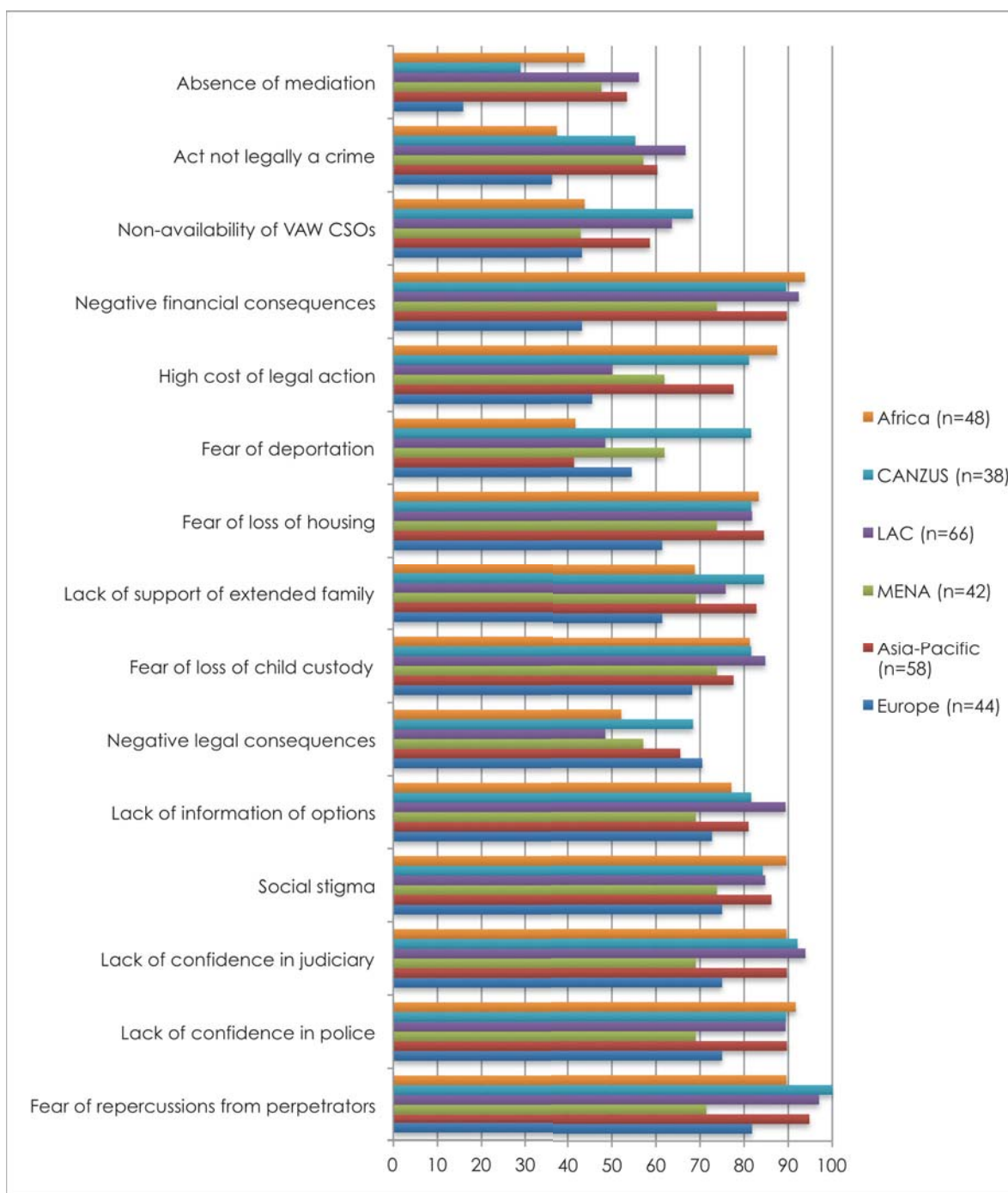
Chart 22 shows responses from Europe and Asia-Pacific. The top five complaints from both regions have only one difference. In Europe, the top five complaints are fear of repercussions, lack of confidence in the police, lack of confidence in the judiciary, social stigma and lack of information on options. In Asia-Pacific, the top five responses are fear of repercussions, negative financial consequences, lack of confidence in the police, lack of confidence in the judiciary and social stigma. Responses from other regions are also similar. This implies that the justice system has, to a large extent, failed most women.

²³⁰ European Women's Lobby (2013), EWL Barometer on rape in the EU 2013. Available at http://www.womenlobby.org/publications/rapports/article/2013-ewl-barometer-on-rape-report?var_lang=en

²³¹ Oxfam, (2009) *Sexual violence in Colombia. Instrument of war*, (Oxfam Briefing Paper, 9 September), p. 10.

²³² Kristin Svendsen, et al., (2007) *Por ser mujer: Limitantes del sistema de justicia ante muertes violentas de mujeres y víctimas de delitos sexuales*, (Instituto de Estudios Comparados en Ciencias Penales de Guatemala, p. 8.

Chart 22: DDP survey: Complaints by VAW victims/survivors — all regions (n = 300; percentage)²³³



²³³ Number of non-responses = 43

Good and effective policing, investigation and prosecution policies could address these factors and create an enabling environment for women to report VAW. These factors should also be considered in the design of the other P's (prevention, protection, punishment and provision of redress and reparation).

The findings are consonant with other studies. A study in **Morocco** indicated that 68 per cent of female victims/survivors of violence do not trust the justice system and 33 per cent of women believed that the male perpetrator's actions were justifiable.²³⁴

Lack of confidence in the police and the judiciary is directly attributable to services provided by the State. Although social stigma is often considered beyond governmental control, State action or inaction against VAW results in a mainstream discourse that accepts and tolerates it. Further, in providing exculpatory defences (incorporating provocation and 'defence of honour') for acts of VAW, the law espouses a norm that removes the constraint on perpetrators to control their behaviour. Thus, the State plays a pivotal role as the final arbiter in recognizing and perpetuating cultural interpretations and their daily enactments and is in a position to change these cultural norms and interpretations.²³⁵

Fear of repercussions from perpetrators and fear of losing child custody were cited as the most oft-quoted complaints in **Australia** and **New Zealand**. In many jurisdictions, a history of domestic violence is not adequately considered in custody proceedings. Domestic violence is instead taken into account to the detriment of the non-abusive mothers such as when 'failure to protect' laws are used against them resulting in the loss of custody of their children. This results in women being discouraged from mentioning spousal abuse during custody hearings. The practice of family courts at times prioritizing male parenting over women's safety has also been raised as a concern by advocates in **New Zealand**.

Custody arrangements in **Australia** were perceived as inadequate in prioritizing women's safety and investigating their claims that abusive partners harmed their children; perpetrators used family law to bully and intimidate their partners. In response, the Family Law Act (FLA 1975) was amended in 2006 to provide that family violence be taken into account in

all relevant matters. However, the 'pro contact' aspect of this law put victims at risk by requiring them to interact with perpetrators around custody arrangements. Further amendments were then made, emphasizing that protection from domestic violence is more important than promoting joint custody.²³⁶

In the MENA region, fear of losing homes and negative financial consequences are the greatest concerns for women. The former could be directly related to lack of accessible shelters (see Chapter 3.2 on Protection) and the unavailability of (or lack of confidence in) protection orders that remove perpetrators from the family home.

The DDP survey also asked CSOs to comment on whether these factors deterred women from seeking help. Chart 23 shows the responses from all regions.

In all consultations, advocates stressed the importance of programmes and practices that offer survivors support throughout the justice process. The CESCER noted that laws, policies and practices could fail to address and even perpetuate inequality between men and women because they do not take into account existing economic, social and cultural inequalities, particularly those experienced by women, which may hamper the legal process.²³⁷

Intersectionality also increases the burden on women from underserved communities. The IACHR, in Valentina Rosendo-Cantú, held that the State should adopt special measures to assist victims/survivors not only in filing criminal complaints, but also throughout the investigative and prosecutorial process, especially since they belonged to indigenous communities and were particularly vulnerable.²³⁸

Assessing the situation of women in **Bolivia**, the CEDAW indicated that high rates of illiteracy, lack of information, absence of customized legal assistance, lengthy legal proceedings and related costs, and the judiciary's insufficient understanding of international

²³⁴ The Advocates for Human Rights & Global Rights, *Morocco: Challenges with addressing domestic violence in compliance with the Convention Against Torture*, 47th Session of the Committee Against Torture, p. 1 (31 October – 25 November 2011) at 2.

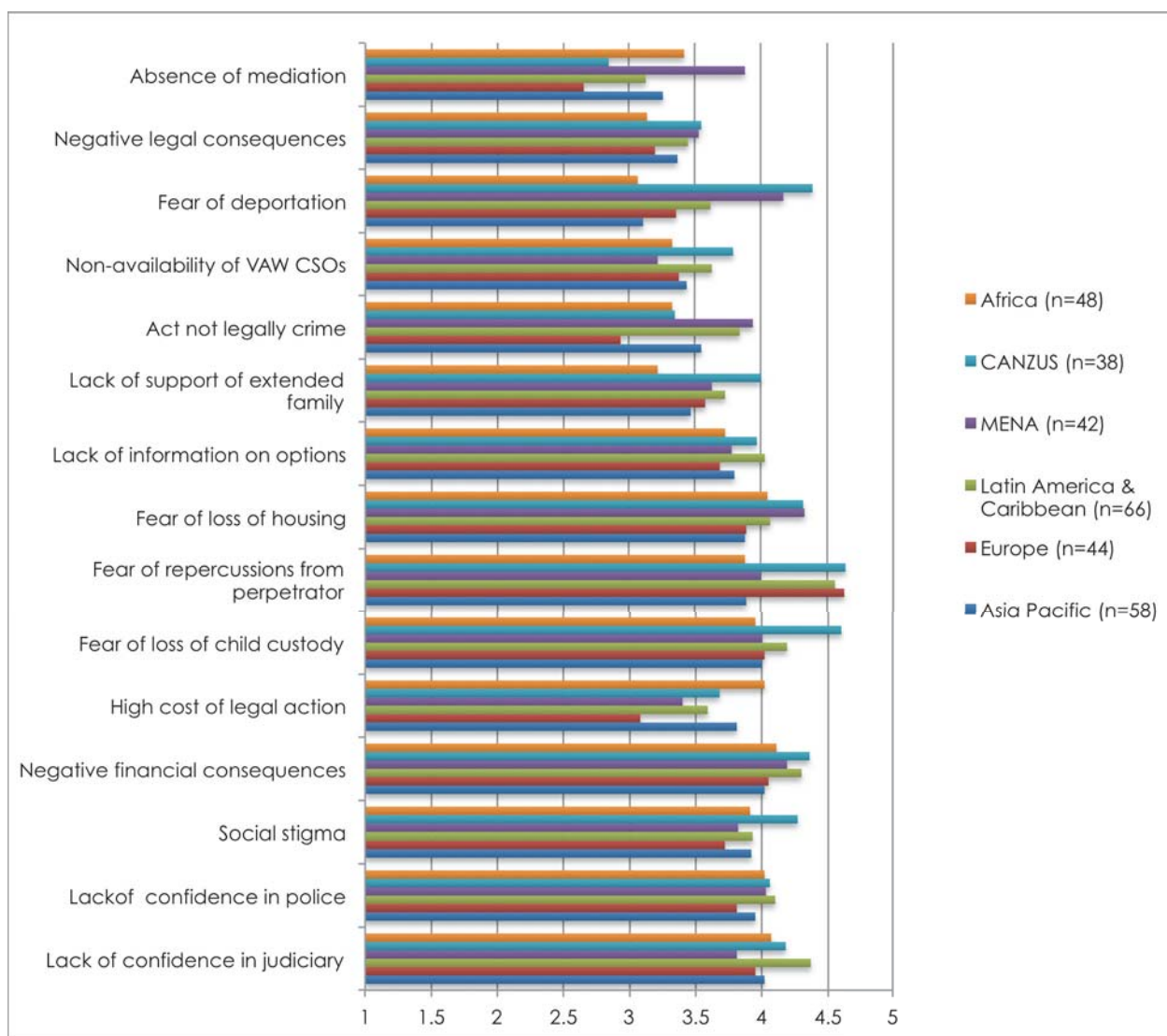
²³⁵ Abdul Aziz, supra note 88.

²³⁶ See Lucy Daniel, (2009) Australia's Family Law Amendment (Shared Responsibility) Act 2006: A policy critique, *Journal of Social Welfare & Family Law*, Vol 31(2), 147-158; Australian government (2011) Family Law Legislation Amendment (Family Violence and Other Measures) Act 2011, Available at <http://www.comlaw.gov.au/Details/C2011A00189>.

²³⁷ United Nations CESCER, (2005) General Comment N. 16 Article 3: the equal right of men and women to the enjoyment of all economic, social and cultural rights, Thirty-fourth session, Geneva, 25 April – 13 May 2005, para. 8.

²³⁸ Rosendo Cantú et al. v. Mexico IACtHR, Interpretation of the Judgment of Preliminary Objection, Merits, Reparations and Costs. Judgment of 15 May 2011. Series C No. 225, para. 210.

Chart 23: DDP survey: Deterrents to seeking help — all regions (n = 300; 1 = not at all, 5 = very much)



instruments on women's rights compounded the marginalization of women from such communities.²³⁹ According to the Committee, in **Peru**, language imposes additional barriers for indigenous women trying to access justice²⁴⁰ as governments have not instituted interpreters and culturally appropriate services.²⁴¹

²³⁹ CEDAW, UN CEDAW, Concluding observations of the Committee on the Elimination of Discrimination against Women, (Bolivia), 8 April 2008, CEDAW/C/BOL/CO/4, para. 16.

²⁴⁰ See, for example, UN CEDAW, Concluding observations of the Committee on the Elimination of Discrimination against Women, (Peru), 2 February 2007, CEDAW/C/PER/CO/6, para. 18.

²⁴¹ *Ibid.*

An expert at the Caribbean consultative meeting pointed out that in **Antigua and Barbuda**, a majority of abused women are migrants but as they are undocumented, most may not report violence for fear of deportation.²⁴² Poor women also cannot afford to pay a lawyer or access medical and psychological care or travel to a tribunal hearing. In the **United States** several laws permit immigrant women the ability to gain legal status without having to go through their abuser. Women in the military in particular face several obstacles to accessing justice and needed services.

²⁴² Caribbean regional expert consultative meeting in Nassau, Bahamas, 7-8 May 2013.

Another underserved group are sex workers. Reports abound of police specifically targeting sex workers and arresting them for minor offences because they are easy to identify and intimidate. Arrest is usually followed by detention during which the sex workers are often subjected to abuse, extortion of sexual favours and money, insults and physical violence. Consequently, sex workers are reluctant to seek police assistance when they become victims of violence and rape. This, in turn, contributes to the impunity of perpetrators of VAW.²⁴³

➤ *Developing Policies to Reduce Attrition*

Even if women decide to report violence, the attrition rate from report to conviction is high. According to a report by Taskforce on the Implementation of Sexual Offences Act, withdrawal of cases is a major challenge in **Kenya** due to the lack of adequate witness protection during and after the trial.²⁴⁴ In 2010, 10 per cent of VAW cases filed at police stations and 2 per cent of cases brought before the courts in **Senegal** were withdrawn the same year.²⁴⁵ A UN Women report indicates that many cases were simply abandoned by women.²⁴⁶ Interestingly, family members, and not victims/survivors, are usually responsible for withdrawing cases, whether at police stations (47 per cent of withdrawals) or at courts (52 per cent of withdrawals).²⁴⁷ This highlights the extent to which family pressures affect women's ability to seek justice.²⁴⁸

Much of the success in prosecuting VAW cases hinges on the cooperation of victims/survivors. Consequently,

several States have instituted procedures that adopt mandatory investigation or prosecution policies irrespective of the victim's/survivor's agreement or do not rely on victims/survivors to provide primary evidence.²⁴⁹ This is useful in some instances, particularly where the gravity of the crime is such that not prosecuting it exposes victims/survivors to unacceptable risks.²⁵⁰

However, such policies have been criticized for their inflexibility and their consequent impact in disempowering victims/survivors. Advocates also report concerns about other policies such as mandatory reporting by medical professionals.²⁵¹

Regional experts at the Latin American consultative meeting highlighted the importance of not treating women as minors, suggesting that an adult and capable woman should decide the course of her case herself. However, the policy of dropping cases when victims/survivors do not cooperate is undesirable.

Mandatory prosecution by itself cannot address concerns over the reluctance of victims/survivors to proceed with a case. Mandatory and pro-arrest policies also mean that victims could be arrested at the scene of an assault if the police are unable to identify primary aggressors. This may happen if the victims/survivors injure the perpetrators while trying to defend themselves.²⁵²

²⁴³ Women's Legal Centre, (2012) 'Stop Harassing Us': A report on Human Rights violations by police against Sex Workers in South Africa, Cape Town, Available at http://www.wlce.co.za/images/violence_against_women/General/Sex%20Workers%20Report.pdf.

²⁴⁴ See *Sexual Offences Act Implementation Workshop*, www.law.berkeley.edu/files/HRC/Publications_SOA_Summary_04-2012.pdf.

²⁴⁵ ONU Femmes (Bureau Régional de l'Afrique de l'Ouest), Avril 2012, « La Situation de violences faites aux femmes: le mode de réponse et soutien aux survivantes dans les régions de Dakar, Diourbel, Fatick, Kafrine, Kaolack, Louga, Saint-Louis et Thiès », p. 65.

²⁴⁶ Ibid.

²⁴⁷ Ibid.

²⁴⁸ Charging a woman for falsely retracting an accusation of rape would further exacerbate the low rate of rape reporting and exert a further undue toll on a woman caught between family pressure and the threat of legal sanction. See Amelia Hill, *Woman fails to quash conviction for falsely retracting rape claim*, The Guardian, 13 March 2012. Available at <http://www.theguardian.com/society/2012/mar/13/woman-retracted-rape-claim-husband>.

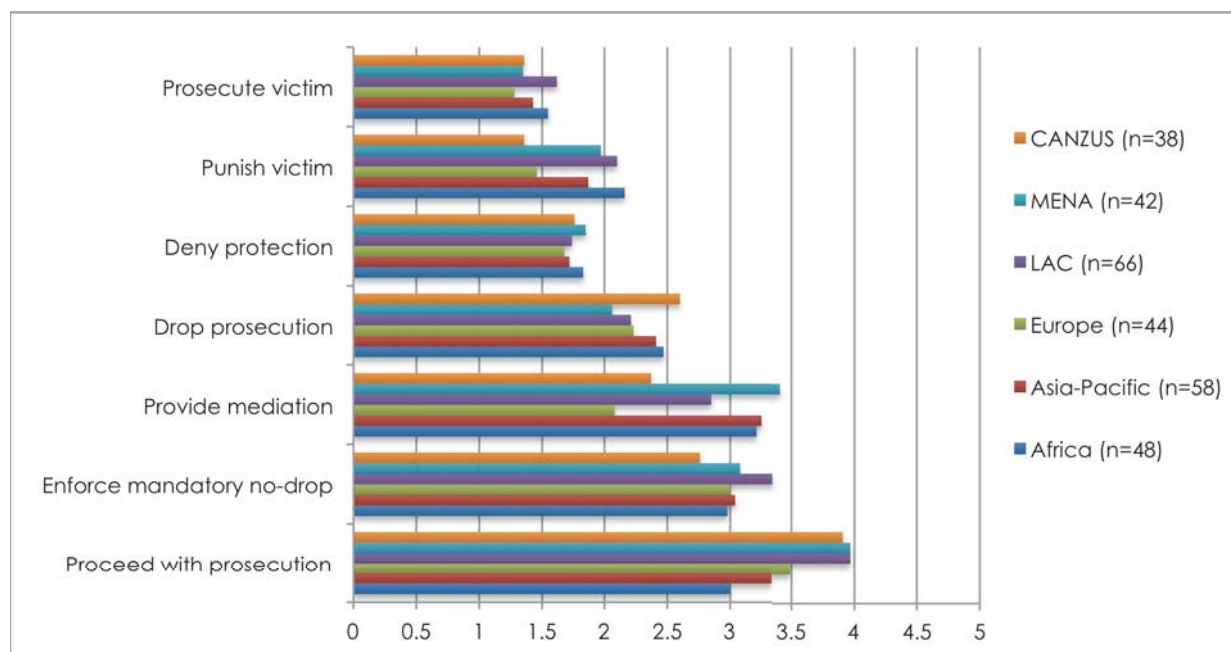
²⁴⁹ Western Australia's Acts Amendment (Family and Domestic Violence) Act requires police to investigate acts of domestic violence; Israel's Criminal Procedure Ordinance provides that police and prosecutors may not rely solely upon a spouse's request in determining whether to conduct an investigation or prosecution in a domestic violence case; Timor-Leste's training course for police instructors promotes a 'no-drop' policy where every case must be investigated; German law requires medical examinations in cases of domestic violence; Brazil's law establishes compulsory notification of cases of VAW where medical services are needed; and El Salvador's Penal Code provides for sanctions on public officials for failure to investigate domestic violence. Slovakia's Criminal Procedure Code does not require consent from victims/survivors to prosecute a violent offence. Standards for criminal proceedings under Switzerland's and Slovakia's Penal Codes provide for automatic prosecution of domestic violence offenses; Icelandic and Danish laws require police to advise victims/survivors of their rights under the law and Canada's Manitoba Domestic Violence Front End Project requires early and consistent contact between the Crown attorney and the victim and appoints pre-trial coordinators who ensure procedural matters are addressed within agreed timelines. Some of these policies have, however, been criticized by feminists and policy makers alike.

²⁵⁰ See *Opuz v. Turkey*, ECHR, *supra* n. 9.

²⁵¹ Recorded from CANZUS respondents.

²⁵² UN Handbook Legislation, *supra* 157, p. 38.

Chart 24: DDP survey: CSOs' opinion on possible State responses to victim/survivor inability or refusal to continue with prosecution (n = 300; 1 = strongly disagree; 5 = strongly agree)



Concerns over prejudice are particularly acute among women of colour, undocumented immigrants and LGBT communities. **Australian** advocates report prejudice by the police, especially when responding to incidents of same-sex domestic violence. The New South Wales police does not record same-sex intimate partner violence in their database.

In the **United States** advocates speak of a disproportionate number of arrests of women of color in incidents of intimate partner violence, due in part to police invoking the stereotype of African-American women as 'more aggressive' to justify their not being able to differentiate victim from perpetrator.

Advocates at the Caribbean regional expert consultative meeting supported mandatory charges but preferred to allow prosecutors the discretion to prosecute or otherwise (see mandatory prosecution below).²⁵³ Mandatory charging gives the magistrate the opportunity to assess the case and if desirable, compel the perpetrator into programmes that promote non-violence.²⁵⁴

According to the Istanbul Protocol, prosecutors should not force victims to talk about any form of torture, particularly sexual violence, if they are uncomfortable doing so.²⁵⁵ A process for evidence collection and victim/survivor involvement that increases the likelihood of their not having to testify in court is preferable.

This is borne out by the DDP survey, with most CSO respondents agreeing that the best possible response is for governments to proceed without relying on victims/survivors to testify and provide other evidence to support prosecution (see Chart 24).

Some States have also experimented with allowing previous inconsistent statements to be presented to the judge or jury for their determination. If victims/survivors recant, the judge or jury can rely on previous statements.²⁵⁶

► **Honduras** obliges judges to analyze the reasons given by victims/survivors for dropping complaints before authorizing the requests. In addition, judicial

²⁵³ DDP Caribbean experts' consultative meeting on, 7-8 May, 2013, Nassau, the Bahamas.

²⁵⁴ See for example UN Women's Partnership for Peace Programme, http://www.unifemcar.org/pr_ins.cfm?SubID=115&link_=18.

²⁵⁵ Istanbul Protocol, supra note 4, para. 154.

²⁵⁶ For example, Trinidad and Tobago and the United Kingdom. Expert at the DDP Caribbean experts' consultative meeting, 7-8 May 2013.

authorities are also mandated to look into protection measures for victims and their next of kin, if needed.

► The Victim and Witness Support Unit in **Trinidad and Tobago** has seen some success with witnesses who do not want to continue with prosecution. Earlier, victims were permitted to drop prosecution if they so chose, but now they are directed to the Victim and Witness Support Unit that assists in handling and resolving their issues.

► *Providing Positive Early Victim/Survivor Engagement through the Police*

Apart from medical professionals, police officers are ordinarily the first on the scene of violence and can provide mandated referrals to victim/survivor services. Therefore, speed and quality of police intervention is crucial. Positive and early engagement with the police and special VAW units may encourage victims/survivors to take action to stop the violence.

Advocates take varied positions with respect to police intervention. Some urge increased and speedier police involvement to curb the violence, particularly if a protection order has been issued. These advocates seek expanded law enforcement follow-up on breaches of protection orders and object to bail for offenders. Others opine that there has been over-policing or over-enforcement especially where both perpetrators and victims/survivors are arrested and there are cross-complaints of violence.²⁵⁷

Historical distrust of the police within certain communities discourages women from reporting intimate partner violence or even rape, resulting in their inability to stop the violence and immunity for perpetrators.²⁵⁸ In some communities, this has also resulted in communal policing, such as vigilante groups, which creates its own challenges and problems.²⁵⁹

For example, a high proportion of immigrant women report experiencing violence in **Spain** (further exemplified by cases brought by a Nigerian woman, a Romani woman and a transgender woman before the ECHR against Spain). This suggests that more attention

must be paid to intersectionality to create a safe society for all women.²⁶⁰ Calls have been made for police and relevant government departments in **Hong Kong** to provide a more coordinated response to at-risk victims, such as female foreign domestic workers and Chinese mainland women who marry Hong Kong men, who appear to suffer from higher rates of domestic violence.²⁶¹

Lesbians and transgendered persons have been raped, tortured and murdered for not conforming to dominant heteronormativity.²⁶² It is well documented that taking steps to stop the violence, such as filing police reports, may increase survivors' vulnerability to further violence by perpetrators, particularly intimate partners. The risk of arrest, further violation or deportation (if undocumented) compounds this fear and may possibly lead to inaction on the part of victims.

Sex work is criminalized in many jurisdictions. Therefore, it is rare for sex workers to report VAW for fear of being charged themselves. Some advocates report that decriminalizing prostitution has increased the likelihood of sex workers reporting violence.

Participants at the MENA expert consultative meeting reported that Shiite women in **Bahrain** were often reluctant to report violence due to the fear that they would be ill-treated by Sunni police officers or that complaints would be used as excuses to torture Shi'a men.²⁶³ This is echoed by advocates in the **United States** who articulated concerns over lack of trust and confidence in the police by the African-American community. The DDP survey discloses that lack of

²⁶⁰ 51 Muertas por Machismo tras el tercercrimen in tresdías, El País, (14 October 2011), http://www.elpais.com/articulo/sociedad/51/muertas/machismo/tercer/crimen/dias/elpepisoc/20111014elpepisoc_9/Tes; ECHR Press Unit, (2011) *Press Country Profile: Spain* http://www.echr.coe.int/NR/rdonlyres/D8FE021F-1EAC-420A-9D24-A9159BC890F5/0/PCP_Spain_EN.pdf? (last accessed 27 February 2012).

²⁶¹ Maggie Chen, (2007) Domestic Violence Cases Rising in Hong Kong, 14 May. Available at <http://www.voanews.com/tibetan-english/news/a-28-2007-05-14-voa2-90291732.html>.

²⁶² Criminal Injustice: Violence against Women in South Africa, Shadow Report on Beijing +15, March 2010. The term 'corrective rape' is commonly used to refer to instances where women are violently sexually and physically abused under the guise of 'correcting' their sexual orientation, often ending in death. (Action Aid, 'Hate crimes: The Rise of "Corrective" Rape in South Africa', March 2009. Available at http://www.actionaid.org.uk/doc_lib/correctiveraperep_final.pdf).

²⁶³ Participants at the MENA expert consultative meeting in Beirut, 9-10 September 2012.

²⁵⁷ *Ibid.*

²⁵⁸ For example, undocumented migrant women who face deportation if they report violence to the police (Amnesty International Spain Report: (2005) *More than Words -- Spain: Making Protection And Justice a Reality for Women Victims of gender based Violence in the home* (in Spanish).

²⁵⁹ For example, South Africa. Discussions at DDP's Experts' Group Meeting in April 2011.

confidence in the police and other authorities is a major obstacle to women reporting VAW.²⁶⁴

➤ *Establishing Affirmative Duty to Investigate*

Investigation refers to the duty of undertaking effective action to establish the facts related to a VAW incident. This duty must be exercised in an effective, prompt, impartial and thorough manner.²⁶⁵ It is not necessarily linked to a criminal process although current international thinking acknowledges VAW as a crime. Sometimes, investigations into VAW may take the form of administrative action (as in the case of workplace sexual harassment), restorative justice or truth processes.²⁶⁶

All acts of VAW should be investigated. However, this does not mean that all acts of VAW necessarily have to be prosecuted or punished.

States are duty-bound to investigate serious human rights violations and if there is sufficient evidence, to prosecute those responsible with reference to 'Basic Principles and Guidelines on the Right to Remedy and Reparations for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law'.²⁶⁷

The obligation to investigate human rights violations is one of means rather than results.²⁶⁸ According to the IACHR, investigation is critical in cases of VAW 'as deficiencies often prevent and/or obstruct further efforts to identify, prosecute and punish those responsible'.²⁶⁹ Therefore, States must adopt effective

measures to ensure that legal remedies and procedures are accessible to victims/survivors of VAW and authorities act under a legal framework where due process guarantees, for victims and perpetrators, are respected.

States should ensure that they meet their positive duty to investigate cases of VAW. In *M.C. v. Bulgaria*, the ECHR found that the State did not meet this duty because it dismissed the case for lack of evidence without conducting a thorough investigation.²⁷⁰

The due diligence principle ascribes specific duties.²⁷¹ '[W]hen an act of violence against a woman occurs, it is particularly important that the authorities in charge of the investigation carry it out in a determined and effective manner, taking into account society's obligation to reject violence against women and the State's obligation to eliminate it and to ensure that victims trust the State institutions there for their protection.'²⁷² States should also guarantee the implementation of a policy that addresses VAW and initiate *ex officio* and without delay, prompt, thorough, serious, impartial and effective investigations.²⁷³ Authorities must comply with this duty within judicial, administrative and any other justice proceedings.

Lack of awareness can lead to late reporting and lost evidence. This is also the result of inaccessibility of services to all women, including those in rural areas. Forensic evidence is crucial in successful prosecution and appropriate sentencing. The inability of medical service providers and police to collect evidence in an effective and timely manner has a negative impact on the likelihood of prosecution.

²⁶⁴ For discussion on police bias and negative attitudes, please refer to 'Prosecution' below.

²⁶⁵ UN (1989) Principles on the Effective Prevention and Investigation of Extrajudicial, Arbitrary and Summary Executions, 24 May (Economic and Social Council Resolution 1989/65, annex); United Nations High Commissioner for Human Rights, *Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, Istanbul Protocol submitted to the United Nations High Commissioner for Human Rights, U.N. Doc. HR/P/PT/8 (1999), paras. 76, 79.

²⁶⁶ Please refer to Chapter 3.5 on Redress and Reparation.

²⁶⁷ United Nations General Assembly, *Basic Principles and Guidelines on the Right to Remedy and Reparations for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law*, Resolution 60/147 of 16 December 2005.

²⁶⁸ Rosendo Cantú et al. v. México, IACtHR, *Case 12.579*, *supra* note 241, para. 175.

²⁶⁹ The Situation of the Rights of Women in Ciudad Juárez, México, IACHR, (2003): The Right to Be Free from Violence and Discrimination. OEA/Ser.L/V/II.117, Doc. 44, 7 March, para. 137. The investigation also serves other purposes, for example, to ascertain the right to truth. The IACHR has written

that any victim of a violation of human rights is entitled 'to obtain clarification of the events that violated [his or her] human rights and the corresponding responsibilities from the competent organs of the State, through the investigation and prosecution (...)'. Barrios Altos v. Perú, IACtHR, Judgment of 14 March 2001. Series C No. 75, para. 48.

²⁷⁰ ECHR (*Application no. 39272/98*). See also *Ranstev v. Cyprus*, where the ECHR similarly held that the State had failed to properly investigate both sexual trafficking and sexual exploitation.

²⁷¹ Convention of Belém do Para, Art. 7; United Nations Office of the High Commissioner for Human Rights (OHCHR), Istanbul Protocol.

²⁷² Rosendo Cantú et al. v. Mexico, IACtHR, *supra* n. 238, para. 177.

²⁷³ *González et al. ('Cotton Field') v. México*, IACtHR, *supra* note 8, para. 290; Fernández-Ortega et al. v. Mexico, Preliminary Objection, Merits, Reparations, and Costs, Judgment of August 30, 2010. Series C No. 215, para. 191; Rosendo-Cantú et al. v. México, IACtHR *supra* 238, para. 175; Ana, Beatriz and Celia González Pérez (Mexico), IACHR, Report No. 53/01, Case 11.565, 4 April 2001, paras. 84-88.

Officers in charge of investigations and prosecutors often lack special technical training in family law and VAW, which hinders proper and timely treatment of crimes committed in this context.²⁷⁴ When institutions lack the necessary human, technical and scientific resources for undertaking exhaustive investigations, the ability to introduce evidence, go to trial and collect the elements necessary to sanction aggressors is compromised.²⁷⁵ In some countries, governments still do not implement internal guidelines and protocols to ensure uniform, transparent, quick and coordinated responses.²⁷⁶ Authorities must collect and preserve evidence and crime scenes (particularly those susceptible to contamination), immediately compile evidence, conduct thorough investigations, keep complete and correct records and establish coordination among institutions involved in criminal investigations.²⁷⁷ Additionally, authorities often do not undertake *ex officio* investigations of VAW, unless they are deemed 'relevant' or have caught media attention; frequently, victims must undertake their own investigations.²⁷⁸

In recent years, States have improved their justice apparatus to more effectively address VAW by adopting specific measures such as specialized sexual violence units, capacity-building programmes and protocols and manuals to improve investigation. A standardized action protocol for investigating sexual abuse based on parameters established in the Istanbul Protocol and by the World Health Organization aims to enable better responses to VAW.²⁷⁹ States should also implement a system to

check if such protocols are being used.²⁸⁰ Regional experts highlight the importance of multi-disciplinary groups conducting investigations with anthropological expertise for a more comprehensive perspective of cases.

The Inter-American Court and Commission have developed useful investigative guidelines in compliance with the State's due diligence obligations.²⁸¹ These include

- i. identifying victims;
- ii. recovering and preserving probative material;
- iii. identifying possible witnesses and obtaining their statements;
- iv. preserving crime scenes and determining the cause, form, place and time of the crimes;
- v. conducting thorough and exhaustive investigations and tests using the most appropriate procedures;
- vi. establishing databases containing personal information of missing persons, including genetic and tissue samples;
- vii. preventing re-victimization;
- viii. providing only trained personnel (of the sex preferred by victims as far as possible) to conduct the investigation;
- ix. using gender-based approaches and parameters and performing forensic analyses harmonized with international standards;
- x. undertaking complete and detailed medical and psychological examinations of victims/survivors;
- xi. informing victims/survivors that they can be accompanied by a person they trust if they so wish;
- xii. coordinating and documenting investigative measures;
- xiii. taking sufficient samples and handling them with care;
- xiv. performing all possible tests to identify perpetrators;
- xv. obtaining other evidence such as victims' clothes;

²⁷⁴ IACHR, (2009) *Report on the Rights of Women in Chile: Equality in the Family, Labor and Political Spheres*, OEA/Ser.L/V/II.134, Doc. 63, 20 March 2009, para 91.

²⁷⁵ IACHR, (2011) *Access to justice for women victims of sexual violence in Mesoamerica*, IACHR, OEA/Ser.L/V/II. Doc. 63 (9 December). For example, *El Salvador, Nicaragua, Guatemala and Honduras*.

²⁷⁶ Andrea Diez, (Coordinadora), (2011) *Violencia contra las mujeres Tratamiento por parte de la justicia penal de Guatemala*, (Centro de Estudios de Justicia en América (CEJA): Guatemala), p. 34.

²⁷⁷ IACHR, (2007) *Access to Justice for women in the Americas 2007*, para. 128; Washington Office on Latin America (WOLA), *Hidden in Plain Sight: Violence Against Women in Mexico and Guatemala*, (WOLA), p. 11, Ana Carcedo (coordinator), (2006) *No olvidamos ni aceptamos: Femicidio en Centro américa* (CEFEMINA), p. 78.

²⁷⁸ IACHR, *Access to Justice for Women Victims of Violence in the Americas*, OEA/Ser. L/V/II. doc.68, 20 January 2007, p. 128; Washington Office on Latin America (WOLA), *Hidden in Plain Sight: Violence Against Women in Mexico and Guatemala*, (WOLA, 2007), p. 11, Ana Carcedo (coordinator), *No olvidamos ni aceptamos: Femicidio en Centroamérica 2000 – 2006*, (CEFEMINA 2006), p. 78.

²⁷⁹ IACtH.R., *Case of Rosendo Cantú v. México*, Preliminary Objection, Merits, Reparations, and Costs, Judgment of 30 August 2010. Series C No. 26, para 175.

²⁸⁰ Regional meeting of Latin American experts in San Jose, Costa Rica, 3-4 April 2013.

²⁸¹ Investigative guidelines were developed by the IACtHR in various cases: *González et al. ('Cotton Field') v. México*, IACtHR, para. 295, 300-301, 305, 310, 315-316, 318, 331-332.; *Fernández Ortega et al. v. Mexico*, IACtHR, *supra* note 273; *Rosendo Cantú v. México*, IACtHR, *supra* 238, para 175. See also: United Nations High Commissioner for Human Rights, (1999) *Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, Istanbul Protocol submitted to the United Nations High Commissioner for Human Rights, U.N. Doc. HR/P/PT/8, paras. 154,173.

- xvi. immediately examining the scene of the incident and
- xvii. maintaining a proper chain of custody for evidence.

➤ *Establishing Affirmative Duty to Prosecute*

Prosecution refers to the duty of exercising criminal jurisdiction over those responsible for human rights violations. It is crucial to assess whether the violation is criminalized/recognized in the law. Almost all countries have laws that criminalize some forms of VAW, but many of these laws are not comprehensive and do not ensure that prosecution is as non-traumatic for victims/survivors as possible.

Alternative non-criminal processes may be worth considering particularly where victims/survivors have requested not to be separated from their partners or to be allowed to see them in jail or if the remedies they seek cannot be obtained through the criminal process.²⁸² However, using personal status laws in cases of VAW has often proven unfavourable for victims/survivors.

On the one hand, shifting the focus from criminal prosecution allows States to use a lesser burden of proof when establishing that an act of VAW has taken place. States could then give women greater freedom to participate in the process including setting the punishment. Data and statistics on prosecution could help States monitor their effectiveness in prosecuting VAW. On the other hand, conventions like CEDAW and relevant resolutions call for criminal prosecution so that States take VAW seriously. Reducing the burden of proof may then have the inadvertent effect of States failing to take VAW seriously.

In recent years, **African** countries have reformed existing laws or enacted new laws on VAW, although these vary considerably with respect to forms of violence. Regionally, domestic violence and sexual offences legislation are the most common forms enacted with regard to VAW.²⁸³ Conversely, apart

from Jordan, none of the MENA countries studied have domestic violence laws. Without specific laws, domestic violence continues to be treated lightly by those in the justice system.²⁸⁴

In Latin America, most countries criminalize domestic and sexual violence. Most States have also enacted human trafficking laws or regulations.²⁸⁵ However, not all of these comply with international human rights standards.²⁸⁶

Reforms in some European countries have also attempted to address gaps in rape laws.²⁸⁷ This includes redefining rape, criminalizing FGM,²⁸⁸ harassment or stalking²⁸⁹ and redefining trafficking.²⁹⁰ However, laws related to trafficking in women and girls and sexual harassment are uncommon in **Africa**. **Algeria** and **Jordan** have taken major steps in criminalizing sexual harassment.²⁹¹ However, regulation of harassment or sexual harassment in the **LAC** is insufficient.²⁹²

A draft proposal for the Safe Motherhood Law that aimed at banning FGM in **Yemen** was rejected in

Nigeria, Ghana, Kenya and Mozambique have enacted anti-trafficking legislations.

²⁸⁴ MENA expert consultative meeting, Beirut, 10-11 September 2012.

²⁸⁵ UNODC, (2012) Global Report on Trafficking in Persons (United Nations publication, Sales No. E.13.IV.1), p. 84.

²⁸⁶ Inter-American Commission of Women. Follow-up Mechanism to the Belém do Pará Convention (MESECVI), Second Hemispheric Report on the implementation of the Belém do Pará Convention (2012), p.20.

²⁸⁷ For example, the United Kingdom's Sexual Offences Act includes non-consensual penile penetration of the mouth in its definition of rape. Australia's Criminal Law Consolidation Amendment Act includes the continuation of sexual intercourse when consent is withdrawn within its definition of rape.

²⁸⁸ For example, Egypt has a strong programme to eradicate FGM and many countries have criminalized it. The United Kingdom has criminalized extraterritorial FGM and Spanish law provides for extraterritorial prosecution of FGM.

²⁸⁹ For example, Bolivia (political harassment); Belgium (harassment in the workplace); Germany (stalking); the United Kingdom (criminal harassment and fear of violence); Alberta, Canada (stalking); Tunisia (mental or physical harassment) and Israel (stalking). The United Kingdom's Protection from Harassment Act defines 'criminal harassment' as committing proscribed acts against the victim on at least two occasions and Tunisia's Penal Code criminalizes any form of mental or physical harassment.

²⁹⁰ For example, to find someone guilty of trafficking, Slovakian law does not require intent to exploit women for sexual intercourse and Israel's Penal Law punishes buyers, sellers and middleman engaged in buying or selling a person for prostitution.

²⁹¹ The United States Department of State (2009) *Country Report on Human Rights Practices 2009, Algeria, (USSD Report*, published 11 March 2010 (accessed 25 December 2011).

²⁹² Latin American Expert Group Meeting: participant from Bolivia.

²⁸² Great care must be exercised to ensure that the availability of alternative non-criminal processes does not exert added pressure on victims/survivors to refrain from prosecution of perpetrators.

²⁸³ The South African Sexual Offences Act explicitly provides that a marital or other relationship, previous or existing, shall not be a defence to a charge of rape. Lesotho, Namibia, Rwanda, Sierra Leone, Swaziland and Zimbabwe are some of the very few countries that have criminalized marital rape.

2009; parliament deemed a law to ban FGM unnecessary although a ministerial decree prohibiting FGM in government-run centres does exist.²⁹³ **Sudanese** law officially allows certain types of FGM to be practiced.²⁹⁴ **Bahrain** has no law to prohibit or punish FGM although the practice is widespread.

Latin American countries have enacted laws or provisions on femicide.²⁹⁵ Despite the recognition of femicide as a crime,²⁹⁶ advocates indicated that some of these laws include restrictive definitions or procedural norms that curtail their effectiveness.

According to the Monitoring Mechanism of the Convention of Belém do Pará (MESECVI), some countries criminalize rape within marriage or de facto unions as a separate crime; other States have opted to incorporate rape and sexual violence in marriage or de facto unions as an aggravating circumstance of the generic crime of rape. The adoption of comprehensive laws on VAW in the past few years, has served to raise awareness of sexual violence and rape within the marital relationship or de facto union. However, the provisions of some comprehensive laws on VAW and of the Penal Code still need to be reconciled.²⁹⁷ Marital rape has eluded legal sanctions in many African and MENA countries although this and other forms of intra-marital sexual abuse are widespread. In **Algeria**, an estimated 10.9 per cent of married women are forced into having sex on more

than one occasion.²⁹⁸ Sexual violence constitutes 35 per cent of all cases reported to CSOs, 17 per cent of which are cases of marital rape.²⁹⁹ Conversely, sex outside marriage is a crime. In these countries, a woman risks being prosecuted if she is unsuccessful in proving rape as her complaint is regarded as an admission of sexual relations outside marriage (even if the male 'accomplice' cannot be identified).³⁰⁰

Another exculpating provision, which is of grave concern, is the ability of perpetrators to escape punishment by marrying victims/survivors. Such provisions exist in countries as varied as **Bolivia, Cameroon, Syria, Lebanon** and **Algeria**.³⁰¹ Although some countries require marriages to be consensual, it is difficult to guarantee consent and victims/survivors are frequently coerced into such marriages.³⁰²

The **Egyptian Penal Code** (article 267) provides a three-year statute of limitations for incest, which allows perpetrators to escape punishment if discovery comes years after the crime.³⁰³

• Ensuring Fair Burden of Proof and Evidentiary Standards

In most countries, the prosecutor can decide on whether to proceed with prosecuting a 'minor' offence. Otherwise reasonable, this discretion is problematic in cases of domestic violence which often consists of repetitive offences that may be considered 'minor' on their own. For example, in some countries, the decision to prosecute is based on the

²⁹³ UNFPA, 2007, *Gender Based Violence: Yemen Country Assessment*.

²⁹⁴ Sudan Tribune, 2010, Sudanese activists slam government position on female genital cutting, <http://www.sudantribune.com/Sudanese-activists-slam-government,30099>.

²⁹⁵ For example, Mexico.

²⁹⁶ See for example, *Ley integral contra la violencia hacia las mujeres y de reforma a la Ley 641, Código penal*, Nicaragua; *Ley contra el femicidio y otras formas de violencia contra la mujer*, Guatemala (2008); *Ley de Penalización de la Violencia Contra las Mujeres*, Costa Rica, 2007; *Ley general de acceso de las mujeres a una vida libre de violencia*, Mexico (2007/12); *Ley 29819 que modifica el artículo 107 del Código Penal, incorpora el feminicidio*, Peru (2011); *Ley Especial Integral para una Vida Libre de Violencia para las mujeres*, El Salvador (2010); and *Ley de modificación del Código Penal y la Ley 20.066 sobre violencia intrafamiliar*, Chile (2010).

²⁹⁷ Inter-American Commission of Women, (2012) Follow-up Mechanism to the Belém do Pará Convention (MESECVI), Second Hemispheric Report on the implementation of the Belém do Pará Convention, OEA/Ser.L, p.26-27. Jamaica and Trinidad and Tobago have enacted laws to prohibit marital rape. Some Caribbean countries also make provisions for marital rape including The Sexual Offences Act of Jamaica and Trinidad & Tobago. In the Jamaican legislation certain conditions must be established to bring a charge of marital rape (Section 5). However, a reading of the legislation of Trinidad & Tobago provides no evidence to suggest such conditions.

²⁹⁸ Yakin Ertürk, (2006) Human Rights Council, *Report of the Special Rapporteur on violence against women, its causes and consequences*, Yakin Ertürk, Human Rights Council, U.N. HRC, 7th Sess., Add. No. 2, UN Doc. A/HRC/7/6/Add.2.

²⁹⁹ Les violences contre les femmes en Algérie, Balsam, *Reseau National des Centres d'Ecoute sur les Violences contre les Femmes, deuxièmes résultats*, September 2010. Available at <http://ciddef-dz.com/>

³⁰⁰ Ibid.

³⁰¹ Freedom House, *Special Reports: Algeria*. Available at <http://freedomhouse.org/template.cfm?page=384&key=246&parent=24&report=86>. Marriage is deemed to expunge the dishonour brought onto families of victims/survivors. Egypt repealed article 291 of its Penal Code (Act No. 58 of 1937) in 1999, which exculpated perpetrators who married victims/survivors of rape and abduction.

³⁰² For example, the Moroccan case of a 15-year-old girl (Amina) who was kidnapped and raped. She committed suicide after she was forced to marry her rapist. Her death sparked protests by civil society and led to calls to change the law. See <http://www.theguardian.com/world/feedarticle/10143791?gclid=IwEaQAAQAAQ&link=Article:in%20body%20link> and <http://www.theguardian.com/world/2013/jan/23/morocco-law-rapists-marry>.

³⁰³ National Council for Women, 2009, *Violence against Women Study: services provided for victims of violence*.

number of days a victim/survivor is hospitalized, leading to dismissal of claims if hospitalization is less than 10 days and mandatory prosecution if it is over 20 days.³⁰⁴

In **Bulgaria**, **Ukraine** and **Tajikistan**, when domestic violence consists of light bodily injury, the burden to privately prosecute the offender is on the victim/survivor. In *Bevacqua and S. v. Bulgaria*,³⁰⁵ the ECHR found Bulgaria in violation of its obligation to provide an adequate response since it expected the victim/survivor to prosecute and investigate in the dangerous domestic violence situation that was presented.³⁰⁶ A similar process in Ukraine, for private prosecution of minor domestic violence injuries, was changed with the new Criminal Procedure Code of 2012.

Countries such as **India** and the **Philippines** have also experimented with reversing the burden of proof for specific VAW cases. If a woman dies in suspicious circumstances within the first few years of marriage, the **Indian** Penal Code places the onus of proving innocence on the husband's family. This aims to overcome the difficulties in proving femicide of brides in dowry disputes.

More commonly, women and girls under certain circumstances are deemed not to have the capacity to consent to sexual acts. These include statutory rapes of girls below specified age(s) or incest by persons in loco-parentis positions to victims/survivors and custodial rape. However, in some jurisdictions, corroborative evidence is still required for rape and sexual assault. The requirement has rightly been repealed in most jurisdictions³⁰⁷ but countries such as **Uganda** still insist on it.³⁰⁸

• Ensuring Sensitivity to Confidentiality and Privacy Issues

Women who decide to report violence often have to deal not only with harsh treatment and long delays in court hearings but also practices such as the release of particulars that identify them (especially in child sexual abuse or mass rape during conflict), humiliate them or put them at greater risk. Unsurprisingly, women are often reluctant — for financial, social or safety reasons — to participate in the prosecution of their spouses. Consequently, States must institute procedures that protect the privacy of women from disclosure to the public or from overly harsh treatment during the investigation and prosecutorial process. The latter includes irrelevant humiliating details and scrutiny of their past.

In cases involving children, States should ensure that only specially trained personnel are in attendance³⁰⁹ and that the children's testimonies are taken on closed circuit television (CCTV) or behind a screen so they are not exposed to the accused.³¹⁰ Where the safety of victims cannot be guaranteed, refusing to testify should not constitute a criminal or other offence.³¹¹ At the DDP consultative meetings, several experts spoke of victims/survivors being humiliated by officials who did not consider the privacy of their case. They also provided several examples of women who consequently withdrew cases.

Advocates also report that in MENA, for example, privacy and confidentiality policies at all levels of law enforcement are lacking. Female victims/survivors of violence are questioned in public by numerous officials, wait for long periods at the police station or in the court room to be attended and are not informed of the procedures or progress of the prosecutorial process. In some jurisdictions, women who cannot prove sexual violence are also punished for having 'admitted' to sex out of wedlock or alternatively for having 'falsely' accused a man of having had sex out of wedlock by lodging a rape complaint.³¹²

³⁰⁴ Human Rights Watch, 2006, 'Occupied Palestinian Territories: A Question of Security: Violence against Palestinian Women and Girls', *Human Rights Watch*, Volume 18, No. 7(E). Similar provisions exist in the criminal laws of Jordan, Egypt, Syria, Lebanon and the Gulf States.

³⁰⁵ *Bevacqua and S. v. Bulgaria*. Available at <http://www.humanrights.is/the-human-rights-project/humanrightscasesandmaterials/cases/regionalcases/europeancourtofhumanrights/nr/2579> (Accessed 7 May 2012).

³⁰⁶ The ECHR took the position that States could require self-prosecution, but that it was not reasonable under these specific circumstances.

³⁰⁷ In *Mukungu v. Republic*, [2003] 2 EA (Kenya Court of Appeal), the court found the requirement of corroboration in sexual assault cases unconstitutional because it discriminated against women and girls.

³⁰⁸ Ugandan Criminal Code.

³⁰⁹ United Nations Committee on the Rights of the Child, General Comment 12: The right of the child to be heard, paras. 21, 24, 34 and 64.

³¹⁰ Lidia Casas, (2010) Introducción a los problemas de género en la justicia penal en América Latina [Introduction to gender issues within criminal justice in Latin America], Centro de Estudios de Justicia de las Américas, (CEJA), p. 149.

³¹¹ General Assembly, Strengthening crime prevention and criminal justice responses to violence against women, A/RES/65/228.

³¹² The argument that rape may be conflated with the crime of consensual sex out of wedlock ('zina') should be reviewed. The basis and legal rationale for sanctioning consensual sex in

► Legislations allowing for the recording of the testimonies of victims/survivors are available in **Guyana, Colombia and Australia**, among other countries.

► In **CANZUS**, some advocates laud regional reforms that include rape shield laws, testimony and cross-examination through CCTV, non-disclosure of victims' addresses and medical records and testing victims' level of understanding and mental abilities prior to accepting evidence. They also support victim impact statements that help victims take on a more active role in her case.

However, an expert at the Caribbean regional consultative meeting cautioned that while in-camera proceedings had many advantages, they could also isolate victims. Further efforts should focus on making the in-camera atmosphere friendly for victims, especially children.

- *Providing Legal Aid and Support*

Legal advice and free legal assistance are rights and not privileges afforded to those in need and VAW victims/survivors, particularly, have the right to legal advice and free legal assistance at all stages of the proceeding.³¹³ Prioritizing legal aid for VAW victims/survivors can also be considered a temporary special measure under international human rights law (see art. 4 CEDAW and CEDAW GR 25).

Advocates generally report inadequate access to legal services. In **Canada**, limiting criteria render most women ineligible for legal aid. Advocates in **New Zealand** expressed concern over government policies that make legal aid a loan rather than a grant, further limited by a lack of appropriate cultural sensitivity in the delivery of such services. Legal aid in the **United States** is under-resourced, especially in the area of family law.

In countries where victims/survivors can appear in court and litigate as plaintiffs ('querellante'), States must guarantee access to free legal aid. Both measures facilitate victims' participation in the proceedings. In some Caribbean countries, the Gender Bureaux work closely with Legal Affairs Ministries to provide legal aid to victims/survivors of

domestic violence who cannot otherwise afford legal services.³¹⁴

- *Reducing Delay at Every Level of the Prosecutorial Process*

Systemic delay is another primary cause of attrition in VAW cases and States should establish measures to check delay and expedite the prosecution of VAW cases. According to experts consulted by the DDP, there are various aspects that can make the paper committal or written statement procedure as long as or longer than the committal proceedings. These include obtaining witnesses' statements and cross-examining them, in addition to the shortage of courts and magistrates.

To improve this situation, States such as **Trinidad and Tobago** and **Antigua** have stopped using preliminary enquiry for sexual violence offences. They have moved from committal to a written proceeding, aiming to move faster to trial and avoid victims' trauma in re-telling their accounts multiple times. In **Jamaica**, some legislators are proposing legislation to remove preliminary enquiry, to avoid delays and the need for the victims/survivors to repeat their stories; this move is being vigorously opposed by defence counsels.³¹⁵ **St. Lucia** has also removed committal proceedings and preliminary enquiries by magistrate courts. A judicial officer studies the papers and decides whether the accused should be put on trial. Strict time limits are also imposed.

- *Fostering Confidence in the Police, Prosecutors and Judiciary*

Police and the prosecutors' offices play pivotal roles in determining the outcome of formal intervention in VAW cases. Decisions to investigate and prosecute and the manner of investigation and prosecution determine confidence in the criminal justice system, shaping the participation of victims/survivors in its success.

Negative attitudes, and sometimes even corruption, lead to underreporting, particularly in societies that have a culture of silence surrounding violence, thus exacerbating impunity.³¹⁶ The decision to prosecute may also be intertwined with negative socio-cultural perceptions that imply that victims/survivors provoked

public (proving zina requires the eyewitness testimony of four adult just men) is different from sanctioning sexual assault.

³¹³ Fernández-Ortega et al. v. México, *supra* note 273, para.194; IACtHR.

³¹⁴ Due Diligence Project, Caribbean Expert Consultative Meeting, May 2013.

³¹⁵ *Ibid.*

³¹⁶ CEDAW report on Uganda, 2010.

Chart 25: DDP survey: Sentiments when dealing with VAW — LAC
(n = 67; 1 = not at all; 5 = very much)

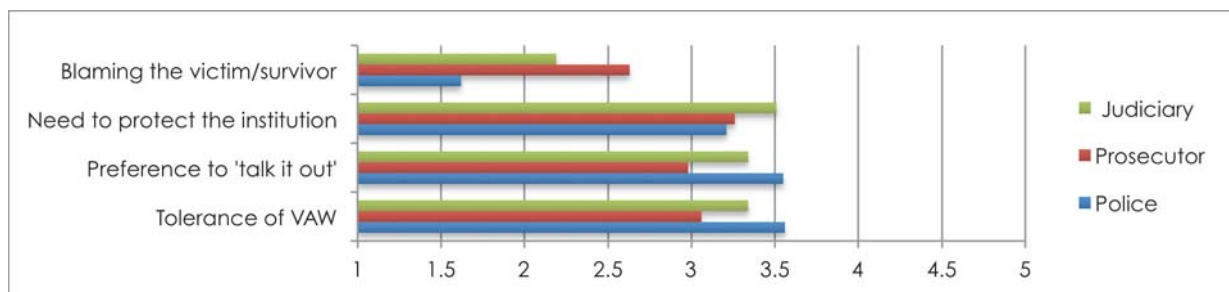
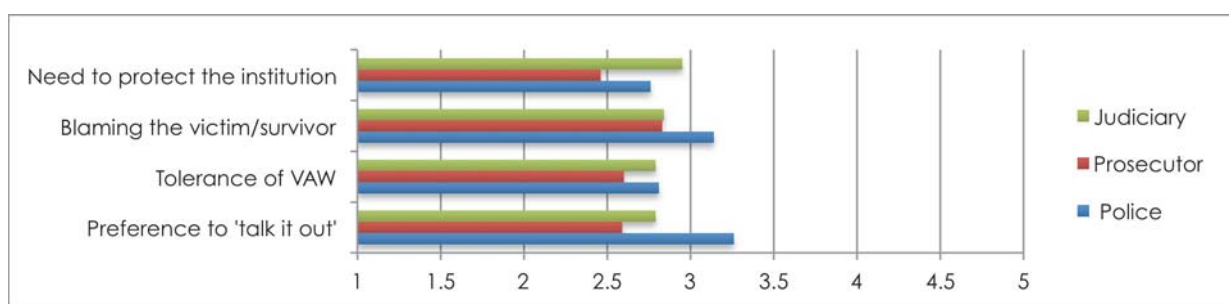


Chart 26: DDP survey: Sentiments when dealing with VAW — Europe
(n = 44; 1 = not at all; 5 = very much)



the violence through misbehaviour or transgression of social-cultural norms. Consequently, VAW cases may not be prioritized.³¹⁷ Therefore, the number of cases that go to trial may not be an indication of the prevalence of VAW.

CSO respondents to the DDP survey believe that courts, prosecutors and the police express their prejudices towards victims/survivors of VAW by tolerating violence, blaming victims, supporting aggressors and trying to preserve the family structure.

CSO respondents reserved their worst ratings for the police, particularly given the latter's penchant for prioritizing the need to preserve the institution of family over women's safety and security.³¹⁸ Overall, CSO

respondents believe the European police prefer to 'talk it out' with perpetrators, while prosecutors blame victims and the judiciary seems intent on protecting the family institution.

In MENA, the value for police preference to 'talk it out' is the highest, at 4.59. These results show that CSO respondents consider the attitudes and sentiments of all three law enforcement and justice agencies to be unfavourable to victims/survivors of VAW. This attitude permeates decisions in VAW cases. Prosecutors and judges concerned with upholding family privacy may aggressively persuade victims/survivors to settle cases informally or accept mediation or conciliation with perpetrators.

Such biases may be more acute when dealing with women from underserved communities. For example CANZUS advocates highlighted prejudices against Aboriginal and native women, lesbian, bisexual, transgendered and queer survivors, sex workers and immigrant women. Immigration provisions and practices can help ensure that migrant survivors of VAW are not dependent on their abusers for visas to remain in the country.

³¹⁷ See Challenges with addressing domestic violence in compliance with the Convention Against Torture, 47th Session of the Committee Against Torture (31 October – 25 November 2011) Joint Written Statement submitted pursuant to ECOSOC Res. 1996/31 by Advocates for Human Rights and Global Rights, NGOs in special consultative status, in collaboration with an alliance of Moroccan CSOs. This was echoed by participants at the DDP experts consultative meetings.

³¹⁸ Unless police exercise their discretion in favour of the safety and security of victims/survivors, assigning a central role in domestic violence cases to the police, such as in Croatia, would be problematic.

It is crucial that States undertake targeted and continual training of the police and prosecutors and gender sensitization of judges in compliance with their due diligence obligations. The importance of culturally competent and adequately funded training cannot be overemphasized.

Advocates in **Canada** point to the need for improved training of judges on violence against women. **New Zealand** advocates note that specialized family violence police teams require adequate training to be effective, and point to a pilot training by the Ministry of Justice for family court staff as a promising practice. Advocates in the **United States** similarly underscore the importance of specialized training of all key stakeholders including the judiciary, law enforcement, court officials, corrections, and child protection workers.³¹⁹

► UN Women conducts training for the judiciary in the **Caribbean** as a primary area of work. The agency works with magistrates in Gender Neuron, a sensitization programme dealing with gender and GBV and how this applies to judgment and sentencing.

➤ **Providing Specialized Prosecutors and Courts**

Conventional courts and justice systems are not necessarily knowledgeable about VAW. Research indicates that special investigative or prosecutorial units respond more effectively to VAW cases.³²⁰ Consequently, some States have established specialized police units, prosecutors and courts (or judges) to work exclusively (or primarily) on VAW. All actors in such investigative and prosecutorial processes should be continually and adequately trained on handling VAW cases. When staffed with trained personnel and supported by adequate funding, such units can provide a more conducive environment for women to seek legal recourse. Such units should address not only procedures and sentencing policies, but sentiments, attitudes and perceptions of enforcement agencies that intimidate victims or discourage them from pursuing justice. The ultimate aim should also be to replicate special units and courts to make them accessible to rural women and underserved communities.

Specially trained judges have received favourable reviews. Some studies indicate that special domestic violence courts may improve offender accountability, case processing, and victim/survivor satisfaction and access to services,³²¹ though reports are mixed.³²² In **Canada** these courts are said to be the impetus behind a number of improvements, including reduced recanting by victim/survivor; greater victim support; enhanced collaboration among stakeholders; expedited cases; and increased referrals of low-risk perpetrators to treatment programmes..³²³

The **Democratic Republic of Congo's** special travelling courts (judges, prosecutors and defence counsel), with capacity and expertise to try sexual violence crimes including those that constitute crimes against humanity under international law, dispense justice in remote areas.³²⁴ In 2008, **Liberia** established a special court, 'Criminal Court E', responsible for handling

³²¹ Center for Court Innovation, *Two Decades of Specialized Domestic Violence Courts: A Review of the Literature* 3 (2009). Available at <http://www.vaw.umn.edu/documents/specializeddvccourts/specializeddvccourts.pdf>. Leslie Tutty, *Evaluation of the Calgary Specialized Domestic Violence Trial Court & Monitoring the First Appearance Court: Final Report* (2011). Available at <http://www.ucalgary.ca/resolve/reports/2011/2011-01.pdf>; Ontario Ministry of the Attorney General, *Domestic Violence Court (DVC) Program*. Available at <http://www.attorneygeneral.jus.gov.on.ca/english/about/vw/dvc.asp> (last modified 9 December 2010).

³²² For example, public information suggests that the creation of specialized units in different countries in the Southern Cone of South America has been hampered by traditional structures that deter any structural change. See UNODC/ ONUMIJERES, *Respuestas para la Violencia Basada en Género en el Cono Sur: Avances, desafíos y experiencias regionales*.

³²³ For example, Leslie Tutty, *Evaluation of the Calgary Specialized Domestic Violence Trial Court & Monitoring the First Appearance Court: Final Report* (2011). Available at <http://www.ucalgary.ca/resolve/reports/2011/2011-01.pdf>. Ontario Ministry of the Attorney General, *Domestic Violence Court (DVC) Program*. Available at <http://www.attorneygeneral.jus.gov.on.ca/english/about/vw/dvc.asp> (last modified 9 December 2010). While this is a promising practice, public information suggests that the creation of special units in different countries in the Southern Cone of South America has been hampered by traditional structures that deter any structural change. See UNODC/ ONUMIJERES, *Respuestas para la Violencia Basada en Género en el Cono Sur: Avances, desafíos y experiencias regionales*.

³²⁴ In its first 22 months, the court heard 248 cases, acquitted 44 accused and convicted 140 persons for rape. Open Society Foundation, (2013) 'Justice in DRC: Mobile Courts Combat Rape and Impunity in Eastern Congo'. Available at <http://www.opensocietyfoundations.org/publications/justice-drc-mobile-courts-combat-rape-and-impunity-eastern-congo>.

³¹⁹ Findings of the DDP Survey in CANZUS.

³²⁰ UN Handbook Legislation, *supra* note 157.

sexual violence cases.³²⁵ Although the court plays an important role, it has been criticized for delays and for violating the constitutional requirement of an adversarial system.³²⁶

➤ *Considering Alternative Dispute Resolution (Mediation/Conciliation)*

Mediation, restorative justice and other alternative approaches to adjudicating GBV remain sources of opportunity and concern.

CSO respondents favour allowing women alternative dispute resolution fora and suggest that this may influence the decision to seek assistance. Experiences have, however, shown that extreme care must be taken to ensure that victims/survivors are not under pressure during mediation, which should be undertaken only when victims/survivors are safe and have real options. Many experts have warned against mediation-based approaches to VAW 'whether in the context of counselling or legal responses as they assume equal fault for violence, equal bargaining power between parties, and fail to adequately address the gendered power imbalances which surround acts of violence against women'.³²⁷ Another expert at the MENA consultative meeting voiced a similar objection: 'law enforcement officers usually treat cases of violence as if it occurs between two equal parties', which is seldom the case. This is of serious concern in MENA where women are generally directed to reconcile with perpetrators rather than file a complaint.

Parties with unequal bargaining power need adequate counselling before considering conciliation/mediation. Often, victims/survivors have not been fully rehabilitated and might lack financial, social and familial support. Such factors prevent victims/survivors from making sound decisions about fundamental aspects of their lives. Before mediating on such cases, mediators should also receive proper

training on issues related to VAW including the nature of the offense, the unequal power dynamics and the supremacy of international human rights norms.

While mediation, conciliation and reconciliation have unique roles in dispute resolution, they should not be made available for grave and serious offences or with the aim of exculpating the perpetrator, such as allowing perpetrators to pay off victims/survivors or marrying rape or abduction victims/survivors.³²⁸

Most rape laws in MENA include clauses that exonerate rapists if they *marry their victims* (for example, article 353 of the Bahrain Penal code and article 489 of the Syrian Penal code). Such exemptions exist in many other jurisdictions, albeit informally and are not officially sanctioned by law. Other prosecution practices such as the option to pay blood money (*diyyeh*) to discharge VAW not only devalues the injury suffered by women but discourages victims/survivors from seeking redress. Article 42 of Yemen's Crimes and Punishment Law No. 12 (1994) provides that a woman's *blood money (diyyeh)* is half that of a man's (thus, also devaluing the worth of a woman). Similar articles can be found in the penal codes of Kuwait, Libya, Qatar, Saudi Arabia and United Arab Emirates.³²⁹

States must also be vigilant against intimidation through '*cheque book settlements*'. This is particularly abhorrent when child victims are involved and pressure is exerted on them by their families. An expert at the Caribbean consultative meeting reported a young victim/survivor at her clinic as saying, 'I wanted to proceed, but my mother told me it did not make any sense. At least with what she got, I could get school books, bus fare, and she would be able to put some money in my account'. Such cases are difficult to prosecute as children do not want their parents

³²⁵ The Act establishing the court is available at <http://legislature.gov.lr/sites/default/files/Criminal%20Court%20E.pdf>.

³²⁶ Emmanuel Saff Abdulai Esp., 'Evaluation: Strengthening of Prosecution of SGBV Offences through support to the Sexual and Gender Based Violent Crimes Unit', Monrovia, Liberia (November 2010). Available at mdtf.undp.org/document/download/6383.

³²⁷ UN Women, (2010) Handbook for National Action Plans on Violence Against Women. Available at <http://www.unwomen.org/~media/775ABCF26B7141F0AD7E9246014CDE5B.pdf> (last visited 9 September 2013). Experts consulted by the DDP also raised similar reservations and concerns over the increased use of mediation instead of prosecution.

³²⁸ CEDAW Concluding Comments on Fiji, 26th Session, 14 January – 1 February 2002, A/57/38 (Part I): 12, paras 58 and 59 'The Committee is also concerned that the social customs on the husband's right of chastisement, and "bulu bulu", give social legitimacy to violence' and requests State party to prohibit 'reconciliation of cases of rape and sexual assault on the basis of the "bulu bulu" custom'. Available at http://www.un.org/womenwatch/daw/cedaw/cedaw25years/content/english/CONCLUDING_COMMENTS/Fiji/Fiji-CO-1.pdf. The use of one-talk (wantok) solidarity tradition was also referred to as allowing impunity for perpetrators of VAW. UN (2013) Report of the Special Rapporteur on violence against women, its causes and consequences, A/HRC/23/49/Add.2, 23rd Session HRC, 18 March. Available at http://www.ohchr.org/Documents/Issues/Women/A-HRC-23-49-Add-2_en.pdf

³²⁹ Elisabetta Zamparutti (ed) (2010), The Death Penalty Worldwide, 2010 Report, Nessuno Tocchi Caino/Hands off Cain: p. 102.

charged with obstruction of justice.³³⁰ The IACHR notes that although most countries in Mesoamerica have laws that clearly prohibit conciliation in cases involving sexual crimes, it is still practised along with mediation.³³¹

If victims/survivors are emotionally stable, free from risks and coercion and able to make an informed decision, mediation can be a viable option especially since prosecutorial processes are often long, expensive and traumatic. Despite reservations, States do consider alternative dispute resolutions viable, either to clear court backlogs or foster continuing relations, which may be impossible after a prosecutorial process. The **New Zealand** Law Commission recommends having the victim/survivor work directly with a specialist to ensure her needs are met. Some advocates however caution against the use of mediation in cases of domestic violence where the emphasis on reconciliation may overshadow the need for protection from imminent harm.

*Some countries regulate reconciliation by requesting State officers to verify its feasibility before granting approval. Law 1142 of 2007 in **Colombia** authorizes reconciliations in cases of VAW 'if it is beneficial to the victim', if her right to have reparations is guaranteed and if the Colombian Institute on Family Welfare (Instituto Colombiano de Bienestar Familiar) has analyzed the situation.³³²*

➤ **Ensuring that Plural Legal Systems Align with International Human Rights Norms and Standards**

Legal systems may hinder or facilitate processes of justice for VAW cases. Many countries have multiple sources of law based on their different cultures and religions and laws inherited from colonization. These might hamper access to justice for women who experience GBV.

States must ensure that customary or religious legal systems are harmonized with human rights principles

and all anti-VAW reforms to codified civil/criminal law equally apply to plural and customary/religious legal systems whether officially sanctioned or otherwise so long as they are practiced.

Customary and religious laws that are not officially sanctioned or recognized may still be practised, particularly in rural areas or among closed communities. In countries that purport to have a singular system but have diverse socio-cultural demographics, governments may informally allow certain orderings, especially in relation to marriage and family, at the community level. Where these orderings are available, women may resort to the jurisdiction of such laws, for myriad reasons, on their own agency or due to family and societal pressures and expectations, cultural identity or a lack of options.

States with multiple sources of law or diverse socio-cultural demographics must ensure that customary or religious legal systems are interpreted (or re-interpreted) to meet contemporary and changing dynamics, values and challenges. States should circumscribe the applicability of such laws if they breach women's human rights. The United Nations too has emphasized 'that it is important that States strongly condemn violence against women and refrain from invoking any custom, tradition or religious consideration to avoid their obligations with respect to its elimination as set out in the Declaration on the Elimination of Violence against Women'.³³³

► Customary laws are subject to constitutional equality guarantees in **South Africa**.³³⁴ The 2010 Constitution of **Kenya** similarly declares that customary laws inconsistent with its equality provisions are void.³³⁵

Plural legal systems exist in many countries — all countries studied in Africa and some in MENA and Asia-Pacific. The **Lebanese** Constitution, for example, grants different sectarian communities the right to oversee their members' personal and family matters. This has created 18 sectarian personal status laws with a total absence of uniformity and consistency in the relief granted to women. These laws neither comply with international standards nor the preamble of the

³³⁰ DDP Caribbean experts consultative meeting, 7-8 May 2013.

³³¹ IACHR, (2011) *Access to justice for women victims of sexual violence in the Mesoamerica*, para. 270 and 271. For example, Guatemala, Honduras, Mexico and Nicaragua. Available at <http://www.oas.org/en/iachr/women/docs/pdf/WOMEN%20MESOAMERICA%20eng.pdf>. Similarly, the laws of Moldova and Kazakhstan allow for dismissal of criminal proceedings on reconciliation between victims/survivors and perpetrators.

³³² Law 1142 of 2007 (Colombia) published on 28 June 2007.

³³³ A/RES/61/143 dated 30 January 2007, United Nations General Assembly resolution 61/143 of 2006, para 5.

Unsurprisingly, customary or religious legal systems are by today's standards less favourable to women since they were mostly conceived when women's roles, mobility and agency were severely restricted and patriarchy was unchallenged. Treaty bodies have also recorded similar concerns. UNSG Report, p. 97

³³⁴ Sec 2.

³³⁵ Sec 2(4).

Chart 27: DDP survey: VAW under customary or religious systems — Africa (n = 51; percentage)

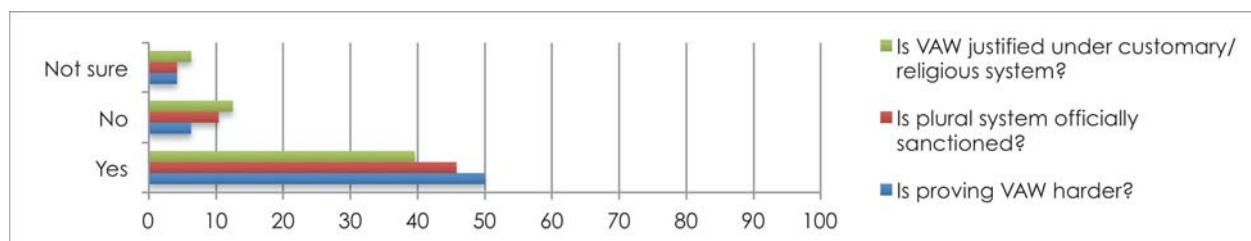
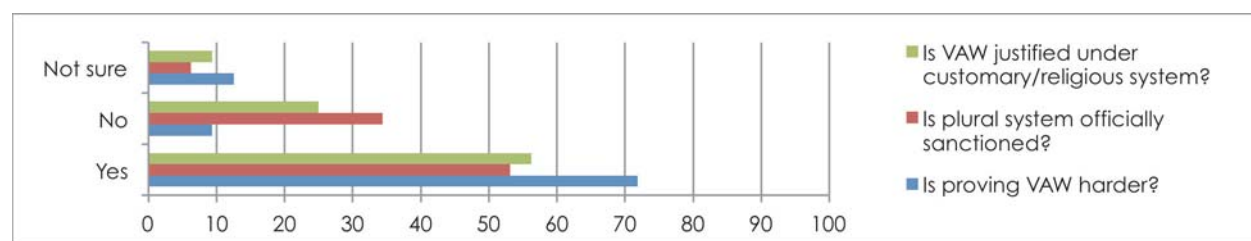


Chart 28: DDP survey: VAW under customary or religious systems — LAC (n = 67; percentage)



constitution, which states that international conventions supersede internal laws.³³⁶

The existence of plural legal systems in all **African** countries has a significant impact on the States' practice of due diligence. DDP survey respondents indicated that many customary and religious legal systems justify or condone VAW. Rarely do customary or religious legal systems, often based on patriarchal interpretations, act in women's best interests.

According to an expert quoted in a 2005 Women's Bureau report, all Senegalese cultures treat men and women differently. Men wield authority within the household and establish the overall climate and rules and women shoulder the burden of domestic life. Women are expected to respect and obey their husbands. Men often resort to violence to punish women who refuse to submit to these prescribed notions.³³⁷

In Latin America, for example, 36.7 per cent of respondents noted that plural legal systems were not officially sanctioned or recognized but were still practised, with disadvantages to women.

Among the countries surveyed in Asia-Pacific, **Bangladesh, India, Indonesia, the Philippines and Solomon Islands** officially sanction plural legal systems. These countries have a general system of law often based on the legal systems of their colonial masters. However, religious and customary laws of people from different religious and ethnic backgrounds address 'personal' matters. A substantial number (45.7 per cent) of respondents in these countries feel that religious or customary laws condone VAW to a certain extent by justifying it.³³⁸ They also opine that acts of VAW are typically harder to prove under religious or customary legal processes.

In the **United States**, jurisdictional barriers that preclude native women abused by non-native men from seeking remedies under native customary laws or US civil laws were only removed in 2013 with the re-authorization of the Violence Against Women Act (VAWA).³³⁹

³³⁶ Azza Charara Baydoun, (2011) *Cases of Femicide before the Lebanese Courts*, KAFA (enough) Violence & Exploitation, Beirut, p. 141. Available at: <http://kafa.org.lb/StudiesPublicationPDF/PRpdf43.pdf>.

³³⁷ Women's Bureau of the Senegalese National Strategy for Equality and Gender Equity Women's Bureau, 2005 report.

³³⁸ Missing value is at 20 per cent of sample (that is, 20 per cent of respondents in the sample group did not record their answers) and the percentage is based only on respondents who answered.

³³⁹ See *President Signs 2013 VAWA*, <http://www.whitehouse.gov/blog/2013/03/07/president-signs-2013-ava-empowering-tribes-protect-native-women>.

➤ ***Developing a Multi-sectoral and Multi-agency Approach***

Close collaboration between special prosecutorial offices, the police and medical/health service providers, including trauma and VAW specialists, show increased prosecution rates. The **Trinidad and Tobago** and **Jamaican** examples below exemplify the desirability of involving different agencies in responding to incidents of VAW. This multi-agency and multi-sectoral approach can enhance not only victim/survivor protection but perpetrator conviction.³⁴⁰

Trinidad and Tobago's Victim and Witness Support Unit, comprising 19 officers, works with victims from the time they make a report until the end of the legal process. The Unit works with the victim/survivor recording statements, conducting medical examinations and networking with agencies. This programme is funded by the State and the personnel are accountable to the Commissioner of Police. More officers are likely to be added to the programme, which will be extended to include victim/witness preparation for court appearances and to include tourists who fall victim to VAW.³⁴¹

In 1989, responding to the need for police sensitivity to victims of sexual assault, the **Jamaican** Constabulary set up the Centre for the Investigation of Sexual Offences and Child Abuse (CISOCA) that provides improved confidentiality and speedier and more effective investigation of sexual offences. Victims/survivors are also assisted through counselling and therapy. In addition to CISOCA's main office, six units have been established island-wide. Officers who work at these units receive special training in dealing with GBV and are also responsible for providing training in the investigation of sexual offences at the

Jamaica Police Academy and other designated organizations.³⁴²

The **Kenyan** WAKI Commission, formally known as the Commission of Inquiry on Post-Election Violence, was established following the country's 2007 presidential election. It documented violations during and immediately after the post-election conflict. Part of the Commission's mandate was to investigate and document widespread incidents of sexual violence. This increased the likelihood of perpetrators being prosecuted. The names of perpetrators were passed on to the Prosecutor at the International Criminal Court (ICC) who received permission from the Court in 2010 to launch investigations.³⁴³

³⁴⁰ For example, the United Kingdom's Call to End Violence against Women and Girls (2010) allows for the collection of forensic evidence for potential prosecution. Independent domestic violence advisors are trained to work with high-risk victims/survivors. The Center for Victims of Sexual Assault at Copenhagen University Hospital has developed standards, procedures and instructions aimed at improving multi-agency efforts to help rape victims/survivors. Standards have been established for registering rape victims/survivors and examining and treating sexually transmitted diseases. The Center has played a part in standardizing procedures for receiving rape victims/survivors across Denmark by setting up emergency-room instructions containing guidelines for hospital staff's contact with rape victims/survivors, the securing of evidence, police reports and referrals.

³⁴¹ Expert from Trinidad and Tobago at DDP's Caribbean expert consultative meeting.

³⁴² The United Nations Secretary General's Database on Violence against Women, *supra* note 145.

³⁴³ UN Women, (2012) *Progress of the World's Women, In Pursuit of Justice*, p 85; also see note 18 of chapter 4 in the publication.

Punishment refers to the obligation of imposing a sanction on perpetrators as a consequence of their having committed VAW. Sanctions can be civil, criminal, administrative or 'other' (for example, community or social sanctions) and at minimum, must ensure negative consequences for perpetrating VAW. States must also understand the systemic and structural inequalities that contribute to VAW to conceive of ways of prosecuting and punishing perpetrators in compliance with the due diligence principle. Failing to hold perpetrators accountable for VAW could leave victims/survivors powerless and unprotected.

➤ ***Holding Perpetrators Accountable: Certainty of Punishment***

According to the Convention of Belém do Pará, the Istanbul Convention, CEDAW Recommendation 19 on VAW and a number of international documents, States are duty-bound to act with due diligence to punish persons found guilty of VAW, regardless of whether the act is committed by private or State actors.³⁴⁴

Punishment should be a mechanism by which States ensure that those who commit violence face its consequences, thereby facilitating women's realization of the right to be free from any acts of violence.

According to a UN survey in Asia-Pacific, 72 to 97 per cent of rapists reported that they were never punished, confirming that impunity remains a serious issue.³⁴⁵ Holding perpetrators accountable for VAW is fundamental to the principle of punishment: it creates a level of predictability and certainty, suggesting that perpetrators will have to answer for VAW. Failure to do

so sends the message to society that VAW is both tolerated and tolerable.

The duty to punish VAW extends to crimes committed during armed conflicts. The UN Security Council has adopted five resolutions on 'Women, Peace and Security',³⁴⁶ which together comprise the international policy framework to promote and protect the rights of women in conflict and post-conflict situations. Such resolutions reiterate that States are obliged to end impunity and prosecute those responsible for genocide, crimes against humanity and war crimes including sexual and other violence against women and girls.³⁴⁷

➤ ***Ensuring Punishment is Commensurate with Offence***

States must enact laws that establish sanctions commensurate with the severity of the offence and meet international standards. Many States also include specific circumstances as aggravating factors for sentencing: severity of violence, relationship between perpetrators and victims/survivors (*loco parentis*, spouse), capacity of victims/survivors (minor) and recidivism of perpetrators.

Although relevant, it is not prudent to base decisions on severity of crime solely on the level of injury suffered by victims/survivors. This is because the gravity of some acts of VAW, such as domestic violence and sexual harassment, turn on their repetitive nature, even if such acts when taken individually may not cause grievous hurt.

Although many **Asia-Pacific** countries have enacted specific legislations on domestic violence, advocates report a tendency to 'down-criminalize' the offence, even where minimum punishments are prescribed.³⁴⁸

³⁴⁴ Convention Belém do Pará; CEDAW, *General Recommendations No. 19 Violence against Women* (Eleventh Session, 1992), para. 23; UN General Assembly, *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims*, *supra* note 267, Article 4; Council of Europe Convention on preventing and combating violence against women and domestic violence, *Council of Europe Treaty Series - No. 210*.

³⁴⁵ UNDP, UNFPA, UN Women and UNV, joint publication, (September 2013).

³⁴⁶ The Security Council Resolutions on 'Women, Peace and Security' include: 1325 (2000); 1820 (2009); 1888 (2009); 1889 (2009) and 1960 (2011).

³⁴⁷ On the duty to punish crimes against humanity, including those committed against women, see the recommendation issued recently by the CEDAW to the Argentinean government: UN CEDAW (2010) Concluding observations, Argentina 16 August, CEDAW/C/ARG/CO/6, p. 24, para. 26.

³⁴⁸ DDP Asia-Pacific consultation.

The general impression of CSO respondents in **Croatia** and **Bulgaria** is that the typical punishments for VAW are very lenient, not dissuasive enough and usually not commensurate with the crime. An advocate called on courts to 'stop the practice of giving the lowest sentences prescribed by law because it's harming both the victims and general public and have no effect on recidivism of perpetrators and prevention of violence'. Only the punishment for trafficking is considered commensurate with the crime.

➤ **Meeting the Goals of Punishment: Preventing Recidivism, Rehabilitating Perpetrators and Deterring Others**

Punishment should prevent recidivism, rehabilitate perpetrators, prepare them for reintegration and deter others from committing similar offences. Sentences that do not meet the goals of punishment foster recidivism and a sense of impunity, normalizing VAW in our collective imagination, resulting in its re-enactment in our daily lives.³⁴⁹

Often, States respond to public outcry, resulting from media attention on a rape, by increasing the sentence for the crime or enacting mandatory minimum sentences for rape and other sexual offences. Their argument is that increased sentences will decrease sexual violence or deter potential perpetrators and more closely reflect society's sentiments. Lenient sentences could discourage victims/survivors from reporting VAW³⁵⁰ and place them at risk from vengeful perpetrators released from custody.³⁵¹ However, research suggests that increased minimum sentences may not be effective within weak justice systems.³⁵²

Sentences that are too harsh, such as the death penalty, may deter police and prosecutors from pressing charges or continuing with the case and increase the likelihood of perpetrators challenging the charges. Minimum sentences may also lead to drawn-

out cases and increase the likelihood of withdrawal by victims/survivors as perpetrators advance 'not guilty' pleas. Judges may also exercise their discretion broadly, giving rise to wide discrepancies in sentencing.³⁵³ Ambiguity in statutes can also lead to ambiguity in charging and prosecution³⁵⁴ (and in perception of the crime) leading to lenient enforcement (for example, by allowing police and prosecutors to prefer a lesser charge for a severe crime).³⁵⁵

In **Asia-Pacific**, life imprisonment and death penalty are used in some countries, especially for the crime of rape. Unfortunately, there has been no study on the impact of the death penalty on prosecution or reporting rates as a result of these sentences.

Specific sexual crime laws appear to have minimized sentencing discrepancies and to have yielded stricter sentences.³⁵⁶ Even-handed enforcement and perception of the same is important to engender confidence in the law. For example, **Canadian** advocates raised concerns that African-Canadian women disproportionately bear the burden of mandatory minimum sentencing laws since they are eight times more likely than white women to be charged, convicted and sentenced, leading to accusations of discriminatory enforcement.

*Tunisia has a penal code provision under which spousal abusers are sentenced for five years.*³⁵⁷

*Algerian law does not specifically define the crime of rape. It uses the phrase *hark al-'ardh* (attack on honour), which alters the character of the crime from a violent sexual offence against an autonomous individual to an offence that affects family honour.*³⁵⁸

³⁴⁹ See also, UN General Assembly, *Report of the Secretary General: In-depth study on all forms of violence against women*, *supra* n. 143, para 76.

³⁵⁰ For example, advocates in Croatia indicated that suspended prison sentences were typically reserved for marital rape, sexual assault and domestic violence.

³⁵¹ See *Opuz v. Turkey*, ECHR, *supra* n. 9. Refer also to DDP survey on women's fear of repercussions from perpetrators.

³⁵² Thompson and Simmonds, (2012) *Rape Sentencing Study: Statutory Sentencing for Rape, Defilement, Sexual Assault in East, Southern and Central Africa*, Population Council, Zambia, available at http://www.popcouncil.org/pdfs/2012RH_RapeSentencingStudy.pdf.

³⁵³ Zimbabwe and, under certain circumstances, Lesotho, Namibia and South Africa.

³⁵⁴ *Ibid.*

³⁵⁵ For example, Finland, (2010) Amnesty International, *Case Closed, Rape and Human Rights in the Nordic Countries Summary Report*, 11-13. Available at <http://www.amnesty.org/en/library/asset/ACT77/001/2010/en/5ba7f635-f2c3-4b50-86ea-e6c3428cf179/act770012010eng.pdf>.

³⁵⁶ ACCORD (2009) 'Making the Law Count: A five Country Judicial Audit', p 16. Available at <http://www.acordinternational.org/silo/files/making-the-law-count-a-five-country-judicial-audit.pdf>. However, many Asia-Pacific countries do not have specific legislations on VAW and resort to general criminal law.

³⁵⁷ Woodrow Wilson International Centre for Scholars, 2005, 'Best Practices' *Progressive Family Laws in Muslim Countries*, Rand Corporation.

³⁵⁸ Article 336 of the Algerian Penal Code. See also Freedom House, *Special Reports: Algeria*. Available at: <http://freedomhouse.org/template.cfm?page=384&key=246>

The application and impact of high minimum sentences requires further study. Meanwhile, a more holistic approach must be taken to addressing VAW while strengthening the response of the justice system.

The DDP survey, CSO respondents were also asked about typical punishments for specific acts of VAW, whether these were commensurate with the crime, prevented recidivism, rehabilitated the perpetrators and deterred others.

It must be noted that perpetrators are not merely those who commit VAW but, in particular circumstances (such as conflict), include those who are in commanding positions when such atrocities are committed.³⁵⁹

In the **Democratic Republic of Congo**, a commanding officer of soldiers who raped dozens of women in the town of Fizi, was brought to trial before a mobile court and found guilty along with three of his officers. Each was sentenced to 20 years in prison. Five enlisted men were also convicted and sentenced to 10–15 years in prison.³⁶⁰

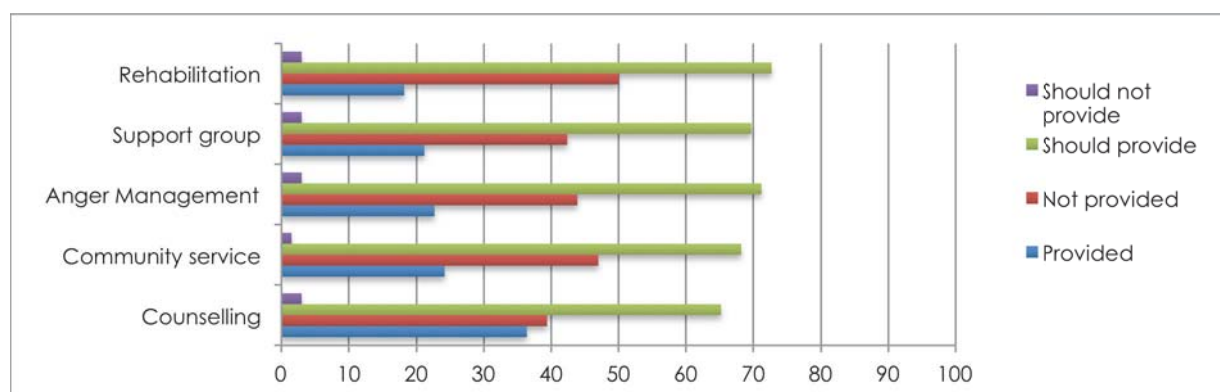
➤ *Broadening the Available Punishment Regime beyond Incarceration, Where Appropriate*

Incarceration appears to be the most common form of punishment for all forms of VAW. For example, in all the MENA countries surveyed, imprisonment is the only punishment for those found guilty of sexual offences against women. Sometimes, however, incarceration may not be the only ‘punishment’ sought or preferred by victims/survivors, especially in cases of domestic violence (intimate partner violence). Incarceration may discourage some women from reporting the violence since it would render their partners, possibly the sole breadwinners of the family, unemployed. Their partners could also retaliate harshly.³⁶¹

The DDP survey disclosed that CSO respondents wanted community service, counselling, rehabilitation and batterer-intervention programmes (such as anger management) included in the punishment regime. Respondents from LAC overwhelmingly supported other forms of punishment.

Although advocates have mixed reactions to incarceration alternatives,³⁶² they generally agree that these deserve consideration. Where appropriate, for example, States could consider laws that allow judges

Chart 29: DDP survey: Broadening the punishment regime — LAC (n = 67; percentage)



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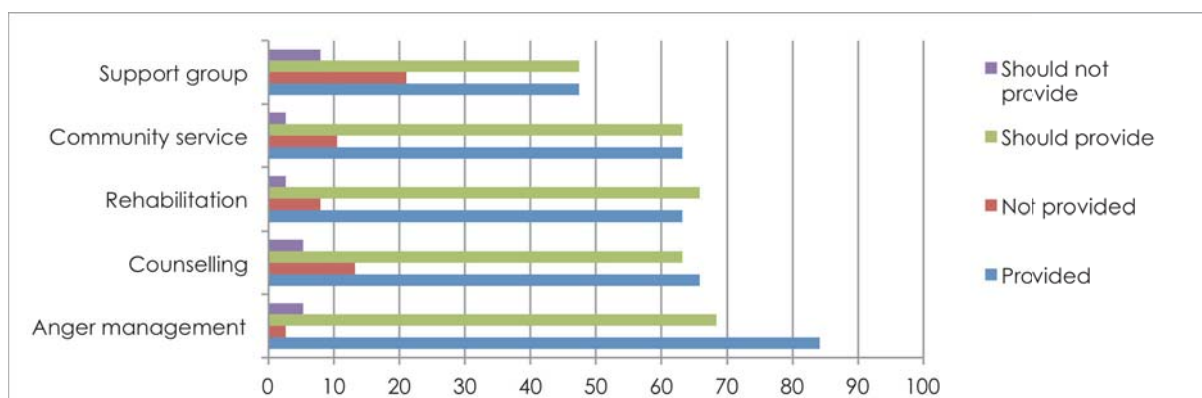
³⁵⁹ See Nuremberg principles, http://legal.un.org/ilc/texts/instruments/english/draft%20articles/7_1_1950.pdf.

³⁶⁰ See *Congolese soldiers go on trial accused of raping more than 60 women*, available at <http://www.theguardian.com/world/2011/feb/10/congolese-soldiers-rape-trial-gender-court>

³⁶¹ The findings of the DDP survey suggest that States must address fear of repercussions since it is the most-quoted complaint of victims/survivors and is deemed a significant obstacle to women reporting VAW by CSO respondents globally. See Chapter on ‘Prosecution’.

³⁶² This is particularly so with respondents from CANZUS.

Chart 30: DDP survey: Broadening the punishment regime — CANZUS (n = 38; percentage)



to impose other punishments in addition to or (more rarely) instead of incarceration. Perpetrators can be allowed to continue working to pay compensation and, where applicable, maintenance (child support and alimony) to victims/survivors. This option should only be exercised if the safety of victims/survivors can be guaranteed.

Batterer programmes provide a neutral space to encourage perpetrators to review their actions and understand the underlying factors influencing their behaviour. Interventions for batterers must prioritize safety of women and children and prevent recidivism.³⁶³ Some States also include counselling for perpetrators.

*By adopting perpetrator accountability as the core principle in its punishment regime, **Grenada** mandatorily imposes counselling for perpetrators of VAW in its batterers' intervention programme.³⁶⁴*

Advocates stress the need for additional research to ensure that the design and development of alternatives are grounded in evidence and serve as viable solutions. For example, evidence is required on when probation is better than incarceration and how States can ensure the safety of victims/survivors while perpetrators are on probation. Alternatives may also be more effective if applied to first-time offenders rather than recidivists. Probationary orders must be balanced with the protection of women and girls, particularly minors.

³⁶³ UNWOMEN, (2012) Men and Boys Knowledge Module 'Perpetrators of violence/batterers', Virtual knowledge centre to end violence against women (January), p. 131. Available at <http://www.endvawnow.org/uploads/modules/pdf/1328564467.pdf>.

³⁶⁴ A UN Women sponsored programme called *Partnership for Peace*.

It is also good practice for States to undertake periodical assessment of the risks for victims and their next-of-kin before and after authorizing alternative sanctions to incarceration. States must also ensure that the gravity of VAW crimes is not diminished by such alternatives.

*In **CANZUS**, a range of batterer intervention programs aim to reduce recidivism and to help ensure survivors' safety. Advocates urge research to identify effective evidence-based programs.*

► **The Bahamas** has been running a successful batterers' programme for the past 20 years. It is run by a clinical psychologist and funded by the Catholic Church. The 26-week programme is either voluntary or court-mandated. Seventy-five per cent of the perpetrators who have completed the programme are said to be violence-free in their relationships.³⁶⁵

Some advocates also suggest exploring restorative justice models, particularly those that can reach minority communities and/or are grounded in the culture and traditions of victims/survivors. For example, **Canadian** advocates indicate that native traditions such as 'shunning', whereby the community isolates the alleged perpetrator/abuser, may offer promising alternatives to criminal justice interventions, especially in small communities where members desire their communities' respect and approval. States could employ public shaming as punishment for perpetrators of VAW. However, this must be balanced with defendants' rights to be re-integrated into society after serving their sentence.

³⁶⁵ Shared by participant at the Caribbean experts' regional consultation, May 2013.

In El Paso, Texas (USA), police post pictures of anyone prosecuted for domestic violence.³⁶⁶

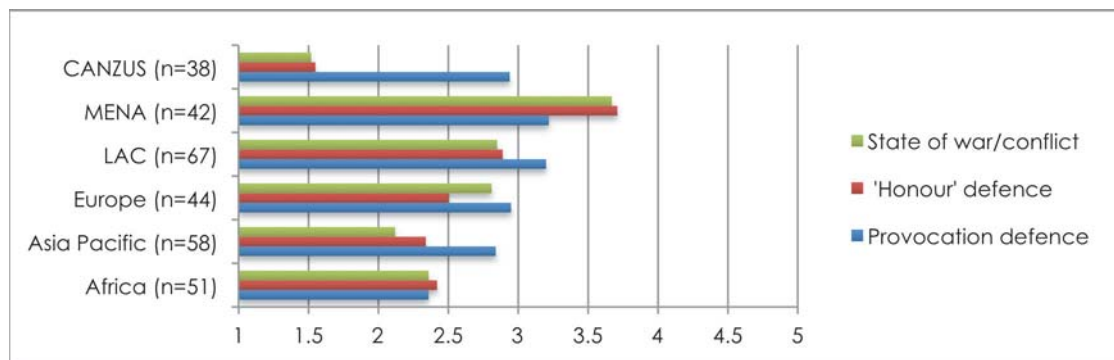
➤ **Ensuring Punishment is Premised on the Principle that VAW is Not Justifiable/Excusable**

Punishment focuses on making perpetrators accountable for their actions. Due diligence in punishment focuses on perpetrator accountability and is premised on perpetrators being held responsible and, therefore, liable for their actions. States should ensure that punishment is premised on VAW not being justifiable or excusable.

Most DDP respondents from MENA noted that provocation, honour and state of war/conflict were often considered mitigating factors when sentencing in VAW cases.³⁶⁷ Most LAC respondents felt that provocation was taken into account in sentencing.³⁶⁸ In the other regions, most respondents felt that these factors did not influence sentencing. However, even a minority believing that these factors are relevant is indicative that they are not completely absent, just that their influence may have waned to some extent.³⁶⁹ The DDP survey also indicates that most respondents in every region believe that none of these factors should influence sentencing.

In post-conflict countries, concerns over impunity or VAW during conflict remain high. For example, advocates indicated that crimes such as rapes perpetrated during the conflict in **Croatia** remained unpunished.

Chart 31: DDP survey: Factors influencing sentencing — all regions
(n = 300; 1 = not at all; 5 = very much)



³⁶⁶ <http://home.elpasotexas.gov/police-department/imugs.php>

³⁶⁷ No punishment is prescribed for a man killing his adulterous wife or female relative in Oman. In Yemen, the law provides for a reduced sentence. In Jordan and Lebanon, the provisions that exculpate perpetrators based on 'honour' have been amended to allow for reduced sentences. Syria removed 'honour killing' as a mitigating factor and provided for a minimum sentence of two years instead. In cases of sexual harassment or rape, women still bear the burden of proving conformity with society's norms, failing which perpetrators may escape punishment or reduced sentences.

³⁶⁸ Latin American countries still provide that sentences can be reduced or commuted if perpetrators of sexual violence invoke 'honour' or 'provocation'. Various Mexican states reduce sentences for the killing of an unfaithful partner.

³⁶⁹ According to anthropologists, a 'culture-of-honour' stance links the idea of male honour to physical prowess, toughness and courage. Men define themselves as dominant to women, using violence if necessary, thus normalizing VAW in our consciousness. See Abdul Aziz, supra n.88.

5. PROVISION OF REDRESS AND REPARATION FOR VICTIMS/SURVIVORS

The due diligence principle dictates that the State must provide redress and reparation. However, this aspect of the due diligence principle is probably the least developed. If punishment deals with perpetrators of VAW, redress and reparation looks at the needs of victims/survivors.

Redress and reparation imply any form of remedy or compensation made available to victims/survivors of VAW to address the harm or loss suffered by them. Reparation measures aim to eliminate or mitigate the effects of the violence committed.³⁷⁰ This could take different forms, from monetary compensation and apology to symbolic reparations.

Victims/survivors of VAW should be treated with compassion and respect and given full access to justice and redress mechanisms.³⁷¹ States should review, modify or adopt policies and legislation to ensure that victims of VAW have effective access to restitution, compensation, rehabilitation, satisfaction, guarantees of non-repetition or other effective redress measures.³⁷² Reparations are sometimes used as a transformative tool, serving not merely the individual but societal needs; a country's understanding of VAW can be changed by empowering women.

United Nations' Basic Principles and Guidelines on the Right to a Remedy and Reparation for Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law provides a normative framework on the obligation to grant reparations.³⁷³ It calls on States to ensure that its domestic laws, to the extent possible, ensure that those who have suffered violence or trauma benefit

from special consideration and care to avoid further trauma in the course of legal and administrative procedures designed to provide justice and reparation.

The UN Declaration on Violence against Women, CEDAW, the Convention of Belém do Pará,³⁷⁴ the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, and the Nairobi Declaration on Women's and Girls' Right to a Remedy and Reparation³⁷⁵ call on States to provide access to justice and effective remedies to victims/survivors.

The former UN Special Rapporteur on VAW, Rashida Manjoo, focused on reparation in her 2010 thematic report. She discussed both procedural (the process by which claims of victims/survivors are heard and decided) and substantive remedies (the measures of redress granted to victims/survivors).³⁷⁶

Reparations can take the following forms:

- 1) restitution or measures to restore victims to their original situations before the violation, including restoration of liberty, human rights, employment, identity, family life and citizenship, return to place of residence and return of property;
- 2) compensation for any economically assessable damage as appropriate and proportional to the gravity of the violation, including physical or mental harm, lost opportunities for employment, education and social benefits, and material and moral damages;
- 3) rehabilitation, including medical and psychological care as well as legal and social services;

³⁷⁰ Blake v. Guatemala. Reparations and Costs. Judgment of 22 January 1999. Series C No. 48, para. 31-34.

³⁷¹ United Nations General Assembly, Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, Resolution 40/34, 29 November 1985. Available at <http://www.un.org/documents/ga/res/40/a40r034.htm>.

³⁷² UN General Assembly, Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims, *supra* note 267, Articles 18-23; Radhika Coomaraswamy, (1999) United Nations, Report of the Special Rapporteur on violence against women, its causes and consequences, submitted in accordance with Commission on Human Rights resolution 1995/85 (Violence against women in the family), UN Doc. E/CN.4/1999/68, 10 March 1999, para. 25, United Nations.

³⁷³ UN General Assembly, Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims, *supra* note 267. See also UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power *supra* n. 371.

³⁷⁴ The Convention of Belém do Pará mandates that States establish fair and effective legal procedures for victims/survivors of VAW and necessary legal and administrative mechanisms to ensure that victims/survivors have effective access to restitution, reparations or other just and effective remedies. Convention of Belém do Pará Art. 7 (f) and (g).

³⁷⁵ An initiative of the women's movement to advocate reparation for victims/survivors of sexual violence in situations of conflict.

³⁷⁶ Rashida Manjoo, (2010) Annual Thematic Report of the UN Special Rapporteur on VAW, its causes and consequences, Human Rights Council, U.N. Doc. A/HRC/14/22 dated 19 April, para 12.

4) measures of satisfaction including, among others, the verification of facts and full and public disclosure of the truth, ascertaining the whereabouts of the missing, public apologies, judicial and administrative sanctions against persons liable for the violations, commemorations and tributes to the victims; and

5) guarantees of non-repetition, including measures contributing to prevention, such as ensuring effective civilian control of military and security forces, protecting human rights defenders, providing human rights education and reviewing and reforming laws contributing to or allowing gross violations of international human rights law.³⁷⁷

Many States have no specific remedies for victims of VAW. Therefore, women can only resort to ordinary laws to claim reparation through the criminal, civil or administrative channels. Most women usually opt out of such processes, thus severely limiting their options when seeking justice. Participants at all DDP regional experts' consultative meetings confirmed that the provision of redress is the least developed and applied component of the due diligence principle. Even the work undertaken by CSOs tends to focus on prevention and protection rather than reparation. Consequently, there is a shortage of data related to provisions for redress, mechanisms, procedures and measures of reparations.

In response to the DDP questionnaire, most CSOs indicated that specific remedies for victims/survivors of

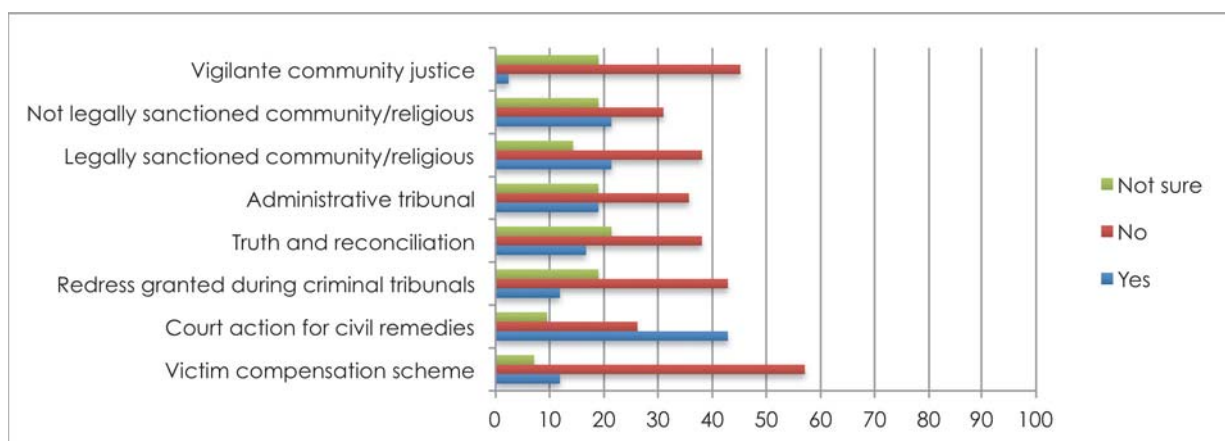
VAW were either non-existent or that they were unsure of its existence. Respondents from MENA indicated that there were several remedies available to victims/survivors apart from redress granted through the formal justice system, namely criminal or civil proceedings; in Europe, apparently, the formal system seems to dominate almost to the exclusion of other remedies.

Although CSO respondents were not in favour of community and religious tribunals (see Charts 32 and 33), an increasing number of countries have adopted a variety of these approaches. These are typically adopted for symbolic reparation and 'reconcile' or 'cleanse' perpetrators and victims and endeavour to restore collective harmony and rebuild broken relationships.³⁷⁸

However, advocates have raised concerns that the power dynamics operative in these processes do not necessarily further the aim of eliminating of VAW.³⁷⁹ As with similar processes in prosecution,³⁸⁰ the values and perceptions that underpin these tribunals must be examined to ensure that they adopt human rights standards and do not re-enact the discriminations and prejudices that facilitate VAW. Another measure that may be akin to restorative justice is the 'victim impact statement' during criminal or civil court proceedings.

Such impact statements are given by victims usually at the end of the trial after the perpetrator is found guilty. Despite shortcomings, as long as victims/survivors

Chart 32: DDP survey: Availability of remedies and reparations for victims/survivors of VAW —MENA
(n = 42; percentage)



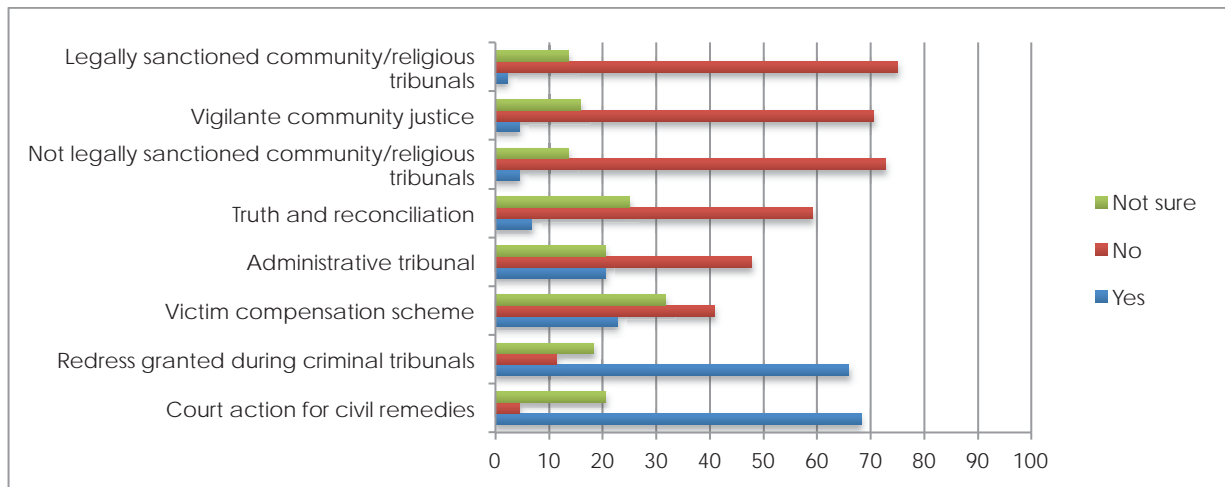
³⁷⁷ *Ibid.*

³⁷⁸ *Ibid.*

³⁷⁹ New Zealand is engaged in a two-year research project evaluating effective interventions for victims/survivors.

³⁸⁰ See 3.3 Prosecution

Chart 33: DDP survey: Availability of remedies and reparations for victims/survivors of VAW — Europe
(n = 44; percentage)



regard this process as cathartic and no presumptions are raised against those who decline to use it, the process provides yet another avenue for positive participation by victims/survivors.

➤ *Adopting a Victim/Survivor-oriented Perspective*

Reparations should address different effects of VAW. Women are not a homogeneous group and, therefore, authorities should grant reparation according to the circumstances of each case and the needs of victims/survivors.³⁸¹

Women's participation and perspectives can help shape, monitor and evaluate reparation schemes that best suit their living situation and needs. The process can simultaneously empower victims/survivors. For example, in **Sierra Leone**, female victims were asked what they wanted as reparation. They requested a boat to enable them to carry their produce (fabrics) to the market. Thus, these women were able to advance their trade and empower themselves.³⁸²

³⁸¹ Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women 1994, 'Convention of Belém do Pará', Art. 9.

³⁸² Discussions at Expert Group Meeting, 26-27 April 2011, Boston. See also UNSRVAW reparations report, *supra* n. 378. Women's participation is also fundamental in the context of post-conflict national reparation programmes. The UN Security Council, through the five resolutions on 'Women, Peace and Security', and particularly resolutions 1325(2000)

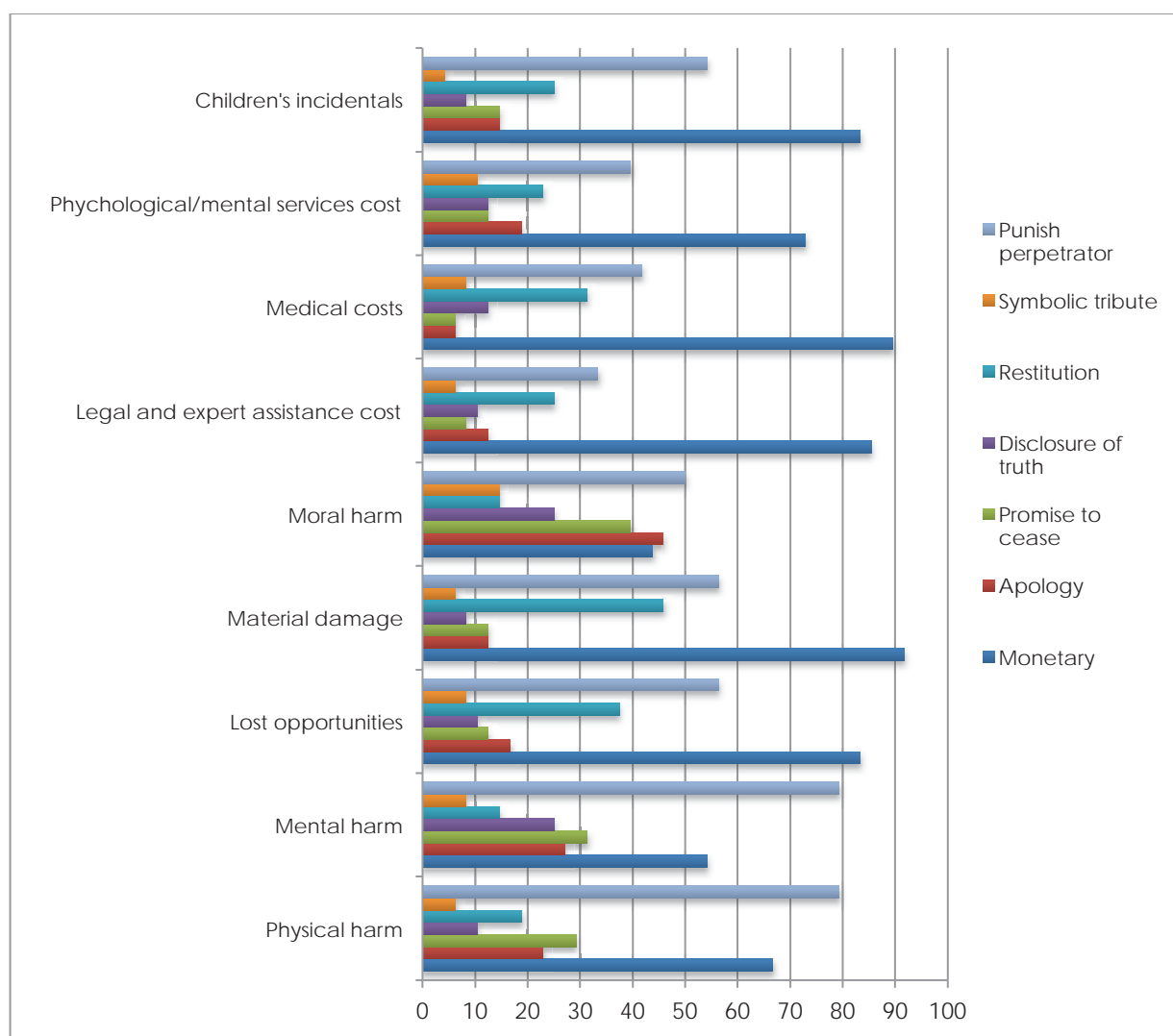
Pain and suffering, loss of employment or education opportunities, costs and expenses incurred or to be incurred on medical and legal fees are the usual damages allowed in civil suits. However, these may be capped. International law, on the other hand, takes a broader view of damages, which often encompass physical and mental harm as well as lost opportunity.

In theory, there are several types of redress available to victims/survivors of VAW. The DDP survey asked respondents to indicate a maximum of three most important forms of redress for each item on a list of possible harm or loss usually suffered by victims/survivors.

The possible redress and reparation that may be afforded to victims/survivors are diverse but for the most part, States focus on monetary compensation and punishing perpetrators as an adequate remedy. Yet, CSO responses from Africa and CANZUS reveal that there are other remedies worth considering and enforcing. Monetary compensation is regarded as one of the most important for all harm or loss; punishing perpetrators is considered the most important for physical and mental harm or loss. For moral harm, African CSO respondents regard monetary compensation, apology, promise to cease and punishing perpetrators as almost equally

and 1889(2009), also emphasized *participation* of women in all phases of the peace process.

Chart 34: DDP survey: Most important redress for specific harm or loss — Africa (n = 51; percentage)



important (Chart 34). In CANZUS, disclosure of truth was also deemed important (Chart 35).

Within a region, opinions varied based on a country's historical experience and women's needs, among other factors. For example, none of the respondents from the **Democratic Republic of Congo** felt that apology was an important redress for any type of harm or loss but 44.4 per cent of **Nigerian** respondents indicated that it was an important redress for physical harm and 55.6 per cent felt it was an important redress for mental harm.

Although symbolic reparation measures were least favoured by CSO respondents, these could facilitate

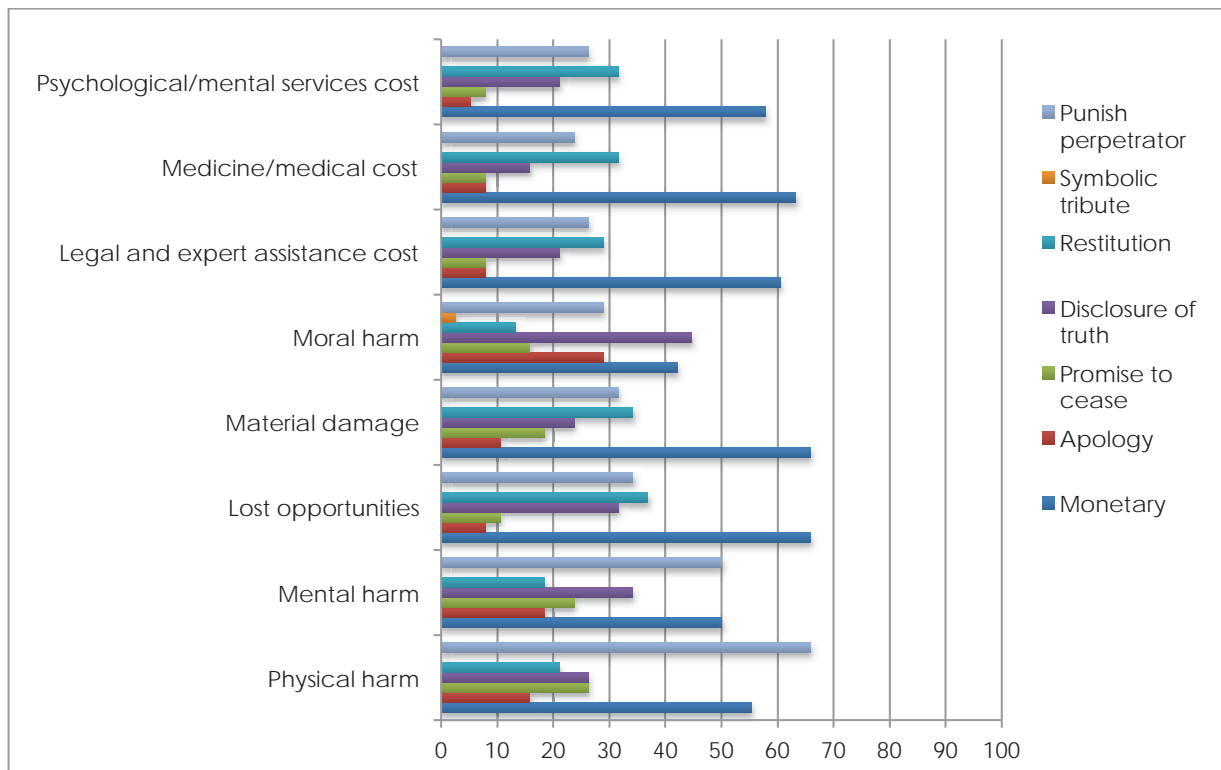
moral and social rehabilitation on an individual and collective level.³⁸³

The **Caribbean** experts' consultative meeting witnessed intense debate about the appropriateness of monetary compensation for victims/survivors of violence.

A victim-oriented perspective to reparation needs greater innovation to fully remedy the harm/wrong/loss suffered by victims/survivors. Such an approach also implies that reparations are not conditional upon victims/survivors co-operating with the authorities. For example, in cases of trafficking, protection and reparation are often afforded only to

³⁸³ For example, Case of Campo Algodonero, *supra* note 8.

Chart 35: DDP survey: Most important redress for harm or loss — CANZUS (n = 38; percentage)



those willing to participate in the prosecution of perpetrators.

➤ Ensuring Proportionality to Gravity of Harm or Loss Suffered

Reparations should be related to the violations that were suffered, facts of each case, gravity of violations and damage/harm/loss proven, and measures requested to remedy the same.³⁸⁴ Compensation should be provided for any economically assessable damage, as appropriate and proportional to the gravity of the violation.³⁸⁵ Satisfaction can include public apologies or other declarations intended to restore the rights, dignity and reputation of victims/survivors; disclosure of truth and verification of

facts; symbolic tributes; sanctions against persons liable for violations and cessation of the violence.³⁸⁶

CSO respondents indicated that in post-conflict Croatia, besides monetary compensation, preferred reparation included apologies and restitution which allowed victims to assume, as far as possible, their earlier life.

➤ *Special laws on VAW recently passed in Colombia, El Salvador, Guatemala and Mexico adopt an international human rights reparations framework. For example, the Law against Femicide and other Forms of Violence against Women (2008) in Guatemala establishes the duty to provide reparation proportional to the damage caused. The particular vulnerability of victims/survivors must also be taken into account, considering, for instance, factors such as age or ethnic origin.³⁸⁷*

³⁸⁴ IACtHR, Case of Rosendo-Cantú et al. v. Mexico, *supra* note 238, par. 178 and 204; IACtHR, Case of Fernández-Ortega et al. v. Mexico, *supra* note 275, para. 194. See also: UN Basic Principles and Guidelines on the Right to a Remedy and Reparation for Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, Art. 18.

³⁸⁵ UN General Assembly, Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims, *supra* note 267.

³⁸⁶ *Ibid.*

³⁸⁷ See for example, IACtHR, Case of Rosendo-Cantú et al. v. Mexico, *supra* note 238, para. 206.

➤ **Assuming Responsibility for
Recuperating Reparation from
Perpetrators**

Victims who pursue compensation from perpetrators may be exposed to further risk and trauma from continued contact with them. Women might only rarely manage to obtain orders for compensation and even when they do, lack of enforcement mechanisms mean that perpetrators are not made to pay. States should ensure victims/survivors are compensated by assuming the responsibility for recuperating compensation from perpetrators.³⁸⁸

The DDP survey found that only 3 - 25 per cent of CSO respondents in Africa, Asia-Pacific and MENA felt that compensation funds were available for victims/survivors of VAW. An overwhelming number of MENA respondents indicated that there was no State allocation to pay compensations to victims/survivors. This was confirmed by participants at the MENA experts' consultation. Availability of compensation funds is low as many States are reluctant to take on the financial burden of such a fund, preferring instead to make victims/survivors responsible for recovering compensation from perpetrators.

In a few countries, compensation schemes are set up to provide assistance to victims/survivors in criminal cases against their perpetrators.³⁸⁹

*The law on compensation of crime victims in **Bulgaria** has been in force since 2007. It provides compensation for the most severe criminal cases³⁹⁰ and covers only certain types of material damage. The amount allocated is rather limited (about €1,260 per case). Advocates raise concerns about accountability for this fund and its inaccessibility to women.*

³⁸⁸ In fact, international law recognizes that if States have already provided reparation to victims/survivors, the parties found liable for reparation should compensate the States. See Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, Principle 15, UNGA res. 60/147 dated 16 December 2005.

³⁸⁹ Based on responses to question F.4(a) of the questionnaire. As many as 43.4 per cent of respondents from Asia-Pacific reported that their governments did not have allocations for such compensation and 24.5 per cent were unsure. Only 24.5 per cent of the respondents believed their governments had such allocations.

³⁹⁰ Namely, terrorism, murder, intentional grievous bodily harm, molestation or rape resulting in serious damage to health, human trafficking, crimes committed by the order or decision of an organized criminal group and other serious intentional crimes resulting in death or serious injury.

*In **Spain**, there is a fund for reinsertion (RAI) awarded to victims/survivors of domestic violence (€480).*

Where victim compensation programmes exist, eligibility and awards vary greatly across jurisdictions. Notably, some jurisdictions impose burdensome eligibility requirements, such as prompt reporting to police, cooperation with police and prosecutors, and, in some cases, precluding recovery to victims with any criminal record.³⁹¹

***Canada's Criminal Injuries Compensation Board** provides redress for victims of violent crimes including domestic violence and sexual assault, and for physical as well as psychological harm³⁹². There is no guarantee the amount one can recover however and advocates point to a need for greater awareness raising and outreach, especially to marginalized communities.*

*The **United States** too has a Victim Compensation fund which provides redress for victims of violent crimes, including sexual assault and rape. These programmes are found in every state and are funded by defendant fines rather than by government funding. Yet advocates complain these programmes remain under-publicised and stringent eligibility requirements limit access.*

*Victims of sexual violence can receive up to 16 weeks of counseling from **New Zealand's** Accident Compensation Corporation, though funding constraints threaten the sustainability of this programme.*

The Sexual Offences Act in **Trinidad and Tobago** allows compensation to be granted to victims/survivors of VAW without a civil trial.³⁹³ The law calculates the amount of money depending on gravity of the violation. In practice, the compensation is disbursed within a month after it is awarded.

States assuming responsibility for recuperating reparations from perpetrators would also mean victims/survivors do not incur costs before obtaining reparation, which could prevent them from even accessing the process.

³⁹¹ See, e.g., Julie Goldscheid, (2004) *Crime Victim Compensation in a Post-9/11 World*, 79 TULANE L. REV. 167.

³⁹² *Criminal Injuries Compensation Board*, available at <http://www.cicb.gov.on.ca/en/eligible.htm>

³⁹³ Participant from Trinidad and Tobago, Caribbean experts' consultative meeting.

➤ **Working Towards Institutional Reform and Transformative Change**

The effect of reparation should not only be restitution, but also rectifying underlying causal factors of VAW and discrimination. Reparations must aim to transform power relations inherent in structural discrimination that fuel violence and exclusion, such as patriarchy and racism.³⁹⁴ Any process that re-establishes the same structural context of violence and discrimination is unacceptable.³⁹⁵

Most victims/survivors would want cessation of and guaranteed non-repetition of violence. This is supported by the DDP survey's findings that victims/survivors most fear repercussions from perpetrators (see 3.3 Prosecution). Guarantees of non-repetition include State obligation to undertake institutional reforms, supported by adequate resources to effectively prevent VAW and to establish mechanisms that guarantee the investigation and punishment of VAW and reparation of victims. They also include preventive measures that are capable of serving as a transformative tool, particularly in challenging the underlying causes of violence and changing mindsets.³⁹⁶

*In a case involving Mexico, the IACtHR ruled that a community centre be established, where human rights and women's human rights educational activities could be carried out. In the impoverished and remote indigenous community where this was ordered, the centre could help empower women who suffered exclusion and discrimination even before they were subjected to violence.*³⁹⁷

Guarantees of non-repetition can only be provided if governments implement their human rights obligations. Reparations can also be linked to State accountability for suffering or facilitating impunity as in the cases of Campo Algodonero, Inez Fernández Ortega and Valentine Rosendo Cantú, where it was noted that reparations must transform the underlying causes of violence.

Where possible, victims should receive restitution to enable them to resume, as closely as possible, the life they enjoyed prior to the incident. This includes restoration of liberty, human rights, employment, identity, family life and citizenship, and return to place of residence and of property.³⁹⁸

In determining reparations, States must, where appropriate, also consider cultural differences assessed according to the principle of equality with the objective of challenging prejudices and stereotypes.³⁹⁹ When victims/survivors belong to a specific group, for example, indigenous communities, State obligation to provide redress and reparation should include transformative measures that encompass the entire community.⁴⁰⁰

³⁹⁴ Catalina Díaz, Camilo Sánchez, Rodrigo Uprimny, *Reparar en Colombia: los dilemas en contextos de conflicto, pobreza y exclusión*, (Centro Internacional para la Justicia Transicional (ICTJ) y Centro de Estudios de Derecho, Justicia y Sociedad (DeJusticia): Bogotá 2010, p. 38.

³⁹⁵ *González et al. (Cotton Field) v. Mexico*, IACtHR, *supra* note 8, para. 450-451.

³⁹⁶ See Chapter 3.1 Prevention.

³⁹⁷ See, for example, IACHR, Case of Fernández-Ortega et al. v. Mexico, *supra* note 273, para 308 (22).

³⁹⁸ Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power emanating from the deliberations of the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders and General Assembly resolution 40/34 of 29 November 1985.

³⁹⁹ IACHR, *Access to justice for women victims of sexual violence in the Mesoamerica*, para. 111.

⁴⁰⁰ *Fernández-Ortega*, IACtHR, *supra* note 273. As the Court noted, 'reparation measures must allow the victim to reincorporate herself into her living space and cultural identity, as well as re-establishing the fabric of the community'. See also *Aloeboetoe et al. v. Suriname*, IACtHR, Reparations and costs. Judgment of 10 September 1993. Series C. No. 15, paras. 96 and 97; *Plan of Sánchez Massacre v. Guatemala*, IACtHR, Reparations and Costs. Judgment of 19 November 2004. Series C No. 116, para. 86, and *Moiwana Community v. Suriname*, IACtHR, Preliminary Objections, Merits, Reparations, and Costs. Judgment of 15 June 2005. Series C No. 124, para. 194.

CONCLUSION

In the past 60 years, great strides have been made in setting international norms and standards for State behaviour, including measures for eliminating VAW. Among these is the international legal obligation for the State to act with *due diligence* to end violations of women's human rights, regardless of who commits the violations.

These norms and standards have been entrenched in international legal instruments, in particular the Organization of the American States (Convention of Belém do Pará and the Inter-American Court and Commission of Human Rights) and the Council of Europe (European Convention for the Protection of Human Rights and Fundamental Freedoms, the Istanbul Convention and the ECHR). They have been further bolstered by UN initiatives such as the Decade for Women (1976–1985) and 1975 World Conference (and NGO Tribunal) of International Women's Year in Mexico City and International Tribunal on Crimes against Women in Brussels in 1976;⁴⁰¹ the 1993 Vienna World Conference on Human Rights; Beijing World Conference on Women, 1995; and post-Beijing World Conferences on Women.

The past few decades have also seen great progress in establishing implementation and monitoring mechanisms and in raising awareness and engendering political will to end this pandemic of violence; a thriving, engaged, and diverse group of stakeholders, including a proliferation of CSOs, has also evolved. Yet VAW remains one of the most pervasive human rights violations. The gap is created by lack of informed action and effective implementation. The DDP was launched against this backdrop, to add conceptual clarity to the meaning, understanding, and use of the due diligence principle in the context of VAW. It aimed to examine the constituents of effective State action to end VAW, hoping to bridge practice with policy or, in short, to help fill this implementation gap.

One of the ways the DDP set about doing this was by collaborating with CSOs, — gathering data and assessments from 295 CSOs across 48 countries — individual experts and advocates. CSOs have, in recent decades, assumed pivotal roles in providing

services, conducting research and undertaking preventive programmes on VAW. Indeed, CSOs have gained recognition from governments and inter-governmental organizations for their role in combating VAW and are uniquely positioned, working directly with victims/survivors and with governments to influence laws, programmes and policies.

The following essential cross-cutting issues emerged from the study:

- Programmes, laws and policies must address underlying causes of VAW and seek to eliminate risk factors. They must aim to change mindset, behaviour and attitudes and effect social transformation. Without such a focus, any measure will be superficial and unable to lay strong foundations toward eliminating VAW. Through their actions, States can create, develop and encourage a culture that eschews VAW.
- Close coordination among agencies handling VAW, such as a victim/survivor-oriented multi-sectoral approach, increases effectiveness. Preserving victim/survivor safety, dignity and integrity throughout the entire process must be prioritized.
- To increase women's confidence in State processes all agencies must receive continual training and undergo periodical evaluation to assess efficiency and competency. Agencies must work to empower victim/survivors from first contact to achieving the desired outcome for the victim/survivor in all areas of the 5P's.
- Laws, programmes, policies and services must be widely publicized and accessible. Strategies, no matter how innovative, are effective only if they are accessible (to communities at risk as well) and sustainable. Ending VAW requires engaging States and CSOs and mobilizing society to eliminate tolerance and justifications for VAW.

The resulting Due Diligence Framework presented here seeks not only to provide a clearer understanding of what governments and other key stakeholders are

⁴⁰¹ See *UN Secretary General Study on Ending Violence against Women: From Words to Action*, *supra* note 112.

doing to end VAW, but also to point out what else is possible. It strives to be a holistic, comprehensive, integrated framework, based on international human rights law; detailed enough to be rendered, effective and implementable; inclusive and reflective of victims' needs, fears and lived realities and framed from the perspective of State obligation whether or not the obligations are directly delivered by the State or supported by the State but delivered by others.

The Due Diligence Framework dissects the legal principle of due diligence entrenched in international legal instruments into tangible, measurable components/guidelines. It is a tool for States to assess their progress in implementing human rights; formulate human rights-based laws, policies and programmes;

improve decision-making for ongoing programme and project management; measure progress and achievements as understood by different stakeholders and assess programme performance as well as identify the need for corrective or remedial action. It sets out to be universally applicable while remaining contextually relevant.

The Framework is a living, breathing, tool meant to be adapted over time, as new and innovative strategies emerge. It neither marks the beginning nor the end but rather is DDP's contribution to the evolving and ongoing discourse on State accountability and effective measures to end VAW.

DUE DILIGENCE FRAMEWORK AND GUIDELINES STATE ACCOUNTABILITY FOR THE ELIMINATION OF VIOLENCE AGAINST WOMEN

Guidelines are critical to facilitate information analyses and increase accountability. They measure progress and achievements; improve decision-making for the management of ongoing programmes; achieve consistency between activities, outputs, outcomes and impacts; and identify the need for corrective or remedial action.

A. PREVENTION

Prevention includes government measures to thwart the occurrence of VAW. Good prevention programmes provide awareness of VAW and of information services and legal protection available post the incident. They also target underlying risk and causes of VAW and often include training and education campaigns."

1. Targeting Underlying Causes of VAW

Effective preventive strategies address underlying causes of VAW and seek to eliminate tolerance and acceptance of VAW while incorporating a human rights framework, exposing the relationship between gender inequality and VAW.

2. Transforming Society: Changing Mindsets and Modifying Behaviour

Effective preventive measures not only specifically target VAW but also aim to transform social perceptions, attitudes and behaviours that cause, support and tolerate VAW. They must be aimed at changing mindsets and modifying behaviour to reject VAW, its justifications and excuses. These are embedded in gender inequality, gender discrimination and negative socio-cultural-religious perceptions of women that reinforce hegemonic notions of masculinity and femininity and the institutions that propagate them.

3. Eliminating Risk Factors

Preventive programmes must challenge negative socio-cultural norms and those that support male authority and control over women and sanction or condone VAW. Strengthening women's economic and legal rights and eliminating gender inequalities in access to formal wage employment and secondary education would lay concrete foundations in preventing VAW.

4. Providing Outreach and Ending Isolation

The availability of a social network increases women's autonomy and their ability to seek support and assistance to stop the violence. Outreach programmes that can end the isolation of and remove the stigma suffered by victims/survivors are required. Society must also be involved in the struggle against VAW, to imbue a sense of vigilance against and a willingness to show disapproval of the same.

5. *Broadening the Scope of VAW Programmes*

Stereotyping and gender roles are learnt from an early age. It is important that preventive programmes address different forms of VAW and target all stakeholders and beneficiaries. Success can be evaluated by verifying if governments' preventive programmes have benefitted intended target groups.

6. *Formulating Comprehensive Laws and Constitutional Guarantees*

Enacting holistic and comprehensive legislation is critical to States assuming accountability for VAW. It is through laws that the necessary components of due diligence and implementing measures are articulated. Competent implementation and enforcement is an effective prevention strategy, particularly if perpetrators are certain that their actions will not go unpunished.

7. *Collecting Data and Designing Programmes*

Preventive programmes must be based on comprehensive, reliable data on prevalence, causes and consequences of VAW. Data collection is important for shaping VAW interventions; data can provide insights to shape prevention measures and monitor and assess prevention programmes.

8. *Incorporating Intersectionality and Providing for At-risk Groups*

VAW does not affect all women equally. Certain groups of women are more vulnerable than others or face greater challenges in accessing the State's laws, programmes and processes.

9. *Maintaining a Sustained Strategy*

A sustained strategy is ideally institutionalized and not a seasonal response. It should involve actions across different environments that target local communities, workplaces, schools and faith institutions; working with individuals or families is also crucial. Mechanisms to monitor implementation, including qualitative surveys to ascertain the prevalence and forms of violence, could further ensure that such strategies remain current and effective.⁴⁰² NAPs and institutional mechanisms are considered good sustained strategies.

10. *Collaborating with Women's/Feminist Organizations*

Women's mobilization over VAW has brought VAW out from the private sphere where the law and culture had set up justifications for State non-intervention to stop VAW. While States bear the obligation to end VAW, cutting-edge research and strategies are often undertaken by civil society experts and organizations. Collaboration between States and the women's movement has undoubtedly strengthened and will continue to strengthen the struggle to end VAW.

B. PROTECTION

Protection against VAW focuses on avoiding the recurrence of further violence and ensuring that victims/survivors receive adequate and timely services. This is sometimes called secondary prevention. It includes the availability and accessibility of services such as hotlines, shelters, medico-psycho social services and protections orders. It also includes adequate training and sensitization of first responders.

1. *Ensuring Availability of and Accessibility to Coordinated Support Services*

Medical (including psychological) interventions and social support are essential in protecting victims of VAW. Coordinated and multi-sectoral support services offer women options to stop the violence; prevent its recurrence;

⁴⁰² For example, Morocco and Azerbaijan.

understand, address and challenge the factors responsible for it; treat the trauma (mental and physical) and provide short-, medium- and long-term measures to transition out of the violent situation and re-build lives.

2. Ensuring Availability of and Accessibility to Protection Orders

Laws that facilitate protection or restraining orders to help women escape violence underscore their right to live free from violence. Such laws must define VAW broadly and should be applied immediately upon occurrence of VAW. Protection orders should protect victims/survivors from further violence while allowing them to continue their daily routines with as little interruption as possible, including staying in their homes (if desirable), continuing to work, taking their children to school and using vehicles.

3. Upholding the Duties of First Responders

On learning of any occurrence of VAW, the police, medical personnel and other first responders must act swiftly and immediately to comply with their due diligence obligation. Their ability to respond urgently and in a specific manner greatly reduces the risk of further harm to victims/survivors and inspires confidence in the system's ability to arrest VAW.

4. Fostering Positive Attitudes and Sensitization through Sustained Training

It is crucial to equip first responders with skills to effectively intervene in cases of VAW. These skills include assessing risks for victims, identifying early signs of violence before it escalates and conducting coordinated risk assessment of the crime scene before adopting protective measures.

5. Implementing a Multi-sectoral Approach and Coordinating Services

The delivery of protection services provided by the government is enhanced through multi-sectoral approaches with coordinated responses and delivery of services. Swift action by the police, medical and social services as soon as a case of VAW is reported helps victims/survivors deal with the legal process and increases prosecution rates.

C. PROSECUTION

Prosecution refers to the duty of exercising criminal jurisdiction over those responsible for human rights abuses. Steps must be taken to ensure that the prosecutorial process is as non-traumatic for victims/survivors as possible. Investigation refers to the duty of undertaking effective action to establish the facts related to a VAW incident. This duty must be exercised in an effective, prompt, impartial and thorough manner.

1. Addressing Victims' Needs and Fears

Effective State measures respond to VAW as a crime and a violation of human rights. Investigators and prosecutors should be able to take into account the perceptions, needs and desires of victims/survivors and the State's need to enforce law and order, eliminate VAW and comply with its international and, where applicable, constitutional obligations to guarantee fundamental liberties.

2. Developing Policies to Reduce Attrition

The conversion rate from reporting VAW to conviction of perpetrators is low because of victims' fear of repercussions and retribution; negative experiences with the legal process; negative social perceptions and bias; inefficient prosecution and unprofessional conduct. States should adopt adequate measures to address these factors without diminishing the integrity of VAW victims/survivors.

3. Ensuring the Police Provide Positive Early Victim/Survivor Engagement

Positive and early engagement with the police and special VAW units may encourage victims/survivors to take action to stop the violence. Speed and quality of police intervention is crucial in engendering confidence in the legal process.

4. Establishing the Affirmative Duty to Investigate

Investigation is critical in cases of VAW 'as deficiencies often prevent and/or obstruct further efforts to identify, prosecute and punish those responsible'.⁴⁰³ The obligation to investigate human rights violations is one of means rather than results.⁴⁰⁴ States must adopt effective measures to ensure that legal remedies and procedures are accessible to victims/survivors of VAW and authorities act within a legal framework where due process guarantees, for victims and perpetrators, are respected.

5. Establishing the Affirmative Duty to Prosecute

a. Ensuring Fair Burden of Proof and Evidentiary Standards

The prosecutor has the right to decide on whether to proceed with prosecuting a 'minor' offence. Otherwise reasonable, this discretion is problematic in cases of domestic violence, which often consists of repetitive offences that may be considered 'minor' on their own.

b. Ensuring Sensitivity to Confidentiality and Privacy Issues

Women who decide to report violence often have to deal with harsh treatment, long delays in court hearings, and practices such as the release of identifying particulars (especially in child sexual abuse or mass rape during conflict) that are humiliating and dangerous. States must institute procedures that protect the privacy of women from public disclosure or overly harsh treatment during the investigation and prosecutorial process.

c. Providing Legal Aid and Support

Legal advice and free legal assistance are rights and not privileges afforded to those in need and victims/survivors of VAW in particular have the right to legal advice and free legal assistance.

d. Reducing Delay at Every Level of the Prosecutorial Process

Systemic delay is another primary reason for the low conviction rate in cases of VAW. States should establish measures to check delay and expedite the prosecution of such cases.

6. Fostering Confidence in the Police and Judiciary

Police and prosecution offices play pivotal roles in determining the outcome of formal intervention in cases of VAW. Decisions to investigate and prosecute and the manner of investigation and prosecution affect the confidence victims/survivors place in the criminal justice system, shaping their participation in its success.

⁴⁰³ IACHR, The Situation of the Rights of Women in Ciudad Juárez, Mexico: The Right to Be Free from Violence and Discrimination. OEA/Ser.L/V/II.117, Doc. 44, 7 March 2003, para. 137. The investigation also serves other purposes, for example, to ascertain the right to truth. The IACHR has written that any victim of a violation of human rights is entitled 'to obtain clarification of the events that violated [his or her] human rights and the corresponding responsibilities from the competent organs of the State, through the investigation and prosecution (...)'.

⁴⁰⁴ Rosendo-Cantú et al. v. Mexico, IACtHR, *supra* note 238, para. 175.

7. Establishing Specialized Prosecutors and Courts

Conventional courts and justice systems are not necessarily knowledgeable about VAW. States should establish specialized police units, prosecutors and courts (or judges) to work exclusively (or primarily) on VAW. When staffed with trained personnel and supported by adequate funding, such units can provide a more conducive environment for women to seek legal recourse.

8. Considering Alternative Dispute Resolution (Mediation/Conciliation)

Mediation, restorative justice and other alternative approaches to adjudicating GBV remain sources of opportunity and concern. Mediation should not be made available for grave and serious offences or with the aim of exculpating perpetrators, such as allowing them to pay off or marry rape or abduction victims/survivors. If victims/survivors are emotionally stable, free from risks and coercion, and able to make an informed decision and mediators receive proper training, mediation can be a viable option, especially since prosecutorial processes are often long, expensive and traumatic.

9. Ensuring that Plural Legal Systems Align with International Human Rights Norms and Standards

Countries must ensure that customary or religious legal systems are interpreted to meet contemporary and changing dynamics, values and challenges. '[I]t is important that States strongly condemn violence against women and refrain from invoking any custom, tradition or religious consideration to avoid their obligations.'⁴⁰⁵

10. Developing a Multi-sectoral and Multi-agency Approach

Close collaboration between specialized prosecutorial offices, the police and medical/health service providers, including trauma and VAW specialists, show increased prosecution rates.

D. PUNISHMENT

Punishment refers to the obligation of imposing a sanction on perpetrators as a consequence of their having committed VAW. Sanctions can be civil, criminal, administrative or 'other' (e.g. community or social sanctions) and at minimum, must ensure negative consequences for perpetrating VAW.

1. Holding Perpetrators Accountable: Certainty of Punishment

Punishment is a mechanism by which States ensure that those who commit violence face its consequences, thereby facilitating women's realization of the right to be free from any acts of violence. Holding perpetrators accountable for VAW is fundamental to the principle of punishment: it creates a level of predictability and certainty, suggesting that perpetrators will have to answer for VAW. Failure to do so sends the message to society that VAW is both tolerated and tolerable.

2. Ensuring Punishment is Commensurate with Offence

States must enact laws that establish sanctions commensurate with the severity of the offence (including aggravating factors) and meet international standards.

3. Meeting the Goals of Punishment: Preventing Recidivism, Rehabilitating Perpetrators and Deterring Others

Punishment should prevent recidivism, rehabilitate perpetrators, prepare them for reintegration and deter others from committing similar offences. Sentences that do not meet these goals foster recidivism and a sense of impunity, normalizing VAW in our collective imagination and resulting in its re-enactment in our daily lives.

⁴⁰⁵ A/RES/61/143 dated 30 January 2007, United Nations General Assembly resolution 61/143 of 2006, para 5.

4. Broadening the Available Punishment Regime beyond Incarceration, Where Appropriate

Incarceration appears to be the most common form of punishment for all forms of VAW. Sometimes, however, it may not be the only 'punishment' sought or preferred by victims/survivors. Although many advocates have mixed reactions to alternatives, they generally agree that these deserve consideration. Where appropriate, States could consider laws that allow judges to impose other punishments in addition to or (more rarely) instead of incarceration, provided that the safety and security of victims/survivors can be guaranteed.

5. Ensuring Punishment is Premised on the Principle that VAW is Not Justifiable/Excusable

Punishment focuses on making perpetrators accountable for their actions. Due diligence in punishment focuses on perpetrator accountability and is premised on perpetrators being held responsible and, therefore, liable for their actions. States should ensure that punishment is premised on VAW not being justifiable or excusable.

E. PROVISION OF REDRESS AND REPARATION FOR VICTIMS/SURVIVORS

Redress and reparation imply any form of remedy or compensation made available to victims/survivors of VAW to address the harm or loss suffered by them. Reparation measures aim to eliminate or mitigate the effects of the violence committed. This could take different forms, from monetary compensation and apology to symbolic reparations.

1. Adopting a Victim/Survivor-oriented Perspective

Reparations must fit women's needs. Women's participation and perspectives can help shape, monitor and evaluate reparation schemes that best suit their living situation and needs. This process can empower victims/survivors. States should take a broader view of harm. States could go beyond the narrow focus on monetary compensation and punishing perpetrators as an adequate remedy and offer victims/survivors diverse redress and reparation.

2. Ensuring Proportionality to Gravity of Harm or Loss Suffered

Reparations should be related to the violations suffered, facts of each case, gravity of violations and damage/harm/loss proven, and measures requested to remedy the same, with compensation provided for any economically assessable damage, as appropriate and proportional to the gravity of the violation. Satisfaction can include public apologies or other declarations intended to restore the rights, dignity and reputation of victims/survivors; disclosure of truth and verification of facts; symbolic tributes; sanctions against persons liable for violations and cessation of the violence.

3. Assuming Responsibility for Recuperating Reparation from Perpetrators

Victims who pursue compensation from perpetrators may be exposed to further risk and trauma from continued contact with them. Women might only rarely manage to obtain orders for compensation and even when they do, lack of enforcement mechanisms mean that perpetrators do not pay. States should ensure victims/survivors are compensated by assuming the responsibility for recuperating compensation from perpetrators.

4. Working towards Institutional Reform and Transformative Change

The effect of reparation should not only be restitution, but also rectifying underlying causal factors of VAW and discrimination. Reparations must aim to transform power relations inherent in structural discrimination to reformulate and transform relationships that fuel violence and exclusion, such as patriarchy and racism. They must include the State obligation to undertake institutional reforms, supported by adequate resources to effectively prevent the occurrence of VAW and put in place mechanisms that guarantee the investigation and punishment of VAW and reparation of victims.

QUESTIONNAIRE TO CIVIL SOCIETY ON STATE OBLIGATION AND DUE DILIGENCE PRINCIPLE TO ELIMINATE VIOLENCE AGAINST WOMEN

BACKGROUND INFORMATION

Due diligence is an important international principle. In the context of violence against women (VAW), it denotes a State's obligation to take 'reasonable' action to prevent VAW, protect victims/survivors from VAW, investigate and prosecute incidences of VAW, punish perpetrators of VAW and provide redress for victims/survivors of VAW. This obligation applies to the State although most instances of VAW are committed by non-State actors (individuals not acting on Governmental authority) and within the private sphere. The principal aim of the Project is to add content to the international legal principle of 'due diligence' in the context of State responsibility to eliminate VAW. The objective is to create compliance indicators that are concrete and measurable across regions.

ABOUT THE QUESTIONNAIRE

As part of this research we are conducting interviews and undertaking surveys with civil society/ non-governmental organisations (CSOs or NGOs) which advocate against VAW, provide intervention services to victims/survivors of VAW or which mission or objectives include eliminating VAW. One of the Project's primary research tools is this questionnaire. The questionnaire will be distributed to 6-10 CSOs/NGOs in approximately 30-40 countries. The questionnaire aims to look into existing State measures and challenges encountered by CSOs/NGOs in their work to eliminate violence against women. The questionnaire will also probe civil society on its perception of State action in discharging its obligation; the effectiveness of these actions; and how they can be improved.

The findings of the report will be shared with Governments, inter-governmental organizations and civil society. We also propose to instrumentalize the findings into manuals, tool kits and training modules for practical application.

INSTRUCTIONS

We need your help to provide information about your experiences and knowledge of laws, policies, procedures and practices related to violence against women in your country. Unless otherwise stated, please answer the questions based on your organisational experience, opinion, perception or knowledge. There are no right or wrong answers. As such, there is no necessity to conduct research into academic writings, papers and books before answering the questions although you may look up data specific to your Government/country if it helps you to answer the questions.

Please answer all questions as comprehensively as possible, providing links and additional information where possible. Where a box is provided, please tick or cross (✓ or X) the box that corresponds with your opinion/answer. Where relevant, you may tick or cross (✓ or X) more than one box.

If you are not sure of the answer to the question, or if you don't know the answer to the question, please tick or cross (✓ or X) "Not sure". You may be contacted by our survey assistants should we require clarification on any of your answers. If you do not wish to be contacted, you may indicate that you do not wish to be contacted in question A12.

SUBMISSION OF QUESTIONNAIRES and DUE DATE

Responses to this questionnaire should be sent in electronic format to:

CONTENTS

As it is important to specify particular gaps, as well as good practices, we have organised this questionnaire according to the five areas mentioned above. We would also like some basic information about your work.

- A. Organisation Profile
- B. Prevention of VAW
- C. Protection from VAW
- D. Prosecution and Investigation of VAW
- E. Punishment of Perpetrators
- F. Provision of Redress to Victims/Survivors

CONFIDENTIALITY

We assure you that your answers are treated in confidence and only aggregated data will be used in the final report, unless permission is specifically obtained from you for us to attribute any answers to your organisation. As this is a questionnaire addressed to CSOs/NGOs and not individual persons, we request that the person completing the questionnaire must have authority to speak on behalf of your organisation.

You will also be asked if you wish us to keep your identity confidential and if you wish not to be contacted by us for further information or clarification. Please make sure you answer these questions i.e. questions A11 and A12.

TERMINOLOGY

Good Practices : Practices that are effective and in addressing or impeding VAW and can be replicated.

Government: The government of your country or the country in which your organisation is most active; acting either on its own behalf or acting through a government actor, such as the police. Governments include national, state/provincial and local governments as well as any Governmental entities. In international law, the acts or omission of all levels of Governments their agencies are imputed to the national Governments which are generally the party held responsible under international law. Such as the obligations under CEDAW (United Nations Convention on the Elimination of All Forms of Discrimination against Women) which is ratified by 187 countries. Government programmes and activities also include those funded by the Government but carried out by non-Governmental agencies. In this questionnaire acts of State or Government includes those of the legislature and judiciary.

Helplines : Are telephone numbers which women are able to call when encountering VAW or threats of VAW when they are in need of services. Sometimes called hotlines.

Non-state actor: Individuals whose actions cannot be imputed to the Government/State. This means the individual was not acting on the authority, apparent or purported authority or with the sanction of the Government/State.

One stop centres : A location where the necessary services required by victims/survivors are provided. Doctors, medical personnel, police and counsellors are in attendance at this location. This will minimise the need for the victim/survivor to shuttle from the hospital to the police station and other agencies.

Perpetrator : Person who commits VAW

Recidivism : Habitual falling back into crime.

Restitution : Restoration of loss suffered to the victim/survivor.

State : See 'government'

VAW or Violence against women: Any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life.

Victim/survivor : The woman impacted by VAW or against whom VAW was committed.

WEBSITE

Please see www.duediligenceproject.org for more information/clarification

A. ORGANISATIONAL PROFILE

A1. Name of organisation :

A2. Job position: (of person filling in form)

A3. What year was the organisation founded?

A4. Address of organisation [City, State (Province) and Country] :

A5. Website and email address (if any):

A6. This questionnaire is meant only for organisations working on issues related to violence against women. Is your organisation involved (whether fully or partially) in the following areas (please select one or more)?

Areas of work	a. Research	b. Advocacy / Outreach	c. Law reform	d. Support services	e. Training
1. Rape and sexual assault					
2. Sexual harassment					
3. Domestic violence					
4. VAW in cultural-religious context					
5. VAW in times of war/conflict					
6. Trafficking					
7. Female genital mutilation					
8. Indigenous (tribal) women and VAW					
9. Violence against girl children					
10. Other (please describe) _____					

A7. Does your organisation have programmes and activities in these areas? (please select one or more)

☐ Local ☐ National ☐ Regional ☐ International

A8. Does the Government reach out to/dialogue with civil society on VAW?

☐ Yes ☐ No

A9. Does the Government financially support your work on VAW?

☐ Yes, fully ☐ Yes, partially ☐ No

A10. Does your organisation monitor/assess (whether formally or informally) Government programmes on VAW?

☐ Yes ☐ No

A11. Would you like us to hold the name of your organisation confidential? (if you answer no, you are giving us permission to disclose your organisation's name in our reports)

☐ Yes ☐ No

A12. Can we contact you should we require further information or clarification on any of your answers?

☐ Yes ☐ No

B. Prevention

Prevention includes measures taken by the Government to impede VAW from occurring. Prevention programmes sometimes target perceived causes of VAW and often include awareness campaigns, training and education.

B1. (a) Does the Government have prevention programmes that cover the following types of VAW? (b) If yes, please rate the effectiveness of the programmes (1=not at all; 5=very much). XX Note: The responses include both direct government prevention efforts and government funding to organizations.

Type of VAW	(a) Programmes exist?			(b) IF YES, please rate effectiveness (1=not at all; 5=very much)				
	Yes	No	Not sure	1	2	3	4	5
1. Domestic violence								
2. Sexual harassment								
3. Rape and sexual assault								
4. Abuse of girl children								
5. VAW in times of war/conflict								
6. Trafficking								
7. Female genital mutilation								
8. Disfiguring attacks (e.g. splashing acid)								
9. Child marriage								
10. Forced marriage								
11. Other (please specify): _____								

B2. (a) Does the Government have VAW prevention programmes targetted toward the following groups/entities? (b) If yes, please rate the effectiveness of the programmes (1=not at all; 5=very much).

Target Groups Entities	(a) Programmes exist?			(b) IF YES, please rate effectiveness (1= not at all; 5= very much)				
	Yes	No	Not sure	1	2	3	4	5
1. Police								
2. Medical service providers								
3. Community, religious or traditional leaders								
4. Men and boys								
5. Young children (ages 5-10)								
6. Youths and teenagers (ages 11-25)								
7. Teachers								
8. Women								
9. Minority/vulnerable groups (please specify) _____								
10. Others (please specify) _____								

B3. Do VAW preventive measures, where they exist, have specific provisions for the following groups?

Groups	Yes	No	Not sure
1. Migrant women			
2. Women refugees and displaced women			
3. Women from rural areas			
4. Women with psychological difficulties			
5. Women with chronic diseases			
6. Women with disabilities			
7. Women with minority sexual orientation			
8. Other (please specify): _____			

B4. (a) In your organisational experience, do the following factors increase the risk of VAW? (1=not at all; 5=very much); and (b) has the Government taken steps to address them?

	(a) Increased prevalence? (1 = not at all; 5 = very much)					(b) Addressed by Government?		
	1	2	3	4	5	Yes	No	Not sure
1. Inadequate housing for family								
2. Financial instability for family								
3. A woman's lack of economic independence								
4. A woman's low level of schooling and education								
5. Negative cultural or religious perception of women								
6. Gender inequality								
7. Other (please specify) _____								

B5. In your own words, please provide some additional information about two of your Government programmes on prevention of VAW?

1	
2	

B6. Please describe two programmes that in your opinion constitute good practices in prevention and the reason(s) why (whether or not they exist in your country).

1	
2	

C. Protection

Protection keeps the victim/survivor safe from present harm. This includes avoiding the re-occurrence of further violence and ensuring the victim/survivor receives adequate and timely services.

C1. We are interested in Government services available to women victims/survivors of VAW. For each of the services listed below, please indicate whether each is (a) available; and (b) IF YES, approximately how many exist nationally.

	(a) Available?			(b) IF YES, approximately how many?	
	Yes	No	Not sure	Insert number	Don't know
1. One-stop centres: medical, police, and psychological/emotional assistance/support in one place					
2. Counselling and support centres					
3. Legal advice or legal referrals centres					
4. Telephone help lines					
5. Medical and health services centres					
6. Rehabilitation services centres					
7. Empowerment services centres					
8. Creches or child care centres					
9. Immediate, safe housing/shelters					
10. Other (please specify): _____					

(c) For each service answered YES above please indicate whether these services are accessible in terms of cost, public transportation, availability in rural areas and services provided in local languages/dialects.

	(a) Cost			(b) Close to public transport			(c) Available in rural areas			(d) Local languages/dialect		
	Yes	No	Not sure	Yes	No	Not sure	Yes	No	Not sure	Yes	No	Not sure
1. One-stop centres: medical, police, and psychological assistance in one place												
2. Counselling support centres												
3. Legal advice or legal referrals centres												
4. Telephone help lines												
5. Medical and health service centres												
6. Rehabilitation service centres												
7. Empowerment service centres												
8. Creches or child care centres												
9. Immediate, safe housing (shelters)												
10. Other (please specify): _____												

C2. Please list two other factors that render any/each of the services listed above more/less accessible.

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C3. Please indicate whether the following interventions are immediately available, by police/judicial/medical/social service personnel, in response to allegations of VAW?

	Yes	No	Not sure
a. Police			
1. Quick response time			
2. Police have authority to expel/remove perpetrator from premises			
3. Police can accompany victim/survivor to retrieve belongings			
4. Other (please specify) arrest (e.g., violation of order of protection)			
b. Prosecution			
1. Quick turn around time applying for protection orders			
2. Co-ordination between prosecutors and other agencies (e.g. child protection services, medical officers)			
3. Other (please specify)			
c. Judicial			
1. Prompt availability of protection orders			
2. Court can order exclusive use of family assets (e.g. car; social welfare subsidy cards) by survivor/victim			
3. Court can issue restraining order and expulsion (removal from premises) order against perpetrator			
4. Court can order temporary custody of children by victim/survivor			
5. Court can order perpetrator to undergo intervention/prevention programme			
6. Other (please specify)			
d. Medical			
1. Quick and effective medical attention			
2. Emotional, psychological assistance			
3. Other (please specify)			
e. Social services			
1. On scene social services assistance (e.g. child protection)			
2. Other (please specify)			

C4. Please describe two programmes that in your opinion constitute good practices in protection and the reason(s) why (whether or not they exist in your country).

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D. Prosecution and Investigation

Investigation and prosecution are actions taken by the Government when it knows of VAW incidences. It allows victims/survivors to take steps to try to stop VAW without fear of repercussions.

D1. (a) In your organizational experience, do VAW victims/survivors complain of the following factors?; and **(b)** In your organizational experience, do the following factors deter a victim/survivor of VAW from seeking help (1=not at all; 5=very much)?

	(a) Complain?			(b) Deter? (1=not at all; 5=very much)				
	Y	N	Not sure	1	2	3	4	5
1. Act not legally recognised as a crime								
2. Lack confidence in police (timely intervention, efficient investigation)								
3. Lack confidence in judicial process (duration of trial, re-living incident)								
4. High cost of legal action								
5. Social stigma/taboo associated with the act								
6. Lack support of extended family								
7. Negative legal consequences (e.g. victim may be punished if her allegation/case is not proven)								
8. Fear repercussions from perpetrator								
9. Lack information on options								
10. Non-availability of VAW service providers/NGOs								
11. Negative financial consequences (e.g. loss of spousal support)								
12. Fear loss of child custody								
13. Absence of mediation/non-criminal dispute resolution process								
14. Fear loss of housing								
15. Fear deportation								
Other (please specify)								

D2. At times, VAW victims/survivors are unable or refuse to continue with prosecution of their case; Governments respond to this in different ways. Please rate the extent to which you agree with the following responses by Governments in the event the victim/survivor is unable or refuses to continue with prosecution (1=strongly disagree; 5=strongly agree) :

Government's response	(1=strongly disagree; 5=strongly agree)				
	1	2	3	4	5
1. Drop prosecution					
2. Enforce mandatory no-drop policy					
3. Proceed with prosecution but excuse the victim/survivor from testifying (i.e. prosecution is not dependent on participation of the victim/survivor)					
4. Deny protection under the law to the victim/survivor (e.g. restraining order, asylum for trafficked women) for failure to co-operate					
5. Prosecute the victim/survivor for failure to co-operate in the prosecution					

Government's response	(1=strongly disagree; 5=strongly agree)				
	1	2	3	4	5
6. Punish victim/survivor (e.g. presumed to have lied in her complaint)					
7. Provide mediation or alternative dispute resolution processes to the victim/survivor					
8. Other (please specify)					

D3. Please rate the extent to which the following sentiments accurately represent police and judicial responses when dealing with VAW (1=not at all; 5=very much) :-

Sentiments	Police					Prosecutor					Judiciary				
	(1=not at all; 5=very much)					(1=not at all; 5=very much)					(1=not at all; 5=very much)				
	1	2	3	4	5	1	2	3	4	5	1	2	3	4	5
1. Tolerance of VAW															
2. Blaming the victim/survivor															
3. Preference to "talk it out" with perpetrators															
4. Need to protect the institution of the family															
5. Other (please specify)															

D4. Plural system (different laws which are applicable to different communities including religious and customary laws):

	Yes	No	Not sure
a. Is there a plural legal system in your country?			
b. IF YES, ...			
1. is the religious/customary legal system legally recognised/sanctioned?			
2. are acts of VAW typically harder to prove in the religious/customary legal system?			
3. does the religious/customary legal system provide justifications for or condone VAW (e.g. husbands committing domestic violence)?			
4. which group(s)/communities does the religious/customary legal system apply to? (please describe)			

D5. Please describe two programmes that in your opinion constitute good practices in prosecution and the reason(s) why (whether or not they exist in your country).

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E. Punishment

Punishment is something negative imposed on the perpetrator as a consequence of his/her having committed VAW.

E1. For each type of VAW listed below, please (a) describe the typical punishment, if any; (b) describe who imposes the punishment (e.g. court, formal or informal tribunals); and (c) rate whether the punishment is commensurate with the crime (1=very lenient, 2=lenient, 3=commensurate, 4=harsh, 5=very harsh).

Types	(a) Typical punishment	(b) Who imposes	(c) Commensurate with crime (1=very lenient; 5=very harsh)				
	(please describe)	(please describe)	1	2	3	4	5
1. Rape							
2. Rape in times of war/conflict							
3. Sexual assault							
4. Domestic violence							
5. Trafficking							
6. Sexual harassment							
7. Forced marriage							
8. Child marriage							
9. Marital rape							
10. Female genital mutilation							
11. Disfiguring attacks (e.g. splashing acid)							
12. Other (please specify)							

E2. For each type of VAW listed below, please rate whether, in your opinion, the typical punishment ordered by the court (that you inserted above) is adequate to (a) prevent recidivism (habitual falling back into crime by perpetrators) (b) rehabilitate perpetrators and (c) deter others from committing of offence (where 1 = not at all; 5 = very much).

Forms of VAW	(a) Prevent recidivism					(b) Rehabilitate perpetrator					(c) Deter others				
	(1=not at all; 5=very much)					(1=not at all; 5=very much)					(1=not at all; 5=very much)				
	1	2	3	4	5	1	2	3	4	5	1	2	3	4	5
1. Rape															
2. Rape in times of war/conflict															
3. Sexual assault															
4. Domestic violence															
5. Trafficking															
6. Sexual harassment															
7. Forced marriage															
8. Early/child marriage															
9. Marital rape															
10. Female genital mutilation															

Forms of VAW	(a) Prevent recidivism					(b) Rehabilitate perpetrator					(c) Deter others				
	(1=not at all; 5=very much)					(1=not at all; 5=very much)					(1=not at all; 5=very much)				
	1	2	3	4	5	1	2	3	4	5	1	2	3	4	5
11. Disfiguring attacks (e.g. splashing acid)															
12. Other (please specify) _____															

E3. To what extent, in your opinion, (a) do and (b) should the following defences influence sentencing (1=not at all; 5=very much)?

Factors	(a) <u>Do</u> influence sentencing(1=not at all; 5=very much)					(b) <u>Should</u> influence sentencing(1=not at all; 5=very much)				
	1	2	3	4	5	1	2	3	4	5
1. Defence of provocation (e.g. 'victim/survivor asked for it')										
2. Defence of honour										
3. State of war/conflict										
4. Other (please describe) _____										

E4. In certain instances in plural/alternate/community forms of justice, women themselves are seen as offenders/transgressors of social norms. Where this occurs in the country in which you are active, please list (a) the offences (e.g. adultery; improper dressing; having child outside of wedlock), (b) the typical punishment for each offence and (c) whether the punishment is commensurate with the offence (1=very lenient, 2=lenient, 3=commensurate, 4=harsh, 5=very harsh)? Where it does **not** occur in your country, please tick/cross this o.

(a) Offence	(b) Typical punishment	(c) Punishment commensurate (1=very lenient; 5=very harsh)				
(please describe)	(please describe)	1	2	3	4	5
1.						
2.						

E5. Are the following programmes (a) provided by Government to perpetrators of VAW; and (b) should they be?

	(a) Already provided			(b) Should be provided		
	Yes	No	Not sure	Yes	No	Not sure
1. Anger management/intervention or prevention programme						
2. Counselling						
3. Support groups						
4. Rehabilitation / reintegration						
5. Community service						
6. Other (please name) _____						

E6. Please briefly describe two ways that in your opinion constitute good practices in Government sanctioned sentencing and punishment and the reason why (whether or not they exist in your country).

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F. Provision of redress

Redress is any form of compensation or reparations available to a victim/survivor of VAW. This could take different forms, from monetary compensation and apology to symbolic reparations.

F1. Below is a list of possible harm/loss that VAW victims/survivors may suffer. For each harm/loss listed please indicate (a) whether the victim/survivor can seek redress; and (b) if yes, the typical redress granted.

	(a) Redress available			(b) IF YES, please indicate typical redress given
	Yes	No	Not sure	
1. Physical harm				
2. Mental harm				
3. Lost opportunities, including employment, education and social benefits				
4. Material damage including loss of earnings and loss of earning potential				
5. Moral harm (loss of reputation)				
6. Legal and expert assistance cost				
7. Medicine/medical cost				
8. Psychological/mental services cost				
9. Cost of children's incidentals (e.g. maintenance)				
10. Other (please specify) _____				

F2. (a) Which of the following processes for redress are available to the victim/survivor of VAW? If available, (b) please indicate who bears the cost of the process.

	(a) Available			(b) IF YES, who bears the cost?		
	Yes	No	Not sure	Own	Free	Legal aid
1. Victim compensation scheme						
2. Court action for civil remedies						
3. Redress granted during criminal trial						
4. Truth and reconciliation tribunals						
5. Administrative tribunals (please name)						
6. Legally sanctioned community and religious councils and tribunals						
7. Not legally sanctioned community or religious council, tribunals or patron/chief						
8. Vigilante community justice						
9. Other (please specify) _____						

F3. In theory, there are several types of redress that may be available to victims/survivors of VAW. For each harm/loss listed below, please indicate the redress that, in your opinion, is the most important. You may check up to a maximum of three for each harm/loss suffered.

	a.Monetary	b.Apology	c.Promise to cease	d.Disclosure of truth	e.Restitution	f.Symbolic tribute	h.Punish perpetrator
1. Physical harm							
2. Mental harm							
3. Lost opportunities, including employment, education and social benefits							
4. Material damage including loss of earnings and loss of earning potential							
5. Moral harm (e.g. to victim/survivor's reputation)							
6. Legal and expert assistance cost							
7. Medicine/medical cost							
8. Psychological/mental services cost							
9. Children's incidentals (e.g. after domestic violence or rape)							
10. Other (please specify) _____							

F4. (a) Does the Government have allocation to pay compensation to victims/survivors?

☐ Yes

☐ No

☐ Not sure / Don't know

(b). IF YES,

1. Name of scheme :

2. How much is allocated :

3. How much is spent : _____

Varies (not controlled by national Government) _____

F5. Where restitution is available for acts of VAW, please rate how effective it is in restoring the losses listed below to the victim/survivor of VAW (1=not at all; 5=very much).

	(1=not at all; 5=very much)				
	1	2	3	4	5
1. Property and place of residence					
2. Liberty					
3. Employment					

	(1=not at all; 5=very much)				
	1	2	3	4	5
4. Economic loss					
5. Reintegration into communal and family life					
6. Citizenship					
7. Social standing					

F6. Please describe two programmes that in your opinion constitute good practices in redress and the reason(s) why (whether or not they exist in your country).

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THE END.

THANK YOU FOR COMPLETING THE QUESTIONNAIRE!

Zarizana Abdul Aziz – Malaysia

Zarizana Abdul Aziz is a human rights lawyer. Zarizana was involved in law and policy reform initiatives on gender equality and anti-violence legislations in Timor Leste, Bangladesh, Indonesia, Malaysia, Maldives, Myanmar and Afghanistan and in constitutional dialogues in the Middle East as well as training of lawyers, civil society advocates, religious scholars and government officials in several countries. She served as an expert in the Expert Group Meeting on Good Practices pursuant to the United Nations Secretary-General in-depth study on all forms of violence against women in addressing violence against women (UN General Assembly resolution 58/185) and as consultant for various other inter-governmental and international organizations. Zarizana served as Chair of Women Living Under Muslim Laws (until 2013). She also served as an elected Malaysian Bar Council member (the statutory self-regulatory body of all lawyers in Malaysia) and co-chairperson of the Human Rights Committee of the Bar Council and President of the Women's Crisis Centre (now Women's Centre for Change) in Malaysia. Most recently, she was shortlisted for the UN Working Group on Discrimination against Women in Law and Practice. Zarizana was Human Rights Fellow and subsequently visiting scholar at Columbia University. Zarizana was visiting scholar at Northeastern University School of Law, Boston, USA where she undertook research and occasionally taught.

Janine Moussa - USA

Janine Moussa is a human rights lawyer, with a specialization in gender and women's rights. Her areas of specialty include the international human rights framework, equality and non-discrimination and violence against women. Her previous experience includes working with NGOs, academic institutions, and inter-governmental organizations, including with the United Nations where she worked as senior program officer on violence against women for the Division for the Advancement of Women (UNDAW, now part of UN Women) and previously the Inter-American Commission on Human Rights of the Organization of American States (OAS). Janine has lived and worked abroad including in Lebanon where she spent two years working as a refugee aid worker; and in Malaysia where she spent three years traveling the region training and advocating for the full implementation of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). Janine was Senior Fellow at Northeastern University School of Law, Boston, USA.