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It Takes a Village: An Analysis of Multilateralism and the Legal Mechanisms Designed to Prevent Violence Against Women

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**IT TAKES A VILLAGE: AN ANALYSIS OF MULTILATERALISM AND THE LEGAL
MECHANISMS DESIGNED TO PREVENT VIOLENCE AGAINST WOMEN**

by

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Chapter 1: Introduction

Violence against women has endured as an endemic stain on our global culture. It is as prevalent and virulent as it has been difficult to solve. There is a direct historical line of connectivity between sexual slavery in ancient Rome to the most recent systematic rape of the Yazidi by the Islamic State. And similarly, for millennia, women have had neither the political/legal nor economic base from which to effectively address – or force others to address, the underlying motivating forces. Our current times demonstrate that the fight is not even remotely finished – as just this Tuesday, April 23, the United States forced a watering-down of a UN Resolution seeking to end sexual violence in war.¹ The Resolution process serves as a microcosm of the solutions and obstacles this paper seeks to address, in particular, the rise and role of multilateral organizations (in this case the UN Security Council), formal treaties, and the repressive effects of religion and social norms – as the Trump Administration demanded the removal of any reference to abortion by rape victims.

The UN Resolution represents just the most recent step forward on a process that has been lengthy, fitful but ultimately moving ever closer to its objective. As Martin Luther King theorized, “the arc of the moral universe is long, but it bends towards justice,” and the trends towards solutions for violence against women are similarly slowly and methodically moving forward.² The cause shares antecedents with so much other progressive social change, in particular, the educational, economic and technological revolutions of the late 19th and 20th Centuries which laid a foundation that ultimately enabled a convergence of forces to begin to more effectively acknowledge and architect potential solutions to the problem.

¹ Reuters, "Bowling to U.S. Demands, U.N. Waters Down Resolution on Sexual Violence in Conflict," The New York Times (New York), April 23, 2019.

² Martin Luther King, Jr, "Sermon at Temple Israel" (speech transcript, Hollywood, CA, February 26, 1965).

The Second World War provided a critical inflection point in this regard. The development of multilateral global organizations and related human rights law exponentially expanded and developed as a result of the horrific genocidal and military acts that occurred. Violent, criminal, and inhumane treatment prevention laws have since been discussed and addressed in countless international conventions and codified through numerous human rights treaties. Considered the first official human rights document of the modern era, the United Nations General Assembly ratified the Universal Declaration of Human Rights (UDHR) on December 10, 1948, at the Palais de Chaillot in Paris, France, with the help and influence of Eleanor Roosevelt. While the UDHR is not a formal treaty and does not directly create legal obligations for countries, it is an expression of fundamental values shared by the international community, thus having an immense influence on the development on international human rights law. Furthermore, among the global community, the UDHR began the discourse on the prevention of future human rights abuses and the regulations of countries that violate human rights law.

Since the UDHR, various other human rights treaties have been erected such as the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social, and Cultural Rights (ICESCR) both in 1966, as well as the Convention Against Torture in 1984, and the Convention on the Rights of the Child in 1989. Combined, these treaties create a robust collection of protections, which are reinforced through various regional human rights tools such as the European Convention of Human Rights (ECHR) established in 1953, and the Inter-American Commission on Human Rights (IACHR) established in 1959. Additionally, specific treaties such as International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) and the Convention on the Elimination of all

Forms of Discrimination Against Women (CEDAW) further attempt to solidify rights and equality for all global citizens.

Treaties and international organizations work together to create a global environment that protects the rights of a person and actively promotes the well-being of society. In addition, “on-the-ground” politics also aims to encourage human rights through non-government organizations and civil society efforts to change the culture of a society. This cultural change often can lead to domestic changes as well which helps promote human rights. Civil society and non-governmental organizations (NGOs) advocate on behalf of humanity and assist in providing a platform for campaigns against a government. Therefore, a combination of progressive factors is beneficial for society due to the variety of actors working together to achieve a common goal of protecting human rights.

However, despite the seemingly all-encompassing nature of these treaties and an active civil society, one class, in particular, lacks full protections of human rights. Women are often left out of the human rights protections and struggle with full recognition of human rights. While women are included by nature through the general language of treaties, structural barriers have proved challenging to overcome in the fight to equate women’s rights with human rights. Violence against women is an epidemic, with one out of three women (35%) reporting that they have experienced physical and/or sexual violence at least once in their lifetime.³ Although, despite the legal human rights mechanisms in place for the last few decades, there is little to no change in the number of women who face abuse in their lifetimes. This lack of explicit language covering women’s rights lends itself to the mistreatment of women and allows the barriers against change to continue.

³ World Health Organization, ed., "Violence Against Women: Key Facts," World Health Organization, last modified November 29, 2017, <https://www.who.int/news-room/fact-sheets/detail/violence-against-women>.

Religion, social norms of a society, and domestic governments are three of the most common barriers that work against women in the international human rights environment. For instance, religion acts against the interests of women in countries in which the majority of the population follows a religion that systematically excludes women from society on the basis of religion such as Saudi Arabia or other nations that include Shari'a Law in their domestic law. Similarly, social norms act against women in places such as Eastern Europe and Central Asia where there is a cultural acceptance of violence against women. Patriarchal attitudes and stereotypes are not compatible with progressive mechanisms that promote women's rights. Furthermore, government negligence or reluctance to help is a critical barrier to overcome because without government acceptance of the problem there will be no change, and often no legal methods for women to obtain protection or other legal remedies in response to violence.

These barriers are arduous to conquer, but they are not impossible, and while a complete end to violence against women is unrealistic, there is hope in continuing the push for a more careful consideration of women's rights as human rights. By working both internally with the people of the country to change social patterns, and externally with the government of the country to create laws, progressive success can occur. Furthermore, without assistance from civil society, there is often resistance to change among the population of a country. Additionally, it is not unfeasible to create a binding treaty that reinforces the concept of women's rights, which in turn may minimize the wide-scale violence and hold countries with poor records of women's rights abuses accountable. However, this must be done with the assistance of civil society and domestic government. No international treaty can be effective without the assistance of these two other forces.

Despite the fact that many obstacles preventing adequate reform of laws and norms surrounding women's rights, including religion and longstanding discrimination, the future of the prevention of violence against women has the potential to effect change. This paper aims to prove why this tri-fold combination of civil society, domestic government, and international organizations is critical to the realization of women's rights as human rights. Through a deeper understanding of the historical context behind mechanisms of prevention and the institutional barriers that inhibit progress, a productive plan for future success emerges. Furthermore, by looking at a variety of instances of violence against women in recent history, it is clear that the framework of a multilateral approach to the violence is the most effective method of driving change.

Chapter 2: Legal Mechanisms for Prevention

Since the Second World War, human rights have been at the forefront of international law. The violence and mass atrocities that occurred in the early part of the twentieth century acted as a catalyst for change, and as such the global community generated legal human rights instruments in response. These documents and conventions guaranteed a list of specific human rights to all, and while women are not expressly included in the treaties and agreements, much of the language can still be applied to women. Large-scale treaties such as the Genocide Convention, the Convention Against Torture (CAT), and the International Covenant on Civil and Political Rights (ICCPR) include women in the general phrasing of the agreements and can be applied as such. Similarly, international mechanisms such as the CEDAW work to stop discrimination against women. While CEDAW's goals are to end gender-bias, the provisions set a standard for the treatment of women. Beyond just these extensive international treaties, regional treaties and committees are also practical tools to prevent VAW. Because of the localized nature of these agreements, they can focus on the relevant issues of the area. With the varying levels of enforcement and jurisdiction that each treaty has, together they form a robust list of guaranteed human rights that should, in theory, protect women.

2.1: Regional Mechanisms

Regional mechanisms created to minimize VAW are advantageous tools in the fight against violence because they can focus on the violence that is most relevant in the immediate area. They are also effective because they do not require as many states to sign on. The smaller scale nature of them allows more specified provisions to be included; provisions that would not necessarily pass with the inclusion of more nations. One particularly successful regional treaty is the European Convention of Human Rights. Two of the treaty provisions are often used to prevent

and protect from violence against women across Europe; “Article 1.4: the enjoyment of the rights and freedoms set forth in this convention shall be secured without discrimination on any ground such as sex,⁴ and Article 2.1: the right to life protected by law.”⁵ Combined, these articles provide for the right to life that is not discriminated against by gender. Furthermore, Europe also has Council of Europe’s Convention on Violence Against Women which includes provisions such as Article 38, “obligates states to criminalize FGM as well as acts coercing or procuring a girl or women to undergo it.”⁶ This Convention explicitly delves into the exact types of violence that must be prohibited. Furthermore, the treaty opens the path for creating a legal framework at a pan-European level to protect women against all forms of violence. The treaty also includes a specific monitoring mechanism (GREVIO) in order to ensure effective implementation of its provisions. Together, the Council of Europe and European Convention treaties have wide-spread protection of women in Europe.

Another regional treaty for the prevention of VAW is the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence Against Women. This treaty is a human rights instrument created within the Organization of American States (OAS) and was adopted in June 1994. This treaty defines VAW as “any act or conduct, based on gender, which causes death or physical, sexual, or psychological harm or suffering to women, whether in the public or private sphere (Art.1) and is understood to include physical, sexual and psychological violence (Art. 2).”⁷ This treaty is deemed successful because of the built-in mechanisms of enforcement and accountability within document. There are periodic reviews as well as an ability to file a

⁴ Article 1.4, *European Convention for the Protection of Human Rights and Fundamental Freedoms*, 1950.

⁵ Ibid, art. 2.1.

⁶ Article 38, *The Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence*, 2014.

⁷ Organization of American States (OAS), *Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women ("Convention of Belem do Para")*, 9 June 1994.

complaint with an advisory committee within the Commission. Since there are enforcement tools as part of the treaty, this regional human rights tool is effective in its application to the Inter-American states that ratified the treaty.

An additional successful regional human rights treaty is the African Union's Maputo Protocol. The Protocol is officially known as the Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa. It was signed in 2003 and became effective in 2005. This protocol was a response to the recognition that women's rights were often marginalized in the context of human rights.⁸ The body of the text contains twenty-five articles that explicitly prohibit violence against women, discrimination, and FGM, and also has a collection of positive rights such as the right to health, right to housing, etc.⁹ While this treaty is extensive in providing equal human rights to women, there are many reservations as well as signatories without ratification. While not entirely enforceable and widely accepted, the Protocol is a starting point for women's rights in Africa. The next steps must be for governments not only to ratify it but also ensure its domestication in national laws, with accompanying resources for its implementation.

Though regional treaties are effective in their ability to start the conversation about local human rights, they are often small bodies and cannot aptly enforce all of their provisions. Additionally, there are many objections and reservations to the articles within the treaties. Widespread change cannot fully occur when member-states are not entirely committed to upholding women's rights as human rights, and when violations against women are not treated with the same severity and consequences as men in similar scenarios.

⁸ Pambazuka News, ed., "Rights of Women in Africa: Launch of a Petition to the African Union," Fahamu Trust Ltd, archived October 12, 2008.

⁹ African Union, *Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa*, 11 July 2003.

2.2: International Mechanisms

One treaty that explicitly identifies women as the target in its provisions is the Convention on the Elimination of All Forms of Discrimination Against Women. This treaty was drafted in the 1970s and entered into force in 1981. It was ratified by 189 parties, with seven states not ratifying (Tonga, Palau, Iran, Somalia, South Sudan, Sudan, and the United States). This treaty is widely accepted despite the many reservations that countries have. As previously stated, many countries have reservations to some of the articles based on religious beliefs or their prioritizing of domestic policy over international policy. Interestingly, many states have filed objections to the reservations because they believe the reservations go against the object and purpose of the treaty. One largely effective mechanism of CEDAW is the CEDAW Committee which was established through the Optional Protocol, entering into force in 2000, and has 109 ratifications. The Protocol gives the CEDAW Committee authority to review individual complaints against state parties and to hear complaints between states. The Committee is comprised of 18 experts (mostly women) who review State reports, reviews complaints from individuals and NGOs under the Optional Protocol, and issues General Comments.¹⁰ However, none of the decisions that the Committee issues are binding, even if a state has explicitly violated CEDAW.¹¹ Additionally, if states have not signed onto the Optional Protocol, then they are not party to the new terms of the Committee. Also, since CEDAW's primary purpose is to prohibit discrimination against women, there is a lack of language which refers to VAW. Even though CEDAW requires state-parties to take active measures to promote women's rights directly, this does not necessarily encompass VAW.

¹⁰ Optional Protocol to the Convention on the Elimination of Discrimination against Women, G.A. res. 54/4, annex, 54 U.N. GAOR Supp. (No. 49) at 5, U.N. Doc. A/54/49 (Vol. I) (2000).

¹¹ *Ibid.*

Interestingly, many state-parties have used CEDAW and applied it within their domestic law. For instance, Mexico even used CEDAW language in their domestic laws regarding VAW and domestic violence.¹² Policy decisions that have been influenced by CEDAW include the creation of the National Program for Women, the equal allocation of funds directed for women, creation of centers for victims, specialized agencies for sexual crimes, and other resource centers and support groups.¹³ Despite CEDAW's roots in anti-discrimination language, it is essential that domestic governments are utilizing the language of the treaty to encourage women's rights in the domestic environment.

In addition to regional treaties and CEDAW, general international human rights instruments are also valuable in the process of combating VAW. However, the lack of specific language toward women highlights the underrepresentation women have in human rights law. However, one can also look to these existing human rights instruments and incorporate women into the language of the text. For instance, international law scholars Hilary Charlesworth and Christine Chinkin argue that "existing human rights law can be redefined to transcend the distinction between public and private spheres and truly take into account women's lives as well as men's [lives]."¹⁴ The argument that treaty bodies and courts can be reinterpreted to include women's rights is misguided; this is because there will be reluctance from states that already struggle with human rights violations and do not want to start applying the law differently. Historically women had a smaller role in the political space. Human rights were dominated by the cultural ideas that men were in the public area (civil and political rights), and women existed in the private sphere.

¹² Christof H. Heyns and Frans Viljoen, *The Impact of United Nations Human Rights Treaties on the Domestic Level* (Leiden, Netherlands: Martinus Nijhoff Publishers, 2002), 431.

¹³ *Ibid*, 432.

¹⁴ Hilary Charlesworth and Christine Chinkin, *The Boundaries of International Law: A Feminist Analysis* (Manchester, UK: Manchester University Press, 2000), 252.

Therefore, when looking at older human rights treaties, it is vital to understand the context at the time of creation; women were not the focus of the treaties when they were in development.

While the prohibition of gender-based discrimination is present in all major human rights treaties, formal gender equality can mask substantive inequality, since laws neutral on their face often apply disproportionately to women.¹⁵ Since they are not specifically designated toward women, these preexisting human rights treaties are not the proper method of preventing VAW. It is interesting to note however that some research has observed that the presence of a single female member on the CAT, for example, led to the frequent raising of women's interests.¹⁶ However, there is a fear that without female members, issues regarding women's right will disappear.

These treaties combined should protect women from all violence, yet the lack of specificity toward women represents a gap in human rights law. There must be a more specified treaty that focuses solely on the elimination and prevention of VAW. However, since each state has incredibly specific cultures and social norms, agreeing on one complete and overarching treaty that works on preventing VAW is a challenge. CEDAW started the process, but there are still many states with reservations that are narrowly accepted since they are close to going against the object and purpose of the treaty. It would be difficult to generate a treaty that encompasses all violence against women, that can also be agreed upon by the majority of UN member-states, however; it is not impossible. There must be the right set of circumstances, including a willingness by countries to enforce and implement any necessary changes, as well as cooperation with civil society to maintain a culture that promotes the wellbeing of women's rights.

¹⁵ Pamela Gann, "Class Lecture on CEDAW" (lecture, Claremont McKenna College, Claremont, CA, November 6, 2018).

¹⁶ Alice Edwards, *Violence Against Women Under International Human Rights Law* (Cambridge, UK: Cambridge University Press, 2011), 104.

Chapter 3: NGO Involvement as a Mechanism of Prevention

Beyond traditional treaties, conventions, and human rights bodies, outside groups provide an additional resource in combating and reducing VAW globally. Non-governmental organizations (NGOs) are external mechanisms that are utilized to drive a change toward the prevention of VAW. Because they operate outside the official international law environment, they have more flexibility to generate social change and influence domestic governments. Since NGOs operate outside the confines of governmental structures, they are more able to effect change on the ground and within civil society. Many believe that civil society organizations and NGOs should fulfill the duty to promote a culture of justice and support for victims of violence since governments are often unable or unwilling to provide any resources. Additionally, NGOs provides critical data to the world community, since they collect data on VAW that is helpful on the fight to prevent the violence, and helpful to build a knowledge base that can assist women in all aspects of recovery.

3.1 NGOs on the Ground

NGOs often see more immediate successes than governments, or international organizations (IOS) because of their access to resources, information, and financial support. More than ever before NGOs are working with community groups and the private sector to develop and implement programs, monitor, and evaluate their progress and help train people working on those projects. NGOs are often considered “more nimble than other institutions in accomplishing development goals because they can reach the most vulnerable or disaffected people in a community and find innovative solutions to the problem.”¹⁷ Furthermore, while their

¹⁷ Bipasha Baruah and Kate Graham, "NGOs are Changing the World: and Not Getting Credit for It," *The Conversation*, last modified December 3, 2017.

financial support and institutional decision-making may be multi-national, they are often focused on one region and are highly localized.

One example of a successful NGO working to prevent VAW was a group of women who went to Tanzania and started an organic yogurt kitchen that hired women to work and simultaneously educated the women about sex-based violence, and the links between violence against women and HIV.¹⁸ This program was incredibly successful until the group had to leave for financial reasons, but the women's kitchen remains functional. NGOs like the one in Tanzania often provide a grass-roots level of social change that can help change social norms and beliefs in a region. NGOs ability to work on the local level allows them to individually meet with women and affected people to discuss and educate them about the necessary steps that must be taken in order to successfully prevent VAW. This grass-roots, on-the-ground campaigning that is often combined with outreach work is a successful remedy to the social norm obstacles that lawmakers face when attempting to effect change on a domestic government level.

3.2 IO-NGO Cooperation

Additionally, there are also successes in the prevention of VAW when NGOs and IOs work together and combine efforts in the elimination of VAW. One successful example of a coalition of NGOs and IOs is the Daphne Program within the European Union. The Daphne program is the EU's primary mechanism for addressing gender violence, which utilized outside organizations to improve the EU's capacity to combat VAW. By working with NGOs, the Daphne Program aimed to increase and improve research on violence to provide more accurate information, develop preventative measures, and strengthen the protection of victims.¹⁹ Also, the

¹⁸ Baruah and Graham, "NGOs are Changing," *The Conversation*.

¹⁹ Celeste Montoya, "The European Union, Capacity Building, and Transnational Networks: Combating Violence Against Women Through the Daphne Program," *International Organization* 62, no. 2 (2008): 361.

Program operated on a local level within the communities of the EU as a result of the incorporation of the NGOs within the Program's structure. Furthermore, NGOs had a multi-purpose reason for being part of the program. The Program utilized a variety of NGOs to provide different areas of expertise. From research to local campaigning, to creative ideas for disseminating information, all varieties of NGOs were included to help the Program find success.²⁰ The program did have success in its initial goal of providing information, but there is no research yet on its effect on actually reducing VAW. They did successfully distribute resources and facilitate networks to increase the capacity of local groups to address policy issues, specifically VAW. The Daphne Program is just one example of cooperation between NGOs and IOs that has led to a successful outcome. By combining resources, these coalitions can reach different areas and gain resources that they did not have previously.

3.3 Domestic Government-NGO Cooperation

Another example of multi-lateral NGO cooperation is a domestic government willing to work with NGOs for the greater cause of preventing and reducing VAW. This was the case in South Africa, where the government actively called on NGOs to work to address a variety of problems. In an interview, South African Minister Ayanda Dlodo asked for NGO involvement on issues regarding VAW. Additionally, she was asked about prior cooperation between government and NGO. She stated that the South African government worked with NGOs on implementing measures aimed at the elimination of VAW such as campaigns, new laws, actions plans, and more.²¹ She also stated the importance in "recognizing that the fight against [VAW] is not the business of government alone, but a community of groups and societies across sectors

²⁰ Montoya, "The European," 362.

²¹ Open Government Partnership, ed., "South Africa looking for innovative ways to work with NGOs," *Open Government Partnership*, last modified December 12, 2012.

working with the government in combating the criminal activities.”²² There must be a willingness for governments to work with civil society. In addition, it also must be acknowledged that coalitions between domestic government and civil society groups and NGOs often are the most successful because of the dual approach of external and internal work.

While there are many benefits to working with NGOs in the prevention of VAW, in comparison with an overarching international treaty that is binding, the effects of an NGO appear minimally helpful on a global scale. Furthermore, another drawback of NGOs is that very few governments accept the input of NGOs. While they do much of the reporting work and data collection, many governments refuse to work with the organizations.²³ This disregard for accurate and detailed information represents a reluctance to admit to the widespread problems. There must be a willingness and an acceptance of cooperation between domestic governments, IOs, and NGOs, otherwise women must face yet another obstacle on the path to achieving full rights.

²² Open Government Partnership, "South Africa," Open Government Partnership.

²³ Edwards, *Violence Against*, 111.

Chapter 4: Barriers to Prevention

While many obstacles have prevented the universal elimination of VAW, religion, social norms, and domestic governments' inability to acknowledge or help women are the three most prolific barriers to change. Religious beliefs that encourage inequality, societies set in their cultural ways, and governments unwilling to change their laws are crucial barriers to break since countries with these problems set an international standard. However, these barriers are difficult to overcome because reluctance for change is often ingrained in citizens. It is important to understand the best ways to reduce VAW in the context of each state, whether that is changing social norms or reevaluating religious texts, so they do not encourage a standard of inequality and mistreatment.

4.1 Religion as a Barrier

Many states have reservations to the CEDAW treaty based on their religious beliefs. For instance, Iraq, the Maldives, the UAE, and Saudi Arabia all have reservations that cite Islamic law (Shari'a law).²⁴ These states argue that their reservations are meant to limit CEDAW in general or to restrict its obligation not to discriminate in marriage, divorce, custody, adoption or inheritance. They believe that the provisions in the treaty are in conflict with their religious laws. Saudi Arabia is one example of a state that has religious objections to treaties regarding women's rights. Saudi Arabia's reservation states, "in case of contradiction between any term of [CEDAW] and the norms of Islamic law, ... Saudi Arabia is not under any obligation to observe the contradictory terms of [CEDAW]."²⁵ This reservation puts their Islamic law above the treaty provisions. While the treaty-body recognized this reservation and Saudi Arabia ratified the

²⁴ Louis Henkin, *Human Rights*, 2nd ed. (St. Paul, MN: Foundation Press, 2009), 820.

²⁵ GA res. 34/180, 34 UN GAOR Supp. (No. 46) at 193, UN Doc. A/34/46; 1249 UNTS 13; 19 ILM 33 (1980)

treaty, it is interesting to note that this reservation goes against the object and purpose of the treaty, and thus is invalid.

CEDAW, while not explicitly relevant to VAW, attempts to help states take active measures toward the better treatment of women. If anything in the treaty is incompatible with Shari'a law, then they do not have to follow it. Essentially, Saudi Arabia can object to any aspect of the treaty and base it off the fact that it is not legal under their Islamic law. In Saudi Arabia, their legal system is based on Shari'a law. The intertwined religious and legal texts in the country prove difficult to overcome. Interestingly, however, the recent law that lifted the ban on female drivers in the country demonstrate some willingness to pursue active measures for equality.²⁶ It may be the first step toward a fuller acknowledgment of women's rights in the country that is not always advocating for equal rights.

Another form of VAW ingrained in religion is female genital mutilation (FGM), a violence that is perpetuated by Islam. There is a widespread view among practitioners of FGM that it is a religious requirement, but this differs according to ethnic group and geographical region. UNICEF suggests that FGM is most prevalent in 27 African countries, Kurdistan, Indonesia, and Yemen.²⁷ UNICEF found that 87-98 percent of women in Somalia, Guinea, Mali, Egypt, and Sudan experienced FGM.²⁸ The prevention of this type of violence is riddled with social issues, however. Banning a religious tradition has implications because of countries that are deeply rooted in their religion. Additionally, making FGM illegal could cause the procedure to be done by untrained doctors and in unsanitary conditions. FGM performed in unsafe

²⁶ Shannon Van Sant, "Saudi Arabia Lifts Ban On Female Drivers," *NPR* (Middle East), June 24, 2018, [Page 1], <https://www.npr.org/2018/06/24/622990978/saudi-arabia-lifts-ban-on-women-drivers>.

²⁷ UNICEF, *Female Genital Mutilation/Cutting: A statistical overview and exploration of the dynamics of change* (2013), 69.

²⁸ UNICEF, *Female Genital Mutilation/Cutting: A Global Concern*, [Page 1], February 2016.

conditions and conducted by unlicensed doctors would further put women at risk; thus, VAW that is also ingrained in religious texts is a difficult hurdle to jump on a broad international scale. FGM is just one example out of many that make it hard for a future universal treaty to be accepted by all nations.

Religious objections to human rights treaties are just one of the many reasons why an international treaty that bans VAW would be difficult to draft and ratify by a majority of nations. The Islamic nations that object to CEDAW on religious basis would most likely also object to treaties on violence as well. This objection is not because they support violence against women, but they are bound by religious texts that do not necessarily support full-fledged equality among genders. One method to beat this may be a reinterpretation of the texts in a more progressive way, but that is a difficult task to achieve when the problem is so widespread and varies by country.

4.2 Social Norms as a Barrier

Beyond just religions in society dictating human rights, social norms also act as barriers to full recognition of equal rights. Many countries have social systems that do not encourage the full protection of women's rights, nor do they provide helpful remedies for women to seek protection or legal recourse. Two regions that have a particularly rigid set of social norms against women are Eastern Europe and Central Asia (EECA). Despite a greater awareness of VAW in the EECA region, cultural acceptance of violence remains high.²⁹ The EECA region maintains patriarchal attitudes and stereotypes that diminish the role of women in society. One study found that strict and perceived gender roles are responsible for encouraging impunity of perpetrators

²⁹ UNFPA Regional Office for Eastern Europe and Central Asia, *Combatting Violence against Women and Girls in Eastern Europe and Central Asia*, by United Nations Population Fund, issue brief no. 6, [Page 6], 2015.

and for discouraging victims from reporting violence.³⁰ When there is a fear of consequences for reporting the violence, women feel as if they have no options. This fear highlights why it is critical to address discriminating social norms and notions of masculinity to prevent and eliminate VAW. Another aspect of the study looked at the percentage of men and women who believe a husband is justified in beating his wife within the EECA region. The results were not surprising, women believe, almost as much as men, that domestic violence is justifiable.³¹ The pervasive social norms in the region are ingrained in both men and women. Even abused women do not see a path toward justice, nor do they think they even should punish their husband for his behavior. Furthermore, discriminatory social norms are considered one of the root causes of VAW. Prevailing cultural and patriarchal attitudes manifest themselves in gender-unfriendly social norms. These norms have a “multiplier effect when it comes to failing to protect victims and survivors and prevent violence from occurring.”³² Since social norms have such a negative effect on an abused woman’s ability to seek help or justice, treaties or international conventions alone would not create much change. The social norms themselves need to be changed from within, rather than an external organization coming in with new laws and regulations.

4.3 Government as a Barrier

Another barrier faced when looking to prevent VAW is government interference or omniscience. A state’s negligence or reluctance to help women in violent situations demonstrates an inability to address the problems of their population, but there are also governments who actively work against women and remove protections that are already in place. It is a profound lack of respect and immense inequality that prevents any wide-spread global change from

³⁰ UNFPA Regional Office for Eastern Europe and Central Asia, *Combatting Violence*, 6.

³¹ UNICEF, "Men and women who believe a husband is justified in beating his wife," chart, UNFPA, 2012.

³² *Ibid.*

happening. One instance of a government's active measures against women is Russia's decriminalization of domestic violence. On February 7, 2017, Russian President Vladimir Putin signed a bill into law that decriminalized domestic violence.³³ The law decriminalizes a first offense of family violence that does not cause serious harm requiring hospital treatment.³⁴ The law severely weakens protections against domestic violence. Furthermore, Russia has a grave problem with domestic violence. A study in 2013 found that spouses or intimate partners commit more than eighty percent of violent crimes against women in Russia.³⁵ This persistent violence against women in the country is very clearly an endemic problem. However, the government is still taking active measures to protect the abusers. This strong government opposition to any change that protects women is problematic and in contrast to any international treaties that Russia has signed. Despite reports by the CEDAW committee, who noted the high prevalence of VAW, Russia has failed in their protection of their female citizens. States like Russia perfectly exemplify a government that is unwilling to change their laws or their society. Active measures taken against women demonstrate the intense obstacles by governments that women face when pushing for more protection.

There are other mechanisms that governments utilize to prevent any change in the elimination of VAW. For instance, governments that do not have equal representation of women or governments that actively dissuade women from achieving equality (such as job-based discrimination), are passively and systematically reinforcing anti-women social norms. The lack of women in government frequently mirrors the lack of respect and equality that a community

³³ Human Rights Watch, "Russia: Bill to Decriminalize Domestic Violence," Human Rights Watch, last modified January 23, 2017.

³⁴ Bill No. 26265-7 on Amending Article 116 of the Criminal Code of the Russian Federation (in Regard to Criminal Responsibility for Battery), State Duma of the Russian Federation.

³⁵ Russia Today, ed., "Study on Domestic Violence," Russia Today, last modified 2013.

has for women themselves. Government inaction or active action against women reinforce social norms that hurt women's access to safety. These obstacles against the prevention of VAW are interconnected, and as such the methods to address VAW needs to be multi-faceted and address all of the possible barriers. Despite the failures of certain systems and norms, there are ways around them and means to help protect women internationally. Through the international and regional mechanisms such as treaties and conventions, combined with measures from civil society, states can start to be held accountable for their lack of prevention of VAW.

Chapter 5: Looking at VAW in Conflict-Zones

An often-forgotten truth within the history of violence against women is violence which occurs in areas of conflict. While this was prevalent in the 1990s, with mass rape atrocities in the former Yugoslavia and Rwanda, during the genocide, many people assumed that these were isolated incidents. Although these were not isolated incidents; with rape as a weapon being used for thousands of years in human history.³⁶ However, it was not until the last few decades that these atrocities are being recorded and considered an act of war violence, and thus should be punished as such. Furthermore, in recent years, there has been an increase in sexual violence in war zones. With wars in Yemen, Syria, and the Rohingya Muslim displacement, sexual violence is being used as a tool of fear. This type of violence is a war crime, and since these incidents are happening today, war-zone sexual violence is at the forefront of women's human rights discussions. Under all international criminal law, the ICCPR, the Convention Against Torture, and the Genocide Convention, sexual violence is a war crime. Although it was not until recently, that it has been enforced and adjudicated as such.

Furthermore, the United Nations secretary-general issues yearly Reports on conflict-related sexual violence. These reports highlight zones of violence and bring forth the issues into the international arena. Therefore, with the increase in conflict-related sexual violence, the international community is highly aware of the issues occurring in the world right now. In the 2017 Report, the secretary-general stated that:

The rise or resurgence of conflict and violent extremism, with the ensuing proliferation of arms, mass displacement, and the collapse of the rule of law, triggers patterns of sexual violence. That was evident across a range of settings in 2017, as insecurity spread to new regions of the Central African Republic, as violence surged in Ituri, the three Kasai

³⁶ Kelly Dawn Askin, *War Crimes Against Women: Prosecution in International War Crimes Tribunals* (Leiden, Netherlands: Martinus Nijhoff Publishers, 1997), 1:10.

provinces, North and South Kivu and Tanganyika in the Democratic Republic of the Congo, as conflict engulfed South Sudan, as “ethnic cleansing” under the guise of clearance operations unfolded in northern Rakhine, Myanmar, and in besieged areas of the Syrian Arab Republic and Yemen.³⁷

The overall increase in violent situations internationally should not automatically lead to an increase in sexual violence. However, the perpetrators of this violence have decided that sexual violence is their method of instilling fear among the public. War itself is not automatically illegal, but crimes committed within the war, such as rape, forced pregnancy, etc., must be prosecuted.

Moreover, the report also states that in 2017, the “space for civil society continued to shrink,” therefore demonstrating that NGOs have lost their power in local societies where they previously achieved much success.³⁸ If NGOs and civil society cannot improve the situation, then communities must look to alternative resources. However, many of the current war zones are in a civil war and therefore have no adequate domestic governmental resources to utilize for protection. Additionally, it often is the government soldiers themselves conducting the violence. One mechanism NGOs have been utilizing to hold these war criminals accountable is the process of fighting impunity. NGO *Missing Peace* fights against impunity for the perpetrators of the violence. Using the International Criminal Tribunal for the former Yugoslavia (ICTY) as an example of holding perpetrators accountable for sexual violence in war, the group researches and advocates for the accountability of those in charge during the conflict.³⁹ While this solution is only practical after the violence has occurred, it

³⁷ United Nations, *Report of the Secretary-General on Conflict-Related Sexual Violence*, comp. Secretary-General, April 16, 2018, 6.

³⁸ United Nations, *Report of the Secretary*, 6.

³⁹ Peace Research Initiative, ed., “Missing Peace Symposium 2017: Preventing Sexual Violence in Conflict,” *PRIO*, last modified December 2017.

may be the only way an NGO can be worthwhile if they cannot help locally during the conflict.

Since violence against women in conflict zones is a problem that is not decreasing with the increase in realization of women's rights, questions arise as to how there will be any solutions to the endemic of conflict-related sexual violence. However, with the rise of social media and globalization, the international community can use these tragedies as a catalyst to create real change for women, as well as previously established courts and legal remedies to ensure justice for the victims.

This chapter aims to evaluate and analyze instances of violence in conflict zones in modern history. In the last thirty years, there have been a plethora of conflicts that highlight the mistreatment of women in war-zones or in conflict areas. Firstly, in the 1990s, there were the civil wars in Yugoslavia and the genocide in Rwanda. These instances of violence were remedied through ad-hoc tribunals. These trials occurred after the fact and attempted to help women achieve justice. However, many men involved in the mass rapes were not held accountable, and often NGOs have done more to help the victims than these formal government trials. Second, in more recent years there has been the displacement of the Rohingya Muslims in Myanmar and the massive refugee camps that do not provide adequate resources for victims. Since the conflict is still ongoing, there has been little to no addressing and adjudicating of these issues. Because this conflict is internal, NGOs have pushed for information to hold the countries involved accountable once the conflict is resolved. Lastly, this chapter will evaluate the violence occurring at the United States border which is currently happening. Only within the last few months has the issues of human rights abuses at the border been in the public discourse, and therefore there has been little push for

remedies. Women at the United States-Mexico border are enduring incredible violence, and the country has not done anything to rectify the issue. The lack of acknowledgment by the United States government may result in NGO involvement and international involvement to assist in ending the conflict and adjudicating the violence.

5.1: ICTR and ICTY Ad-Hoc Tribunals

War crimes and rape were not always crimes that went hand-in-hand. Violence against women was not considered a war crime until the atrocities in Rwanda and the former Yugoslavia so graphically publicized the violence that occurred. While rape as a weapon of war was illegal under customary international law, it was not codified or adjudicated until the public demanded justice for the victims in both the instances within the Rwandan genocide and the former Yugoslavia. With this abrupt publication of the details of violence that women endured during these wars, there was an overall push by the international community to prosecute rape as a war crime.

Remedies for these human rights abuses included ad-hoc trials for perpetrators of the violence. The Women's Media Center declared that "the greatest achievement of the 1990s to the 2000s was the modern enforcement of rape as a war crime, a crime against humanity and sexualized violence within the meaning of genocide."⁴⁰ The said enforcement of these laws came in the form of judgments from cases tried in Yugoslavia and Rwanda. Furthermore, rape as a war crime was formerly outlawed with the Rome Statute in 2002 only after high profile cases brought the issues to the forefront of the global discussion. In the trials for the Former Yugoslavia and in Rwanda the statutes of the courts included rape as a crime against

⁴⁰ Kelly K. Paterson, "When rape became a war crime (hint: It's not when you think)," WMC, last modified July 13, 2016.

humanity, and this was derived from rape having been described as a crime against humanity drafted after the Nuremberg and Tokyo trials.⁴¹ The following tribunals represent a furthering of customary international law and set a standard for further law to come.

The special court set up to prosecute perpetrators of war crimes in the former Yugoslavia was a venue in which victims sought justice for the horrors they endured during the war. The International Criminal Tribunal for the former Yugoslavia (ICTY), was a body of the United Nations established to prosecute serious crimes committed during the Yugoslav Wars and to try perpetrators. The tribunal was an ad-hoc court located in The Hague, Netherlands. The trials that involved sexual violence against women utilized the Yugoslav statute, which was based only on customary international law. While customary international law is binding, at the time there was no codified recognition of sexual violence against women.

The United Nations involvement in this instance was beneficial because it provided a mechanism of impunity for the hundreds of criminals involved in the civil war. The expense alone for the trial was 1.2 billion dollars (762 million euros), a cost which the United Nations paid entirely.⁴² Ultimately, it cost the ICTY about \$10-15 million per accused. However, despite this high cost it was seen as a victory because of the justice brought to the victims. Out of the 161 indictments 90 were sentenced, and 19 were acquitted.⁴³ The trials exhibited how sexual violence against women was a deliberate strategy of war, designed to target ethnic groups. Moreover, the ICTY significantly advanced international law by recognizing the violations as war crimes.

⁴¹ Paterson, "When rape," WMC..

⁴² Rupert Skilbeck, "Funding Justice: The Price of War Crimes Trials," *Human Rights Brief* 15, no. 3 (2008)

⁴³ United Nations, ed., "Infographic: ICTY Facts & Figures," International Criminal Tribunal for the Former Yugoslavia.

Furthermore, the ICTY was a perfect example of United National-NGO partnership because of the work done by NGOs to provide evidence and data to the court. NGOs in Bosnia met needs not addressed by the state and filled gaps in service. Women played a significant role in identifying and supporting witnesses for the ICTY and in initiating reconciliation projects within communities.⁴⁴ According to a study done by a Swedish women's group, "women's groups served to forge direct contact with victims, and thus they worked as a channel between the investigators and witnesses."⁴⁵ Investigators interviewed make clear that if it were not for the work of local NGOs, there would have been few if any, witnesses on sexual violence cases and many other cases.⁴⁶ The local participation by NGOs enhanced the legitimacy of the tribunal. The women's groups' ability to obtain vital testimony regarding sexual violence that occurred during the war was absolutely critical to the effectiveness of the trial. It is interesting to note however that the same NGOs that helped with the trial indicated that "their potential to provide a supportive role was largely untapped and that in fact, they were able and willing to do much more."⁴⁷ Although despite the imperfect involvement of women's groups, the mere fact that they were still so helpful highlights how any cooperation leads to a successful outcome for the court and the victims alike.

While these instances of NGO and IO cooperation were highly successful in the prosecution of the numerous war criminals in the ICTY, the relationship is imperfect and underdeveloped. The lack of formal cooperation between NGOs and IOs is further

⁴⁴ Julie Mertus, *Women's Participation in the International Criminal Tribunal for the Former Yugoslavia (ICTY): Transitional Justice for Bosnia and Herzegovina* (Greensboro, NC: Hunt Alternatives Fund, 2004), 1.

⁴⁵ Kvinna Till Kvinna, ed., *Getting It Right? A Gender Approach to UNMIK Administration in Kosovo* (Stockholm, Sweden: The Kvinna till Kvinna Foundation, 2004).

⁴⁶ Julie Mertus, *Women's Participation in the International Criminal Tribunal for the Former Yugoslavia (ICTY): Transitional Justice for Bosnia and Herzegovina* (Greensboro, NC: Hunt Alternatives Fund, 2004), 22.

⁴⁷ Mertus, *Women's Participation*, 22.

demonstrated within the International Criminal Tribunal for Rwanda (ICTR). After carefully analyzing the ICTR, questions arise as to the extent to which women's advocacy NGOs were able to influence the prosecution of rape and sexual violence as international crimes. In spite of the lack of total inclusion, the NGOs helpfulness in finding and bringing witnesses to the court was nonetheless beneficial.

The ICTR was established in November 1994 by the United Nations Security Council in Resolution 955 in order to "judge people responsible for the Rwandan genocide and other serious violations of international law" in Rwanda.⁴⁸ Located in Arusha, Tanzania, the Court indicted 90 Rwandans, and 62 were sentenced, and 14 were acquitted.⁴⁹ After intense media coverage of the mass rapes in the genocide, the ICTR faced heavy scrutiny by the public to find justice for the victims. In response to the establishment of the tribunal, several women's NGOs (both local and international) participated in the early stages of the Court. The organizations helped the tribunal maintain contact with witnesses and victims of rape and sexual violence. Furthermore, the ICTR's reliance on NGOs increased when the "Victims and Gender Support Unit directed NGOs operating in Rwanda to 'provide services in legal guidance, psychological and medical rehabilitation and other forms of assistance, such as resettlement, to victims and witnesses.'"⁵⁰ However, the cooperation requested could not be fulfilled because of the Tribunals reluctance to fully accept the help of the NGOs, who were often more knowledgeable about the subjects than those working at the ICTR. Even though these NGOs were fully capable and prepared to assist the tribunal in their cases, the tribunal was unwilling to work alongside these local women's groups.

⁴⁸ United Nations Security Council *Resolution 955.S/RES/955(1994)* 8 November 1994.

⁴⁹ ICTR, "CTR Basic Documents and Case Law," International Criminal Tribunal of Rwanda.

⁵⁰ Breton-Le Goff, *Analysis of Trends in Sexual Violence Prosecutions in Indictments by the International Criminal Tribunal for Rwanda (ICTR) from November 1995 to November 2002* (Montreal, CA: McGill University, 2002).

Furthermore, some women's organizations stopped cooperating with the ICTR after learning that survivors received no benefit while being exposed to the risk of physical retaliation and emotional trauma following their testimony. One member of Cyangugu Duhozanye Association, a women's group for rape survivors criticized the ICTR for "caring better for the Interahamwe [the civilian militia force that carried out much of the killing]." ⁵¹ Activist and NGO criticism of the tribunal was not unfounded, with a lack of a support system for women survivors. The ICTR was not an ideal example of cooperation between NGOs and IOs, but despite this, it was still a beneficial partnership. Without the initial help of the groups obtaining relevant testimony and witness statements, many of the criminals would not have faced justice for those crimes.

One critical finding within a study determined that while NGOs did play a significant role in the decision to prosecute individuals in Rwanda, they were not as influential in the actual convictions and trials as they were in the ICTY cases. ⁵² Some arguments for the discrepancy between the two cases look at the media coverage of the two events. Western newspapers covered much more of the violence in the former Yugoslavia than the Genocide in Rwanda, and since there was a lack of media coverage, the public did not put as much pressure on the tribunal in Rwanda.

Regional tribunals in these cases were beneficial because they were seen as legitimate sources of justice, and as such were less subject to critique. In the case of the former Yugoslavia and the Rwandan genocide, these judgments created a historical record and a definitive statement by the United Nations. However, the two tribunals were incredibly

⁵¹ Galina Laeva, "The Impact of Transnational Advocacy Networks on the Prosecution of Wartime Rape and Sexual Violence: The Case of the ICTR," *International Social Science Review* 85, no. 1 (2010), 4.

⁵² *Ibid*, 12.

different regarding their cooperation with NGOs. It is essential to understand that the women in the former Yugoslavia, in general, felt that more justice was brought, in comparison with the female victims in Rwanda. This pattern is reflected in the use of NGOs and their information in the tribunals. While the ICTY heavily relied on information, testimony, and support from NGOs, the ICTR refused to cooperate with the NGOs in Rwanda. Because of these differences, women were treated differently even when much of the violence was the same.

5.2: Rohingya Persecution

Recently in the global human rights discourse, there has been an increased focus on the Rohingya women and the violence that they are facing as a byproduct of their persecution in Myanmar. The Rohingya people are an ethnic minority group and the predominant occupants in the northern region of Rakhine State, Myanmar.⁵³ In 2013, the United Nations described this ethnic group as one of the most persecuted minorities in the world; the Rohingya population is denied citizenship under the 1982 Myanmar Nationality Law.^{54 55} Throughout the last few centuries, the Rohingya people have faced numerous persecutions, violence, and forms of ethnic cleansing. However, since 2015, the Myanmar government has conducted waves of large-scale military campaigns of ethnic cleansing.⁵⁶ As a result of this violence, Rohingya people have fled to Bangladesh in immense numbers to refugee camps across the border.⁵⁷ The mass migration of Rohingya people and the violence that they face has also led

⁵³ Syed S. Mahood et al., "The Rohingya People of Myanmar: Health, Human Rights, and Identity," *The Lancet* 389, no. 10081 (December 1, 2016), 1-10.

⁵⁴ Gabriella Canal, "Rohingya Muslims Are the Most Persecuted Minority in the World: Who Are They?," *Global Citizen*, last modified February 10, 2017.

⁵⁵ "Burma Citizenship Law". *Government of Burma*. UNHCR. 15 October 1982.

⁵⁶ Human Rights Watch, ed., "Rohingya Crisis," Human Rights Watch.

⁵⁷ Human Rights Watch, "Rohingya Crisis," Human Rights Watch.

to increased sexual violence against the Rohingya women both in refugee camps and in Myanmar alike. In Myanmar, as a tool of ethnic cleansing, the Burmese forces have committed widespread rape against women and girls.⁵⁸ In addition to this violence faced at home, once escaped from the Myanmar forces, women still face sexual violence in the refugee camps.⁵⁹

Remedying a situation as large-scale as the Rohingya Crisis is an enormous task that is utilizing many forces to complete. However, many of the resources are going to the crisis in general, instead of specific help to the female survivors. One mechanism that is being utilized to help women is the signing of a *Memorandum of Understanding* between the UN Refugee Agency (UNHCR), the UN Development Programme (UNDP), and the Government of Myanmar in June 2018.⁶⁰ This memorandum was created to address how to meet the necessary conditions conducive to a voluntary and safe return of the Rohingya to Myanmar. The Secretary-General of the United Nations declared, “As the conditions are not yet in place, [I] welcomes the agreement by the Government of Myanmar to take this first step to address the root causes of the conflict of the Rakhine.”⁶¹ While this statement that the UN and the Myanmar government does not explicitly fix the issues that caused the violence or call for justice for the violence, it does begin the process of healing by attempting to create conditions for the Rohingya to return home. This statement also demonstrates how cooperation between international organizations and domestic governments can come

⁵⁸ Human Rights Watch, ed., *Sexual Violence against Rohingya Women and Girls in Burma*, 4. November 16, 2017.

⁵⁹ Francisca Vigaud-Walsh, *Still At Risk: Restrictions Endanger Rohingya Women And Girls In Bangladesh*, July 25, 2018.

⁶⁰ United Nations Office of the Special Representative of the Secretary-General on Sexual Violence in Conflict, "One year into the Rohingya crisis, Special Representative Patten calls for accountability for sexual violence crimes," news release, August 24, 2018.

⁶¹ UN News, "UN agencies and Myanmar ink agreement, setting stage for Rohingya return," United Nations News, last modified June 6, 2018.

together to find solutions to problems. The UN and the Myanmar government aim to work together to create an environment that is safe for a Rohingya return, as well as fix the root of the violence (the intolerance of the Rohingya as an ethnic group).

While this memorandum was a start to the solution finding, it also lacks any clarity in finding justice for the victims of the violence. It is forward-looking in creating a safe environment, yet it refuses to acknowledge the state-sanctioned violence that occurred during the Rohingya prosecution of the last few years. In February 2019, the United Nations women's rights committee met and received a submission from Myanmar saying that "there was no evidence to support these wild claims." Since the government itself is the one who committed violent acts, there is an obvious assumption that those in the Myanmar government will deny any claims of sexual violence against the Rohingya by the Myanmar military. There is also no change in power at the top tier of the government, nor has there been any real change of bias among those in power. As a result, it will be difficult for the Myanmar government to hold itself criminally accountable to find justice on behalf of the victims.

The facts of the violence are established through the UN Human Rights Council's "Independent Fact-Finding Mission on Myanmar" to investigate the alleged human rights abuses by military and security forces. This Fact-Finding Mission issued their initial summary report in August 2018 and followed that with a 444-page report with more detailed findings in September 2018.⁶² These reports provided an immense amount of data of the

⁶² Human Rights Council, "Report of the Detailed Findings of the Independent International Fact-Finding Mission on Myanmar," *Human Rights Situations That Require the Council's Attention*, September 10, 2018, 6.

crimes committed in Myanmar, and many waves of violence that indicate genocidal acts took place.⁶³

One solution for this problem is to have international organizations coming in to hold the government itself accountable. Since Myanmar is a party to international legal treaties, they are held liable to the articles outlined in these documents. From reports coming from the NGO groups and survivors alike, it is clear that the Myanmar government has violated the UDHR (Art. 3, 4, 5, 9, 17, 18, 24)⁶⁴, the ICCPR (Art. 1, 6, 7, 8)⁶⁵, the CAT (Art. 2, 16)⁶⁶, the International Covenant on Economic, Social, and Cultural Rights (Art. 6, 10, 12)⁶⁷, and the Convention of the Rights of the Child (Art. 4, 24, 27, 30)⁶⁸. While Myanmar is not party to the CAT, the ICCPR, and ICESCR, Myanmar is still held legally responsible for these treaties because they are all considered customary international law.

In order to seek justice for the victims of these violations, there are many routes possible to hold the government accountable. Firstly, since the government itself committed the crimes, it is unlikely justice will be found in the domestic legal system. Moreover, since Asia has no regional human rights treaties, no regional legal system is in place for justice. Because of the lack of localized human rights systems, the justice must be found on the international level whether that be in the International Court of Justice, the International Criminal Court, or another ad-hoc court such as the ICTY and ICTR. Furthermore, it also is an important task to draw global attention to

⁶³ Human Rights Council, "Report of the Detailed," 6.

⁶⁴ UN General Assembly, Universal Declaration of Human Rights, 10 December 1948, 217 A (III).

⁶⁵ UN General Assembly, International Covenant on Civil and Political Rights, 16 December 1966, United Nations, Treaty Series, vol. 999, p. 171.

⁶⁶ UN General Assembly, Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 10 December 1984, United Nations, Treaty Series, vol. 1465, p. 85.

⁶⁷ UN General Assembly, International Covenant on Economic, Social and Cultural Rights, 16 December 1966, United Nations, Treaty Series, vol. 993, p. 3.

⁶⁸ UN General Assembly, Convention on the Rights of the Child, 20 November 1989, United Nations, Treaty Series, vol. 1577, p. 3.

the issue. Through the use of the media to highlight the abuses, citizens around the globe will be horrified by the situation. Hopefully, this will ignite international intervention; with people calling on their governments to act.

Additionally, the designation that this is a genocide will draw media attention as well. The genocide definition is carefully crafted and incredibly specific, and the actions taken by Myanmar against the Rohingya seem to fulfill all of the requirements. Calling something a genocide, since it is so precisely defined, creates huge ramifications. Hopefully, if this crisis is designated one, people will understand the gravity of the issues and support whatever actions IOs, NGOs, and their domestic governments take.

Moreover, the United Nations should press the UN Security Council (UNSC) to refer the situation in Myanmar to the International Criminal Court. The information released after the United Nations report on the conflict exhibited critical data about the criminal acts that took place, and the UNSC is the only way this case can move forward in the Court. Although with the immense number of violations against numerous treaties, it seems impossible to hold the State accountable for every act. It, therefore, is necessary to pull key leaders and instances to the front. Similar to the situation in the ICTY and ICTR, holding leaders accountable for their actions sends a clear message that there is no excuse for these crimes, even for those at the top.

Beyond just established legal mechanisms to seek justice for the victims of these acts of violence, NGOs in the area are hoping to positively impact the survivors by documenting the violence for future litigation and providing resources to the displaced people. Furthermore, these NGOs can record the injustice and report back to the rest of the world in order to demonstrate the tragedy in hopes of inciting international demand for justice. However, it is difficult for many NGOs to work directly in the Rakhine state and as such many are working with survivors who

are already in the refugee camps in Bangladesh. One executive of a small family foundation that had long been active in Myanmar said that “NGOs cannot travel freely in the Rakhine state because the military has it locked down.”⁶⁹ Because of the restricted access to the areas of displacement and conflict, group members of this organization have been working to move funds directly to local civil society organizations, since they play such a crucial role in supporting the communities and providing aid.⁷⁰ Despite the efforts from outside groups, local Myanmar civil society groups have little interest in improving the lives for the Rohingya. Even though groups, such as the previously mentioned one, have tried to finance support for the Rohingya, the prison-like state of the country makes this task virtually impossible.

Another group working within the Rakhine state is the Fund for Global Human Rights and their grantees the “Women’s Peace Network – Arakan,” an NGO in Myanmar. This group operates in Myanmar as the “only Rohingya-led human rights organization in the country.”⁷¹ The group monitors abuses against the Rohingya population and “quietly supports efforts of journalists and aid workers to gain access to the displaced populations, as well as informs policymakers about the local context.”⁷² This group is in a unique position because they can advocate both domestically in Myanmar and internationally on behalf of the Rohingya – specifically women within the group. Groups that are able to bring forth evidence of the crimes that occurred are critical to finding justice for the victims. Accountability begins with truth, and the preservation and support of victims by NGOs is critical to the potential future litigation and trials for this conflict.

⁶⁹ David Callahan, "A 'Textbook Example of Ethnic Cleansing.' Who's Helping the Rohingya of Myanmar?," *Inside Philanthropy*, last modified November 6, 2017.

⁷⁰ Ibid.

⁷¹ Fund for Global Human Rights, "The NextGen Leader Championing Women & Minorities," Global Human Rights.

⁷² Fund for Global Human Rights, "The NextGen," Global Human Rights.

This issues in Myanmar concerning the Rohingya are clear violations of international law, but it takes a multitude of forces to come together in order to hold the perpetrators of the violence accountable. Since the conflict is ongoing and investigations are incomplete, there is no obvious answer to the next steps for justice. It is important to note however that the NGOs actions in the country will be instrumental in any criminal proceedings. The victim support and evidence gathering is primarily done by the NGOs and has even already started being collected in preparation. Hopefully, the UNSC and the global community understand the scale of the violence occurring and acts accordingly.

5.3: United States-Mexico Border Violence

The most recent case of multi-faceted cooperation within the women's rights context is the crisis currently occurring on the United States-Mexico border. With the increased number of migrants crossing the border as refugees from Latin America, there has also been an increase in the practice called "militarized border rape."⁷³ These sexual assaults are perpetrated by Border Patrol and Immigration authorities, such as Immigration and Naturalization Services (INS) offices, as well as Border Patrol Agents at the US-Mexico border. Since the US-Mexico border conflict is not officially defined as a "war-zone," the militarized border rape practice is often disregarded.⁷⁴ Furthermore, since the women being assaulted are often already survivors of abuse, undocumented, or seeking to cross "illegally," they rarely report their assaults and therefore it is difficult to find conclusive data about these cases. However, a recent article by *The New York Times* exposed the corrupt immigration

⁷³ Sylvanna Falcón, "National Security' and the Violation of Women: Militarized Border Rape at the US-Mexico Border," in *Everyday Women's and Gender Studies: Introductory Concepts*, comp. Ann Braithwaite and Catherine Orr (Routledge, Taylor & Francis Group, 2017).

⁷⁴ Ibid.

system where “you have to pay with your body” at the border.⁷⁵ The article reports that over a recent four-year period the federal government has received more than 4,500 complaints about the sexual abuse of immigrants at government-funded detention facilities.⁷⁶ Out of the eight survivors interviewed for the article, seven reported that they were assaulted in the United States. The oldest victims were in their early 40s, while the two youngest girls were fourteen-years-old.⁷⁷ The issue is large-scale and deserves to be at the forefront of human rights discourse because of the lack of acknowledgment by the United States government.

These assaults have the potential to be prosecuted domestically, however there is tremendous fear to report because of the immigration status of the victims. Arizona lawyer Jesus R. Romo Vejar, who represents migrant women who are victims of sexual assault, exclaims that “they do not have many defenses. Undocumented women and children are the most unprotected of human beings.”⁷⁸ The anti-immigrant rhetoric in the United States creates a volatile environment for migrant victims to seek justice. Furthermore, the most recent government shutdown resulted in the United States lawmakers failing to reauthorize the Violence Against Women Act (VAWA) which funds organizations across the country, including shelters, hotlines, and counseling services.⁷⁹ The lack of funding for female survivors of assault, in general, is problematic, let alone for women who are undocumented or seeking asylum.

Since the United States is not party to the OAS’s American Convention of Human Rights Court, the nation is not liable to the laws stated in the treaty. Even though the United States is

⁷⁵ Manny Fernandez, "You Have to Pay With Your Body": The Hidden Nightmare of Sexual Violence on the Border," *The New York Times* (New York, NY), March 3, 2019.

⁷⁶ Ibid.

⁷⁷ Ibid.

⁷⁸ Fernandez, "You Have,".

⁷⁹ Elizabeth Chuck, "Women's lives in danger": Government shutdown holds up funds for sexual violence survivors," NBC News, last modified January 3, 2019.

a member of the OAS, it considers the treaty soft-law and non-binding.⁸⁰ As a result, sexual assault cases from the border are unable to be prosecuted in this court. It is interesting to note however that other countries see the United States as bound by these treaties (regional customary international law).⁸¹ Unfortunately, because of this, the OAS Court of Human Rights is not the most effective venue to litigate these criminal offenses.

Beyond regional mechanisms for accountability, international organizations such as the United Nations have looked into the potential violations within the US. However, the US has halted cooperation with the UN investigations into these potential human rights violations within the country.⁸² In 2019, the Trump Administration stopped cooperating with investigators from the UN Special Rapporteur's office, who were looking into issues in the United States regarding migrants, as well as prisons and anti-LGBT issues among other things.⁸³ This lack of engagement with the UN Human Rights division highlights the lack of concern the current administration has with protecting the rights of the nation's underprivileged and unprotected.

Due to the lack of criminal litigation of these border rapes the NGO Amnesty International called for state and other NGO involvement in the crisis to ensure proper medical and psychological services for the victims of sexual violence.⁸⁴ In the case of the US-Mexico border, since there is little criminal justice for the victims, NGOs can provide other services for the women. Whether this is counseling support or medical treatment, outside groups have the resources to help these survivors of assault. Furthermore, these

⁸⁰ Pamela Gann, "Class Lecture on Regional Human Rights Courts" (lecture, Claremont McKenna College, Claremont, CA, November 5, 2018).

⁸¹ Ibid.

⁸² Ed Pilkington, "US halts cooperation with UN on potential human rights violations," *The Guardian* (New York, NY), January 4, 2019.

⁸³ Pilkington, "US halts,"

⁸⁴ Amnesty International, ed., *Invisible Victims*, April 2010.

NGOs are recording data and witness statements on behalf of the victims. Because of the United States' lack of regard for the problem, it is up to third-party groups to record evidence for potential future criminal litigation.

Militarized border rape and other sexual assaults that occur at the United States-Mexico border are not new issues and have been occurring for decades. However, with the large scale of migrant caravans that are coming from conflict-ridden Latin America, the number of these assaults has gone up. Despite the fact that the United States government has not acknowledged the issues, regional organizations and international groups such as the UN have the ability to hold the country accountable. Furthermore, even though the US has withdrawn from the human rights division of the United Nations, it is still obligated to undergo "universal periodic review" in 2020, which is undertaken by the Human Rights Council.⁸⁵ Hopefully, this review exposes the violations that are occurring at the border, and in response, the nation is accountable for the abuses.

These examples from the international community within the context of current issues demonstrates the multifaceted path that must be taken in order to prevent and remedy violence against women. The ICTY and ICTR exemplified cooperation between international organizations, domestic governments, and international organizations. Each tribunal had flaws but ultimately they demonstrated how justice can be found for victims when there is multilateral cooperation. Moreover, the Rohingya crisis, though ongoing, shows signs of accountability with United Nations investigations and potentials for criminal accountability for the perpetrators using NGO evidence and witnesses. Additionally, the Rohingya persecution and the crisis at the US border are co-occurring. However, there is far less

⁸⁵ United Nations, "Universal Periodic Review," *United Nations Human Rights Council*.

international outcry for these issues because the United States is considered a global power and not in need of intense international human rights intervention. Although, after the Universal Periodic Review by the United Nations it will be interesting to see how the global community views the United States standing in human rights, as well as how international aid will change. Similarly, the international response to the United States successfully removing “sexual health” references from the UN Resolution on sexual violence will indicate the current global perspective on the country’s standing on human rights. Despite being an international superpower, the United States is not immune to accountability. The country cannot bully the United Nations without consequences, and thus it is critical to understand the repercussions and accountability that results from the country’s actions.

Chapter 6: Conclusion

The tragic reality about violence against women is that it will never be fully eliminated, until and unless Humankind adopts a meaningfully less violent culture. One is a direct function of the other. However, there are mechanisms and methods to continue to work to drastically reduce and minimize its institutionalized gender-based form. While there will always be obstacles and potential retaliation to solutions, the evidence demonstrates there are sustainable paths to restructure the global community. As discussed, these mechanisms do not always generate linear progress and almost always come with course corrections. Potential outcomes and fears must be analyzed prior to any action, and in turn, cooperation between governments, IOs, and NGOs can provide ample remedies for these fears, and find a solution that serves a catalyst for widespread global change in the prevention of VAW.

Furthermore, increased digital globalization creates an increasingly hostile climate for current human rights violations. Internet access and social media are powerful vehicles highlighting abuses around the world, and as such lead to international pressure on governments to create change in their communities. NGOs are ideal vehicles for collecting and disseminating information to the public, further ensuring that human rights violations become front page news, and are more likely to be addressed by human rights courts and administrations. The power of the people is a magnificent societal development.

In recognizing the positive trends in the prevention of VAW, it is important to be aware of and pro-actively address the related fears and potential outcomes of all mechanisms of prevention. One predominant fear that must be addressed is that of a retaliatory action taken if a sweeping treaty or policy enters into force. Failure to adequately address the impact of cultural and social norms before society accepts any progressive changes can lead to protests and

unwillingness to follow the law. A comparison can be drawn between this situation and *Roe v. Wade*. Many legal scholars think that *Roe* was too early, and the sweeping decision actually served as a catalyst for pro-life movements. The country was not ready for a large-scale change in the law, and as a result, there was an increase in retaliation. In the case of an international treaty, governments that agree without regard for their countries current social norms may face protests from their people and backlash against the government.

Another structural fear that must be tackled when addressing VAW is the problem of portraying women as sexual agents, targets of abuse, and citizens. Alice Miller, a human rights scholar at Harvard University, looks at the conflict between the conflation of violence, patriarchal oppression, and the value and worth of women. This conflation portrays only one side of the story: women as subordinate victims. Miller asks the important question, “How do we ensure that our interventions focused on stopping harm against women do not unknowingly reinscribe and reinforce the idea that the most important thing about a woman is her sexual integrity?”⁸⁶ This question is important to examine when addressing the systematic problems that women face in their daily life, and how methods to address these problems may actually hurt them more than help. It is a problem that is still unanswered, and there currently appears to be no perfect solution to the issue.

As Alice Edwards, international law scholar, writes, “Despite the significant progress that has been made in the sixty years since the formation of the United Nations and the elaboration of the UDHR under the guidance of Eleanor Roosevelt, there remain many ongoing challenges.”⁸⁷ There have been significant successes in human rights law, but those successes have primarily

⁸⁶ Alice M. Miller, "Sexuality, Violence against Women, and Human Rights: Women Make Demands and Ladies get Protection," *Health and Human Rights* 7, no. 2 (2004): 39.

⁸⁷ Edwards, *Violence Against*, 342.

excluded women. Women have yet to be treated as equal humans – being entitled the equal protection of the law. Women have benefited from human rights only indirectly since many of the human rights laws were written with men in mind rather than women.⁸⁸

By looking at past patterns of generating change, and the obstacles inhibiting the change, it is clear that coalitions between private and public groups must continue to form to actively implement a system to reduce both the sources and practice of violence. Post-World War II evidence suggests that the most effective strategy for preventing VAW is a multilateral approach that includes international organizations, domestic governments, and NGOs. Every branch of the coalition provides solutions to the unique problems each obstacle creates. Whether that is through NGOs' outreach work changing the norms of a society or domestic governments holding citizens accountable for their actions, each wing is vital for prevention. By working together, the groups can operate in the public and private realm of countries and affect true and meaningful change.

⁸⁸ Edwards, *Violence Against*, 343.

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