

## CHAPTER VIII: Violence against Women

Violence against women is a manifestation of social, sexual, and economic inequalities between men and women. Gender-based violence occurs against women and girls of every age, and it can happen in any setting, including within families, workplaces, educational institutions, and health facilities. Practices such as domestic violence, sexual harassment, sexual assault, trafficking in women and girls, and female genital mutilation (FGM) are all types of violence against women.

Governments worldwide are taking action to end violence against women. This chapter addresses the duty of governments to prevent violence against women and bring perpetrators to justice. It reviews the international legal foundations of this duty and identifies its three principal components: 1) to recognize all forms of violence against women in the law, 2) to remove all procedural barriers that impede the punishment of perpetrators of violence against women, and 3) to address transnational forms of violence such as trafficking.

### Global Dimensions of Violence against Women

- At least one in three women has been beaten, coerced into sex, or otherwise abused in her lifetime, according to a study based on 50 surveys from around the world.<sup>1</sup>
- The World Health Organization has reported that up to 70% of female murder victims are killed by their male partners.<sup>2</sup>

### HUMAN RIGHTS FRAMEWORK

The international community has specifically recognized women's right to be free from violence, including rape and other sexual violence. At the 1993 World Conference on Human Rights, representatives of 171 countries declared that "[g]ender-based violence and all forms of sexual harassment and exploitation, including those resulting from cultural prejudice and international trafficking, are incompatible with the dignity and worth of the human person, and must be eliminated."<sup>3</sup> States must therefore take the necessary measures to protect the rights of women in this area.

*For international legal foundations of the rights marked in bold, see Appendix B*

Violence against women violates women's **rights to life, health, and security of person**. Acts of violence such as rape, domestic violence, and FGM cause harm to a woman's body and health, and can result in death.

Women's **right to freedom from discrimination** entitles them to full enjoyment of all guaranteed human rights. Violence against women interferes with that enjoyment, particularly of the rights to life, health, and security of person noted above. Violence can also reinforce broader gender inequalities. For example, harassment and violence in schools or in the workplace have a direct impact on women's ability to participate equally with men in every sector of society.

These legal guarantees require governments to:

- **Recognize a governmental duty to take measures to prevent violence within the family.** Governments can be held accountable for their failure to prevent and punish acts of violence committed by private parties.
- **Recognize all forms of violence against women in the law.** Governments must criminalize all forms of violence against women and create law enforcement and judicial mechanisms to facilitate meaningful enforcement of laws protecting women from violence.
- **Address transnational forms of violence against women, including trafficking.** Governments should ensure that criminal laws specifically address trafficking. Also, governments should enact legislation to protect and support victims of trafficking.

## 1. RECOGNITION OF A GOVERNMENTAL DUTY TO PREVENT VIOLENCE WITHIN THE FAMILY

Governments' responsibility for preventing violence against women requires action on multiple fronts. Initiatives to address gender-based violence, such as **El Salvador's** law against violence within the family, can improve the response of law enforcement by enumerating procedures that make it safer for survivors to come forward.

### A. El Salvador Addresses Violence within the Family

*Since domestic violence commonly occurs within the home and between close relatives, advocates for intervention frequently must dispute the contention that the problem is a private affair. At the same time, legislators need to consider the family context in which the violence takes place in order to draft appropriate legislation. In El Salvador, a 1996 law on violence within the family represents one public response that is sensitive to the intimate dimensions of these crimes.*

In El Salvador, violence within the family is regulated by the Law against Violence within the Family and by the penal code.<sup>4</sup> The former establishes the state's duty to prevent, punish, and eradicate violence within the family.<sup>5</sup>

#### *Definition of violence within the family*

The law defines violence within the family as direct or indirect acts or omissions “that cause harm, physical, sexual, or psychological suffering, or death to persons within a family.”<sup>6</sup> Three types of family violence are distinguished: psychological violence,<sup>7</sup> physical violence,<sup>8</sup> and sexual violence.<sup>9</sup>

#### *Police procedures*

A special division was created in the National Civil Police to investigate and process complaints of violence within the family.<sup>10</sup> The law also sets out the procedures for police intervention.<sup>11</sup>

#### *Role of courts*

The law establishes the jurisdiction of certain courts to adjudicate cases of violence within the family, as well as protective measures that courts may order to protect the person who has been harmed.<sup>12</sup>

For example, judges can grant the injured party an order of protection and police assistance, and decree maintenance.<sup>13</sup> Judges can also decree a loss of parental authority or custody of the children, or both.<sup>14</sup>

Judges can also take more direct measures to stop the aggressor's acts of violence, such as:

- ordering the termination of acts of harassment and mistreatment;
- prohibiting the aggressor from consuming alcohol or drugs or from carrying weapons; and
- ordering the aggressor to leave the shared home and prohibiting him or her from having access to the home of the injured party.<sup>15</sup>

The aggressor is required to undergo specialized psychological or psychiatric treatment relating to violence within families.<sup>16</sup> A fine is imposed when the measures ordered by the judge are violated.<sup>17</sup>

Any person who has knowledge of an act of violence within the family can file a complaint.<sup>18</sup> The family courts and the justices of the peace are legally competent to hear such complaints;<sup>19</sup> in the event of noncompliance with their judgments, the Office of the Public Prosecutor is required to intervene.<sup>20</sup>

## 2. RECOGNITION OF ALL FORMS OF VIOLENCE AGAINST WOMEN IN THE LAW

Many forms of violence against women have gone unacknowledged by national-level legislation. The failure to recognize some forms of gender-based violence as crimes often stems from social and cultural acceptance of these acts. Governmental recognition of the criminal nature of long-accepted forms of violence against women is an important step in addressing widespread tolerance of discrimination against women.

Legislative initiatives are critical to changing the social environment that has fostered the perpetuation of violence against women. Policymakers can send strong signals about society's condemnation of these crimes by comprehensively enumerating offenses and prescribing stringent penalties, as did **Colombia** in its expansion of the definition of rape and **Tunisia** and **Sri Lanka** in their legislation on sexual harassment.

### A. Colombia Expands Definition of Rape

*Sexual violence is a serious problem in Colombia. In 2000, 11% of ever-married women of reproductive age reported having been sexually abused by their spouses; an additional 7% reported having been raped by others, most commonly by men who were strangers (29%), friends (26%), and relatives (15%).<sup>21</sup> The following summary of reforms in the Colombian Penal Code illustrates how a legislature can significantly increase protection against sexual violence by expanding the definition of sexual crimes and eliminating loopholes in the law.*

The penal code reform achieved in Colombia's Law 599 of 2000 addresses a void identified long ago by those within the criminal justice system—namely, the lack of a definition of “carnal access” in provisions meant to punish unlawful carnal access. The definition provided by the new code has been commended for extending jurisprudence and legal principles in this area. According to the new

definition, “carnal access” includes penetration of the penis into the vagina, anus, or mouth of the victim, as well as penetration of any other body part or object in the victim’s vagina or anus.<sup>22</sup>

## **B. Tunisia Enacts Law Criminalizing Sexual Harassment**

*While there are currently no statistics available to indicate the extent and level of sexual harassment in Tunisia,<sup>23</sup> a women’s rights group recently identified workplace harassment as the second most reported crime in that North African nation.<sup>24</sup> In passing an amendment to the penal code to include the specific offense of sexual harassment, the Tunisian legislature recognizes the distinct harm caused by the set of actions, gestures, words, and environment factors that make up sexual harassment.*

On August 2, 2004, Tunisia enacted Law No. 2004–73 amending the 1913 Penal Code to criminalize sexual harassment and certain offenses “against morality.”<sup>25</sup>

### *Definition*

The provision relating to sexual harassment defines the offense as persistent harassment of another through repeated humiliating or offensive actions. It also designates as sexual harassment words or gestures that are intended to cause the victim to submit to one’s own sexual overtures (or to those of a third party) or to weaken the victim’s efforts to resist those overtures.<sup>26</sup>

### *Penalties*

The provision penalizes offenders with imprisonment of one year and a fine of 3,000 Tunisian dinars, and doubles the punishment where the victim is a child or a person with physical or mental disabilities.<sup>27</sup>

## **C. Sri Lanka Establishes Civil and Criminal Procedures to Address Sexual Harassment in Schools**

*Sexual harassment in schools not only violates the right to bodily integrity but also interferes with the right to education and can have far-reaching negative effects on students who are harassed. The Sri Lankan government recently passed legislation to address the problem of sexual harassment in school environments.*

Through the 1998 Prohibition of Ragging and Other Forms of Violence in Educational Institutions Act, Sri Lanka made combating sexual harassment in schools a law enforcement priority.<sup>28</sup>

### *Definition*

The legislation defines ragging as “any act which causes or is likely to cause physical or psychological injury or mental pain or fear to a student or a member of the staff of an educational institution.”<sup>29</sup> The act addresses the specific forms that sexual coercion in a school environment may take.<sup>30</sup>

### *Penalties*

Ragging that involves the sexual harassment of a student or staff member at an educational institution is punishable with up to ten years' imprisonment and payment of compensation to the victim.<sup>31</sup> In addition, the act grants courts the authority to order the expulsion of a student or the dismissal of a staff member from an educational institution.<sup>32</sup>

### *Measures to facilitate enforcement*

The legislation further seeks to promote the judiciary's effectiveness on the issue by ordering courts to give priority to cases prosecuted under the act.<sup>33</sup> Provisions of the act also prescribe methods for handling witnesses' repudiation of their prior statements, presumably to ensure that proceedings are not undermined by witness intimidation.<sup>34</sup>

## **3. ACTION AGAINST TRAFFICKING OF WOMEN AND GIRLS**

Combating trafficking in persons is a difficult and complex task because of the implications trafficking has for international law enforcement, immigration policies, concepts of enslavement and consent, conflict situations and geopolitical instability, global economic inequalities, and corruption. Trafficking for the purposes of sexual exploitation represents an insidious pattern of violations of many rights, including the rights to dignity, bodily integrity, and freedom of movement.

Government responses to trafficking have increasingly recognized the transnational dimensions of the crime. Initiatives such as the legislation adopted in the **Philippines** support the fight against trafficking by revising criminal laws to respond to the ever-increasing modes of trafficking. Greater specificity in laws addressing trafficking makes it easier for prosecutors to pursue perpetrators of exploitation. The legislative process is also an effective venue for addressing the immigration status of trafficked persons and establishing programs to facilitate their transition to legal means of employment. An initiative of this type was adopted in **Italy**.

### **A. Philippines Enacts Comprehensive Plan for Combating Trafficking and Assisting Trafficked Persons**

*On May 26, 2003, the Philippines enacted Republic Act No. 9208, entitled the Anti-Trafficking in Persons Act of 2003.<sup>35</sup> The law, which cites international human rights instruments,<sup>36</sup> announces a state policy to address the multiple forms of human trafficking and develop measures aimed at supporting trafficked persons and ensuring their recovery and reintegration into mainstream society.*

Under Republic Act No. 9208, it is a crime to:

- recruit, transport, or receive a person by any means, including under the pretext of domestic or overseas employment, for the purpose of buying, selling, or trading the person;
- introduce or match for marriage a person to a foreign national for money or other consideration;
- offer or contract marriage, real or simulated;
- organize tours for the purpose of prostitution, pornography, or sexual exploitation;

- maintain or hire a person to engage in prostitution or pornography; or adopt or facilitate the adoption of persons for the purpose of prostitution, pornography, sexual exploitation, forced labor, slavery, involuntary servitude, or debt bondage;
- recruit, hire, adopt, transport, or abduct a person for the purpose of removal or sale of his or her organs; and
- recruit, transport, or adopt a child to engage in armed activities in the Philippines or abroad.<sup>37</sup>

A number of activities deemed to “promote” trafficking are also prohibited. Increased penalties, including life imprisonment, are imposed when, inter alia, the trafficked person is a child; the offender is a parent or guardian of the trafficked person; or the trafficked person dies, develops mental illness, suffers mutilation, or becomes infected with HIV.<sup>38</sup> Other provisions of the act mandate the implementation of programs to prevent trafficking, and protect and rehabilitate trafficked persons.<sup>39</sup> The law recognizes trafficked persons as victims, according them exemption from criminal liability and entitlement to enter the Witness Protection Program.<sup>40</sup> Trafficked foreign nationals are provided the same protection as trafficked citizens of the Philippines.<sup>41</sup> The law calls for the establishment of an Inter-Agency Council against Trafficking and enumerates mandatory services to be made available to trafficked persons such as emergency shelter, counseling, free legal services, medical or psychological services, livelihood and skills training, and educational assistance to a trafficked child. The law further provides for the repatriation of foreign trafficked persons and the inclusion of trafficking among extraditable offenses.<sup>42</sup>

## B. Italy Offers Trafficked Persons Temporary Residency

*As receiving countries grapple with how to penetrate and prosecute international trafficking networks, they must also determine how to treat trafficked persons, whose presence within their territory is frequently illegal. A number of countries have made temporary grants of residency to trafficked persons contingent upon their participation in the investigation and prosecution of their traffickers. Italy, however, in a progressive move lauded by advocates for trafficked persons, chose not to impose that obligation.<sup>43</sup>*

Under article 18 of the Italian Immigration Law, Law 286 of 1998, victims of severe exploitation may apply for a renewable six-month residency permit.<sup>44</sup> While Italian authorities encourage trafficked persons to cooperate with the apprehension and trial of those responsible for their exploitation, the law does not withhold residency from those who wish to avoid involvement in criminal proceedings against their traffickers.<sup>45</sup> The granting of residency is contingent on the individual taking part in a social assistance program that facilitates integration through access to social services and employment.<sup>46</sup> Holders of residency permits are entitled to social services, access to educational institutions, and—provided minimum age requirements met—authorization to work.<sup>47</sup>

## CONCLUSION

Advocacy in the judicial and legislative branches of government can yield significant gains in efforts to eliminate violence against women. Work with judicial and legislative actors offers opportunities to achieve formal recognition of governments' legal responsibility to address violence against women. It also helps expand governments' understanding of the criminal nature of many long-accepted forms of violence against women, such as the age-old crime of marital rape, which persists through patriarchal conceptions of privacy. Building on that work, litigation and legislative advocacy can enhance the enforcement of criminal penalties by removing procedural obstructions to justice. Finally, recognition of the global dimensions of crimes such as trafficking encourages a governmental approach that looks beyond national criminal law.

## Endnotes

1. Amnesty International, *Stop Violence Against Women, Statistics*, available at <http://www.amnesty.org.uk/content.asp?CategoryID=10309> (last visited Nov. 20, 2006).
2. *Id.*
3. *Vienna Declaration and Programme of Action, World Conference on Human Rights*, Vienna, Austria, June 14-25, 1993, para. 18, U.N. Doc. A/CONF.157/23 (1993) [hereinafter *Vienna Declaration and Programme of Action*].
4. *Ley Contra La Violencia Intrafamiliar* [Law Against Violence Within the Family], Decreto Legislativo No. 902, Nov. 28, 1996, amended by Decreto Legislativo No. 403, Aug. 12, 2004 (El Sal.), available at <http://www.csj.gob.sv/leyes.nsf/0/ea93e5a68de3343906256d02005a3a9e?OpenDocument>.
5. *Id.* art. 6.
6. *Id.* art. 3.
7. *Id.* Psychological violence is defined as all actions or omissions whose purpose is to “control or degrade the actions, behavior, beliefs and decisions of other people, through intimidation, manipulation, direct or indirect threat, humiliation, isolation or any other conduct or omission that causes damage to mental health, self-determination, comprehensive development and personal opportunities.”
8. *Id.* Physical violence is defined as “actions, behavior or omissions that threaten or wound the physical integrity of a person.”
9. *Id.* Sexual violence is defined as “actions that force a person to engage in physical or verbal sexual contact, or to participate in such acts, through force, intimidation, coercion, blackmail, bribes, manipulation, threat or other mechanisms that nullify or limit personal free will. It is also considered sexual violence when a person is forced to carry out these acts with third persons.”
10. *Id.* art. 6.
11. *Id.* arts. 10-11.
12. *Id.* art. 7.
13. *Id.*
14. *Id.*
15. *Id.*
16. *Id.* art. 28.
17. *Id.*
18. *Id.* art. 13.
19. *Id.* art. 20.
20. *Id.* art. 17.
21. PROFAMILIA, SALUD SEXUAL Y REPRODUCTIVA EN COLOMBIA: ENCUESTA NACIONAL DE DEMOGRAFIA Y SALUD [NATIONAL DEMOGRAPHIC AND HEALTH SURVEY] 180 (2000).
22. CÓDIGO PENAL [PENAL CODE], Law No. 599 of 2000, art. 212 (Colom.).
23. U.S. DEP’T OF STATE, *Tunisia: Country Report on Human Rights Practices 2003*, February 25, 2004, available at <http://www.state.gov/g/drl/rls/hrrpt/2003/27939.htm>.
24. FIDH, *Discrimination and Violence Against Women in Tunisia*, June 3, 2002, available at [http://www.fidh.org/article.php3?id\\_article=2274](http://www.fidh.org/article.php3?id_article=2274).
25. *Loi No. 2004-73 modifiant et complétant le Code pénal concernant la répression des atteintes aux bonnes moeurs et du harcèlement sexuel* [Law modifying and completing the Penal Code to prohibit assaults against morality and sexual harassment], August 2, 2004, J.O. REP. TUNISIA, No. 63, Aug. 6, 2006 (Tunis.) available at <http://www.ilo.org/dyn/natlex/docs/SERIAL/68257/66315/F262878188/TUN68257.pdf>.
26. *Id.* art. 1 (sole article) creating Penal Code art. 226 ter.
27. *Id.*
28. Prohibition of Ragging and other Form of Violence in Educational Institutions Act, No. 20 of 1998, § 2(2) (Sri Lanka).
29. *Id.* art. 17.
30. *Id.* arts. 2-7
31. *Id.* art. 2(2).
32. *Id.* art. 8.
33. *Id.* art. 15.
34. *Id.* art. 13.
35. *Republic Act No. 9208, the Anti-Trafficking in Persons Act of 2003*, May 26, 2003 (Phil.), available at [http://www.lawphil.net/statutes/repacts/ra2003/ra\\_9208\\_2003.html](http://www.lawphil.net/statutes/repacts/ra2003/ra_9208_2003.html).
36. *Id.* sec. 2.
37. *Id.* sec. 4.
38. *Id.* sec. 5.
39. *Id.* sec. 16.
40. *Id.* secs. 17-18.
41. *Id.* sec. 19.
42. *Id.* secs. 20-21, 25-26.
43. See, e.g., Franciscans International, *Legislative and administrative challenges in fighting human trafficking in Italy* (written statement), United Nations Commission on Human Rights, 60th Session, UN Geneva, March 15-April 23, 2004.
44. *Decreto legislativo, n. 286/98, art. 18, Testo unico delle disposizioni concernenti la disciplina dell-immigrazione e norme sulla condizione dello straniero* [Immigration and Aliens], art. 18.1, July 25, 1998, *Gazzetta Ufficiale* n. 191, Aug. 18, 1998 – Supp. Ord. n. 139 (Italy), available at <http://www.parlamento.it/leggi/deleghe/98286dl.htm>.
45. *Id.*
46. *Id.*
47. *Id.* art. 18.5