

SYMPOSIUM ON
THE INTERNATIONAL LEGAL OBLIGATION TO CRIMINALIZE MARITAL RAPE
CRIMINALIZING SEXUAL VIOLENCE AGAINST WOMEN IN INTIMATE
RELATIONSHIPS: STATE OBLIGATIONS UNDER HUMAN RIGHTS LAW

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Introduction

Criminalization of sexual violence against women in intimate relationships must form a central part of the human rights agenda for achieving gender equality. According to a study by the United Nations Secretary-General, “[t]he most common form of violence experienced by women globally is intimate partner violence” including “a range of *sexually*, psychologically and physically coercive acts.”¹ The World Health Organization reports that nearly one in four women in some countries may experience sexual violence perpetrated against them by an intimate partner.² Other research suggests that approximately 40% of all assaulted women are forced into sex at one time or another by their male partners.³

Yet more than half the countries of the world do not explicitly criminalize sexual assault in marriage,⁴ including OECD countries like the Czech Republic and Japan. In some countries, such as Tunisia, Cameroon, and Bulgaria, perpetrators of rape are exempt from criminal charges if they marry the victim. Sexual assaults committed against a spouse remain entirely legal in 35 countries including Sri Lanka, India, Bulgaria, Kenya, and Malawi.⁵ Certain U.S. states either retain exemptions for sexual assault committed by spouses or give it

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¹ Secretary General, *In-depth study on all forms of violence against women*, paras. 112-113 UN Doc. A/61/122/Add.1 (July 6, 2006) (emphasis added) [hereinafter UNSG VAW Study]. *See also* Human Rights Council Res. 23/25, UN Doc. A/HRC/RES/23/25 (June 25, 2013).

² ETIENNE G. KRUG ET AL., WORLD REPORT ON VIOLENCE AND HEALTH, WORLD HEALTH ORGANIZATION [WHO] 149 (2002).

³ Jacquelyn C. Campbell & Peggy Alford, *The Dark Consequences of Marital Rape*, 89 AM. J. NURSING 946, 946 (1989). Judith M. McFarlane & Ann Malecha, *Sexual Assault Among Intimates: Frequency, Consequences & Treatments* 3, U.S. Dept. of Justice Grant No. 2002-WG-BX-0003 (2005).

⁴ World Bank, Protecting Women From Violence (2015).

⁵ *Id.*

lesser penalties than other rapes.⁶ When passing legislation to address domestic violence in 2014, Lebanon not only declined to criminalize marital rape, but legally entrenched a “marital right of intercourse.”⁷

Failure to criminalize sexual violence perpetrated by a husband (or intimate partner) effectively facilitates and condones a private legal space within spousal relationships where sexual assault and coercion are permissible.⁸ This legal abandonment of married women’s rights to liberty, autonomy, self-determination, and bodily security creates a class of women with lesser legal rights. The state’s insulation of marital rape from criminal sanction is also incommensurate with women’s equal citizenship and equal enjoyment of all other human rights.

We argue that international law requires the criminalization of marital rape.⁹ We point to the ways in which international human rights treaties and other international instruments can assist efforts to end legal impunity for the sexual violation of women in intimate relationships. International law establishes a due diligence standard under which states are obliged to prevent, investigate, punish, and provide remedies for violations of human rights, regardless of whether the acts are committed by state or nonstate actors. This standard provides a powerful legal tool for the work of criminalizing and ending sexual violence in intimate relationships.¹⁰

International Human Rights Prohibits Marital Rape

As early as 1993, the UN Declaration on the Elimination of Violence Against Women (DEVAW) explicitly recognized violence against women as including marital rape.¹¹ DEVAW specifies that UN members have a duty to exercise “due diligence to . . . *punish* acts of violence against women,” even if those acts are perpetrated by private persons.¹² This was subsequently emphasized in the 1995 Beijing Declaration and Platform for Action, which was adopted by 189 UN Member states. The Beijing Declaration further recognized that violence against women, including marital rape, “is a manifestation of the historically unequal power relations between men and women” and demanded that states enact or reinforce sanctions that punish perpetrators and provide women with access to justice.¹³ Sexual violence perpetrated against intimate partners is a violation of fundamental human rights and interferes with or entirely undermines the enjoyment of all other rights.

International human rights treaties and the criminalization of marital rape

Beyond these nonbinding declarations, violence against women can breach a number of human rights treaties that require criminalization by states in order to fulfill their due diligence obligations under a variety of international and regional arrangements. The Committee on the Elimination of All Forms of Discrimination

⁶ Jessica Klarfeld, *A Striking Disconnect: Marital Rape Law's Failure to Keep up with Domestic Violence Law*, 48 AM. CRIM. L. REV. 1819, 1842 (2011).

⁷ Human Rights Watch, *Lebanon: Domestic Violence Law Good, but Incomplete* (April 3, 2014).

⁸ Sexual violence in intimate relationships refers to marital rape, spousal sexual assault, and sexual assault in marriage. The term marriage refers to a range of intimate spousal type relationships, whether legally constituted or not.

⁹ For a fuller elaboration, see Melanie Randall & Vasanthi Venkatesh, *The Right to No: State Obligations to Criminalize Marital Rape and International Human Rights Law*, 41 BROOK. J. INT'L L. (forthcoming 2016).

¹⁰ *Velásquez Rodríguez v. Honduras*, Merits, Judgment, Inter-Am. Ct. H. R. (ser. C) No. 4, paras. 172-176 (July 29, 1988)

¹¹ *The UN Declaration on the Elimination of Violence Against Women*, GA Res. 48/104, arts. 1-2 (Dec. 20, 1993).

¹² *Id.*, art. 4(c,d).

¹³ World Conference on Women, *Report of the Fourth World Conference on Women*, paras. 118, 124(c,h) UN Doc. A/CONF.177/20/Rev.1 (Sept. 4-15, 1996).

Against Women (CEDAW)¹⁴ and other UN treaty bodies such as the Committee against Torture and the Human Rights Committee¹⁵ have recognized that violence against women, which includes marital rape, can breach fundamental rights to life, liberty and security of person, to nondiscrimination and equal protection under the law, and to freedom from torture.

In the International Covenant on Civil and Political Rights (ICCPR), the right to life is nonderogable.¹⁶ The Human Rights Committee identifies violence against women as a threat to the right to life.¹⁷ Any action by a nonstate actor that is condoned by the state and results in the violation of the right to life must be subject to the strictest sanctions, in other words, to criminal sanctions.¹⁸

Rape and domestic violence have each been legally recognized as violations of the right to life¹⁹ and rape in spousal relationships, by extension, necessarily also violates that right. Marital rape can have distinct health consequences harboring right to life implications, such as miscarriages, fistulas, and the contraction of potentially fatal sexually transmitted diseases including HIV.²⁰ The fear of domestic violence and physical harm can also force women to accede to unwanted sex.²¹ Both on its own terms, and as an expression of domestic violence, therefore, marital rape violates the right to life.

In its recent General Comment on the right to liberty and security of the person, the Human Rights Committee asserted that the right requires state parties “respond appropriately” to patterns of violence against women, including domestic violence.²² Appropriate responses, according to the Committee, include preventive measures as well as retrospective measures, such as the enforcement of criminal laws. Safeguarding women’s rights to liberty and security of the person, therefore, obliges states to criminalize marital rape.

The Human Rights Committee has recognized that the gender-specific nature of domestic violence makes it a violation of the right to equality.²³ The link between violence against women and gender discrimination is well established and uncontroversial. Criminalization of sexual and physical violence in all its forms has long been recognized by CEDAW, UN Special Rapporteurs on violence against women, and several UN bodies as

¹⁴ Comm. on the Elimination of Discrimination Against Women, General Recommendation 19, para. 7, UN Doc. A/47/38 (1992) [hereinafter General Recommendation 19].

¹⁵ The United States is among the states that do not accept the opinions of treaty bodies as authoritative (*see* U.S. Department of State, Response of the United States to List of Issues to Be Taken Up in Connection With the Consideration of the Second and Third Periodic Reports of the United States of America (July 17, 2006)). However, courts in many jurisdictions, including several in the United States, have recognized that treaty bodies’ “interpretations deserve to be given *considerable weight* in determining the meaning of a relevant right and the existence of a violation.” *See* INTERNATIONAL LAW ASSOCIATION, COMMITTEE ON HUMAN RIGHTS LAW AND PRACTICE, FINAL REPORT ON THE IMPACT OF FINDINGS OF THE UNITED NATIONS HUMAN RIGHTS TREATY BODIES, para. 148 (2004) (emphasis added).

¹⁶ International Covenant on Civil and Political Rights, art. 4(2), Dec. 16, 1966, 6 ILM 360 (1967).

¹⁷ UN Human Rights Comm., Concluding Observations on Colombia, UN Doc. A/52/40, at para. 287 (1997); UN Human Rights Comm., Concluding Observations on Peru, UN Doc. A/52/40, at para. 167 (1997). In several concluding observations, the Committee has specifically demanded that the member states criminalize marital rape (*See* UN Human Rights Comm., Concluding Observations on Sri Lanka, UN Doc. CCPR/CO/79/LKA, at para. 20 (2003)).

¹⁸ UN Human Rights Comm., General Comment 28, Equality of Rights Between Men and Women (Article 3), para. 10, UN Doc. CCPR/C/21/Rev.1/Add.10 (2000) [hereinafter UNHRC General Comment 28].

¹⁹ *See* Opuz v. Turkey, App. No. 33401/02, 2009 Eur. Ct. H.R. 870; Maria Da Penha v. Brazil, Case 12.051, Inter-Am. Comm’n H.R., Report No. 54/01, OEA/Ser.L/V/II.111, doc. 20 rev. 704 (2001); Lenahan v. United States, Case 12.626, Inter-Am. Comm’n H.R., Report No. 80/11, OEA/Ser.L/V/II.142, paras. 170, 177, 199 (2011).

²⁰ World Health Organization, Understanding and Addressing Violence Against Women: Sexual Violence, WHO/RHR/12.37, at 6 (2012).

²¹ *Id.*

²² UN Human Rights Comm., General Comment 35: Article 9—Liberty and Security of Person, para. 9, UN Doc. CCPR/C/GC/35 (Dec. 16, 2014).

²³ UNHRC General Comment 28, *supra* note 18, at para. 10.

an essential remedy to combat gender discrimination and provide women with equal protection under the law.²⁴ The obligation to provide adequate reparations to women who are subject to sexual or physical violence under any conditions involves ensuring access to both criminal and civil remedies.²⁵ A 2006 report on violence against women by the Secretary General reiterates the due diligence obligation of states under the Beijing Platform “to treat all forms of violence against women and girls as *criminal offences*.”²⁶

In a similar vein, the Committee against Torture has emphasized that when condoned by the state, gender violence by nonstate actors constitutes a violation of the Torture Convention.²⁷ The Committee includes rape and gender violence in its definition of acts of torture, and asserts that the state should be considered as the “author” of such acts when it has failed to “exercise due diligence to prevent, investigate, prosecute and punish” them.²⁸ The Committee is categorical that Articles 1 and 4 of the Convention require states to make the offence of torture punishable as a criminal offence,²⁹ which therefore extends to marital rape. State failures to criminalize marital rape also represent encouragement or *de facto* permission for the crime, as per the Committee’s interpretation of state inaction towards acts of torture by private actors.³⁰ Furthermore, because marital rape can be an act of torture, a state’s obligation to prohibit it is absolute and nonderogable.

In international criminal law, rape has also been identified as constituting torture and cruel and inhuman treatment, even when conducted by private actors, if it is condoned or tolerated by the state.³¹ International criminal law is concerned with individual responsibility, whereas international human rights law is concerned with state responsibility, and the two define rape and torture somewhat differently.³² Yet the absolute condemnation of rape as an act of torture in both fields, along with the requirement that rape perpetrated by

²⁴ General Recommendation 19, *supra* note 14, art. 6; Yakin Ertürk (Special Rapporteur on violence against women, its causes and consequences), The Due Diligence Standard as a Tool for the Elimination of Violence against Women, para. 35, UN Doc. E/CN.4/2006/61 (Jan. 20, 2006); Rashida Manjoo (Special Rapporteur on violence against women, its causes and consequences), Report of the Special Rapporteur on Violence Against Women, paras. 50, 74 UN Doc. A/HRC/23/49 (May 14, 2013) (due diligence standard requires that states impose “severe” and effective sanctions against spousal violence to prevent future conduct “because of the ongoing nature of the relationship between victim and perpetrator”); Yakin Ertürk (Special Rapporteur on violence against women, its causes and consequences), Indicators on violence against women and State response, paras. 71, 78, 81 UN Doc. A/HRC/7/6 (Jan. 29, 2008) (the criminalization of domestic and intimate partner violence is a specific requirement under the Beijing Platform and was a “minimum standard”).

²⁵ Rashida Manjoo (Special Rapporteur on violence against women, its causes and consequences), Report of the Special Rapporteur on Violence against Women, UN Doc. A/HRC/14/22 (19 April 2010).

²⁶ UNSG VAW Study, *supra* note 1, at 12 (emphasis added). The study also noted, “State inaction with regard to the proper functioning of the *criminal justice system* has particularly corrosive effects as impunity for acts of violence against women encourages further violence and reinforces women’s subordination.”

²⁷ Comm. Against Torture, General Comment 2, Implementation of Article 2 by States Parties, UN Doc. CAT/C/GC/2/CRP.1/Rev.4 (2007) [hereinafter Comm. Against Torture, General Comment 2].

²⁸ *Id.*

²⁹ *Id.* at paras. 8,9. Marital rape satisfies all the elements of “torture” as defined in Article 1 since it is an act (1) inflicting severe pain and suffering; (2) for a prohibited purpose that includes coercion, intimidation, or discrimination; and (3) acquiesced or condoned by a state actor.

³⁰ *Id.* at para. 13.

³¹ See Prosecutor v. Furundžija, Case No. IT-95-17/1-T, Judgment, paras. 144, 153-189 (Int’l Crim. Trib. For the Former Yugoslavia Dec. 10, 1998). See also Prosecutor v. Jean-Paul Akayesu, Case No. ICTR-96-4-T, Judgment, para. 597 (Sep. 2, 1998). See also Aydin v. Turkey (No. 50), 1996–VII 75 Eur. Ct. H. R. 1866, para. 86 (1997); Opuz v. Turkey, Eur. Ct. H. R. App. No. 33401/02 (2009)

³² REDRESS, REDRESS FOR RAPE, USING INTERNATIONAL JURISPRUDENCE ON RAPE AS A FORM OF TORTURE OR OTHER ILL TREATMENT (2013).

private actors must be criminalized, demonstrates the universality and convergence in international law in matters of sexual violence against women.³³

Finally, marital rape impinges on myriad other rights recognized by regional human rights instruments, domestic laws, and transitional and domestic courts, rights that are critical to the autonomy and wellbeing of an individual. Acts of intimate partner sexual assault impair or nullify the enjoyment of economic, social, and cultural rights, protected under International Covenant on Economic, Social and Cultural Rights (ICESCR).³⁴ Additionally, the Committee on Economic, Social and Cultural Rights, in its General Comment on the right to the highest attainable standard of health, exhorts states to protect women from domestic sexual violence in order to reduce women's health risks.³⁵

The failure to protect women against violence, and the failure to criminalize and to prosecute perpetrators of marital rape, therefore, are violations of a state's obligation to protect women's right to health. Other rights affected include rights to equality within the family, sexual self-determination, human dignity, humane treatment, privacy, effective judicial recourse, safety, physical and mental integrity, integrity of the person, sexual and reproductive choice, and health.³⁶

Regional instruments and the criminalization of marital rape

Regional human rights systems make spousal rape a high priority for legislative action. The Inter-American Convention to Prevent, Punish and Eradicate Violence against Women (also called the Convention of Belém do Pará) recognizes all gender-based violence as an abuse of human rights and fundamental freedoms.³⁷ This Convention's definition of violence against women includes "physical, sexual and psychological violence" that occurs "within the family or domestic unit or within any other interpersonal relationship," which obviously covers intimate partner sexual violence.³⁸ The Inter-American Commission on Human Rights (IACHR) has consistently demanded that states adopt "criminal, civil and administrative laws to prevent, punish and eradicate violence against women" and demands that states make no distinctions based on the marital status of victim or perpetrator.³⁹

The Council of Europe and the European Union have consistently reiterated that violence against women, including intimate partner sexual assault, is a form of discrimination that requires adequate criminal remedies.⁴⁰ The European Union has expressly called for the criminalization of marital rape for several decades,

³³ Comm. Against Torture, *General Comment 2*, *supra* note 27, at para. 22. *See also* Barbara Cochrane Alexander, *Convention Against Torture: A Viable Alternative Legal Remedy for Domestic Violence Victims*, 15 AM. U. INT'L L. REV. 895 (2000); Rhonda Copelon, *Gender Violence as Torture: The Contribution of CAT General Comment No. 2*, 11 N.Y. CITY L. REV. 229 (2007).

³⁴ UN Comm. on Economic, Social and Cultural Rights, *General Comment No. 16: The Equal Right of Men and Women to the Enjoyment of All Economic, Social and Cultural Rights*, para. 27, UN Doc. E/C.12/2005/4 (Aug. 11, 2005).

³⁵ UN Comm. on Economic, Social and Cultural Rights, *General Comment No. 14: The Right to the Highest Attainable Standard of Health (Art. 12)*, para. 21, 51, UN Doc. E/C.12/2000/4 (Aug. 11, 2000).

³⁶ *General Recommendation 19*, *supra* note 14.

³⁷ Organization of American States, *Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women* preamble and art. 7, June 9 1994, 33 ILM 1534.

³⁸ *Id.* art. 2.

³⁹ Inter-American Commission on Human Rights, *Access to Justice For Women Victims of Sexual Violence in Mesoamerica*, ix, OEA/Ser.L/V/II. Doc. 63 (2011). *See also*, *Maria Da Penha v. Brazil*, Case 12.051, Inter-Am. Comm'n H.R., Report No. 54/01, OEA/Ser.L/V/II.111, doc. 20 rev. 704 (2001).

⁴⁰ Council of Europe Comm. of Ministers, *Recommendation Rec (2002)5 on the Protection of Women Against Violence*, 794th Sess., para. 34 (Apr. 30, 2002); 2010 O.J. (C285 E) 53 preamble, art. 1 (26 Nov 2009) (*Eur. Parl. Resolution on the Elimination of Violence Against Women*).

beginning with the European Parliament's Resolution on Violence Against Women of 1986.⁴¹ The Resolution specifies that Member States must “recognize sexual violence and rape against women, including within marriage and intimate informal relationships . . . as a *crime* . . . and . . . ensure that such offences result in *automatic prosecution* and reject any reference to cultural, traditional or religious practices or traditions as a mitigating factor.”⁴² In addition, a 2012 EU directive establishing mandatory minimum standards and safeguards to protect direct victims of crime *assumes* that intimate partner sexual violence is criminalized in the member states.⁴³ One of the most comprehensive instruments against gender violence, the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention), in effect as of August 2014, explicitly obliges its parties to *criminalize* sexual violence when committed against former or current spouses or partners, whether living or not living in the same residence.⁴⁴

In 2003, the African Union adopted the Protocol on the Rights of Women in Africa, which defines violence against women as including “all acts perpetrated against women which cause or could cause them physical, *sexual*, psychological, and economic harm, including the threat to take such acts . . . in *private* or public life.”⁴⁵ Asia does not have an effective regional human rights system; however several countries have introduced bills criminalizing marital rape in their legislatures, some passing successfully.⁴⁶

The Content of Marital Rape Criminalization Laws

As is clear from a review of international and regional human rights norms, international law requires that states criminalize rape in spousal and other intimate relationships. But criminalization requires more than the removal of the exemption for assaults perpetrated in the context of marriage. It also requires that there be no legal presumption of continuous consent to sex in the definition of marital relationships. Definitions of rape that are based merely on use of force rather than lack of consent have been found by CEDAW to fail a state's obligations to ensure that women's rights to bodily security remain protected.⁴⁷ Given the structural gender inequalities of power in many marital relationships, especially where women are faced with ongoing threats of violence, dishonor, or stigma; removal of economic support and shelter; polygamy; and other societal pressures, a legal requirement of affirmative consent is arguably the only way that women's universal rights to security and liberty are meaningfully protected.⁴⁸

⁴¹ 1986 O.J. (C176) 73 (Jul 14, 1986) (European Parliament Resolution on Violence Against Women).

⁴² *Id.* art. 24 (emphasis added).

⁴³ Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 Establishing Minimum Standards on the Rights, Support and Protection of Victims of Crime, and replacing Framework Decision 2001/220/JHA, 2012 O.J. (L 315) 57.

⁴⁴ Council of Europe, Convention on Preventing and Combating Violence Against Women and Domestic Violence, art. 36 para. 36, May 11, 2011, C.E.T.S. No. 210.

⁴⁵ African Commission on Human and Peoples' Rights, Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, art. 1(i) (July 11, 2003) (emphasis added). As of December 2015, only three out of 54 African countries have not signed the Protocol and 38 states have ratified it. African Commission on Human and Peoples Rights, Ratification Table, available at African Commission on Human and Peoples' Rights, Protocol to the African Charter on Human and Peoples' on the Rights of Women in Africa.

⁴⁶ At least 11 Asian countries explicitly criminalize marital rape, including Nepal, Thailand, Indonesia, and China. See World Bank, Protecting Women From Violence (2015). See also *Meera Dhungana v. His Majesty's Government et al.*, Writ No. 55 of the year 2058 BS (2006 AD) (Nepal).

⁴⁷ Comm. on the Elimination of Discrimination against Women, Report of the Committee on the Elimination of Discrimination Against Women 195, paras. 333–334, UN Doc. A/57/38 (2002).

⁴⁸ Rebecca Cook et al., *Report to the UN Special Rapporteur on Violence against Women – Analysis of Canadian Law*, quoted in the submission of Interights in the case of *M.C v Bulgaria*, 2003-XII Eur. Ct. H. R. 1, 12 April 2003.

How marital rape is criminalized also matters. Marital rape must be recognized as a crime against the liberty and security of the *person*, as it violates the physical integrity and dignity of the victim. Many countries, including Afghanistan, Hungary, and Mexico, have deficient legal protections because they categorize rape as a crime against marriage and the family or against morality.⁴⁹ Such morality-based categorizations not only fail to protect the specific core rights to liberty and security that marital rape violates, they also render the law less meaningful and effective. As Amnesty International has pointed out, this approach increases the pressure on a victim to remain silent for fear that her complaint against her husband can disrupt the moral norms of her community and bring shame to her extended family and social network.

CEDAW, the Council of Europe, and IACHR have asserted that sexual crimes, particularly in intimate relationships, must be treated as violations of women's rights to bodily security or a "person's physical, psychological and/or sexual freedom and integrity" and not as crimes prohibiting moral violations.⁵⁰

Conclusion: Criminalizing Marital Rape to Protect Women's Human Rights

Over the last few decades, human rights and women's advocates around the world have vigorously pursued criminalization strategies to end violence against women. As we have shown, international law now demands criminal justice responses to violence in intimate relationships. At the same time, the use of criminal law to combat domestic violence is increasingly the subject of controversy, particularly due to concerns about the unintended consequences of mandatory arrest and prosecution policies, the revictimization of women in the criminal justice system, and the racialized and class impacts of discriminatory police interventions.⁵¹

The criminal justice system remains a deeply imperfect system. Nevertheless, criminal law sanctions prohibiting sexual violence against women in intimate relationships are of paramount symbolic and practical importance and must be implemented. Their absence signals that women in marriage and other marriage-like relationships have no legal protection against violence of a sexual nature perpetrated against them in these relational contexts. Criminalizing marital rape is necessary to signal strong condemnation of sexual violence in intimate relationships and to ensure women's equal human rights and equal rights to protection of the law.

Criminalization, of course, is only a first step in engaging law to end this human rights violation in women's lives. Even where marital rape is criminalized, there remain formidable social, cultural and legal barriers to achieving justice for women who have experienced this form of assault in an intimate relationship.⁵² For example, women who are sexually assaulted by intimate partners may feel shame, fear reprisals, be unaware that legal remedies exist, or not feel entitled to refuse sex with a marital partner.⁵³ Underenforcement of the law is another major problem. Police and prosecutorial discretion too often filter out cases of spousal sexual assault because these are not viewed as serious offences, compounding barriers to reporting. These institu-

⁴⁹ Human Rights Watch, *Afghanistan: Surge in Women Jailed for "Moral Crimes"* (May 21, 2013); Amnesty International, *Hungary: Cries Unheard: The Failure to Protect Women from Rape and Sexual Violence in the Home* 4-5, AI Index EUR 27/002/2007 (2007); Marianne Mollmann, *Ending Impunity for Rape*, WASH. POST (Dec. 27, 2008).

⁵⁰ Comm. on the Elimination of Discrimination against Women, *Concluding Comments: Hungary*, paras. 20-21 UN Doc. CEDAW/C/HUN/CO/6 (Aug. 10, 2007); Inter-American Commission on Human Rights, *Access to Justice For Women Victims of Sexual Violence in Mesoamerica*, ix, OEA/Ser.L/V/II. Doc. 63 (2011); Council of Europe Comm. of Ministers, *Recommendation Rec (2002)5 on the Protection of Women Against Violence*, 794th Sess., para. 34 (Apr. 30, 2002).

⁵¹ Kristin Bumiller, *Feminist Collaboration with the State in Response to Sexual Violence*, in GENDER, VIOLENCE, AND HUMAN SECURITY: CRITICAL FEMINIST PERSPECTIVES 191 (Aili Mari Tripp et al. eds., 2013).

⁵² For example, see JENNIFER KOSHAN, *THE LEGAL TREATMENT OF MARITAL RAPE AND WOMEN'S EQUALITY: AN ANALYSIS OF THE CANADIAN EXPERIENCE* (2010).

⁵³ Stop Violence Against Women: A project of The Advocates for Human Rights, *Marital and Intimate Partner Sexual Assault* (Aug., 2013).

tional failures are part of the broader problem of minimizing or failing to recognize the harms and rights violations associated with marital rape as an expression of gendered violence.

The broader strategy for combating marital rape has to go beyond criminalization, to include public education and rights awareness, professional training about appropriate system responses, the provision of adequate victim services, and the eradication of institutional and cultural structures, practices, and norms that entrench male dominance, including in marriage. As an element of this broader strategy, criminalization of marital sexual assault codifies rights and creates a potential source of symbolic and practical power for victims to have access to legal remedies when those rights are violated. International human rights law and norms obligate states to criminalize rape in marriage, in the same way that gendered violence in general is criminalized. Finally, international human rights law and norms provide crucial supports for mobilizing domestically for law reform and social change to end sexual violence in intimate relationships and to protect women's equality and human rights.