

Volume 2, Issue 2, July 2018

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Research Articles*

DOI:

10.14658/pupj-phrg-2018-2-2

How to cite:

Degani, P., Pividori, C. (2018), 'Ending Violence against Women as Testing Ground for Women's Human Rights Discourse: Practices, Limits and Challenges', *Peace Human Rights Governance*, 2(2), 163-184.

Article first published online

July 2018

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Ending Violence against Women as Testing Ground for Women's Human Rights Discourse: Practices, Limits and Challenges

Paola Degani*, Claudia Pividori**

Abstract

In recent decades, international human rights law has significantly developed, not only with regard to the dimension of their universality, but also to the processes of multiplication and specification of all those needs that have led to the progressive recognition of other new rights. At the same time, however, the limits of these rules to be accepted as binding as well as the resistance of many States to assume human rights as a paradigm for domestic law and policies continue to pose challenging questions about justice. Within this frame, this paper looks at the development of women's human rights and the related machinery, assuming violence against women as paradigmatic of the capacity of the political discourse of human rights to advance, also in a multi-level perspective, effective policy frames to fight such phenomena and to support women's needs. But also of the need to translate the normative contents in social (feminist) practices going beyond the limits that any legal response presents if it is not followed by action. Considering violence against women as offensive, rather than 'normal' if not 'natural', has led to a progressive awareness of its socially constructed and unnatural character. This implies the end of the 'genderless' character of national criminal systems and the end of impunity for severe crimes committed against women. Will the political discourse that through human rights has developed on violence against women be able to tackle the roots of this phenomenon and how will the quest for protection be taken forward in the coming years? One thing seems evident: after the experience of feminism, the language of human rights paradigm apparently is the only one that is able to aggregate different dimensions and experiences at national and international levels. This confirms the potential of the human rights political discourse in the fight against male violence against women and the benefit of working along this direction.

Keywords: *Violence against women; women's human rights; gender; feminist international legal theory; human rights policy frames*

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Introduction

In recent decades, international human rights law has significantly developed, not only with regard to the dimensions of their universality and of the legal framework, but also in relation to the processes of multiplication and specification of all those needs that have led to the progressive recognition of new and different rights (Degani and Della Rocca 2014). Today, at the global level, values and issues broadly shared by the international community have been made official in international human rights law and policy framework. At the same time, however, the limits and the difficulties of these rules to be accepted as binding as well as the resistance of many States to assume human rights as a paradigm for domestic law and public policies continue to pose challenging questions about justice, both for individual and international communities. More in general, the international diffusion of women's human rights norms has varied greatly from one State to another and many States continue to oppose obstacles to recognise and implement them domestically as other human rights norms. This is probably due to the fact of gender-biased identity that constitutes a significant barrier, especially in criminalising male violence against women and in combating sex-based discriminations.

Critiques levelled to international women's human rights discourse have drawn attention to the fragmented and individualistic language of the mainstream understanding of rights as well as its male and western model of the 'human' (Binion 1995). More in general, many feminist scholars have critically evaluated the tensions between feminist and non-feminist approaches to contemporary human rights issues and debates (Lloyd 2007). Others have focused on the fact that human rights remain particularly blind to structural inequalities and to the complex and intersecting power relations in the public and private life that lie at the heart of diverse manifestations of discrimination on the ground of sex. This last point relates to scepticism about the capacity of law in general and human rights in particular to produce fundamental transformation of society (Charlesworth 1994; Cook 1994a).

Today, the issue of male violence against women highlights the limits of an institutional response that does not have the capacity to work on the root and nature of social phenomena. It is also paradigmatic of the danger of a narrative of violence that finds its main solution in the criminal dimension (Degani and Della Rocca 2014). Feminists stress that social and historical reality has been organised according to a 'gender-sex' system that informs and structures the symbolic and institutional contexts in which persons work out their destinies creating and reproducing different forms and manifestations

of male violence towards women (Rike 1992). From this perspective, it is fundamental to articulate a vision that combats and overcomes gender-based violence and permits women to envision a possible transformation. In these last years, the 'legal solution' has represented a practical way to recognise the social and 'public' profile of the phenomenon of violence at a political level, but the outcome of criminalisation appears to be the more relevant and impressive. The extent of which the fact of putting our trust in a 'pre-eminently legal' instrument, as human rights are, has contributed to create this condition is worth reflection.

In the context of this paper, violence against women is assumed as paradigmatic of the capacity of the political discourse of human rights to advance effective policy frames to fight such phenomenon as well as to promote women's needs, also in a multi-level perspective. At the same time, however, violence against women is exemplary of the need to translate the normative contents in social practices, going beyond the limits that any legal response presents if it is not followed by action or real change (Degani and Della Rocca 2014).

Within this frame, this paper comprehensively looks at both the potential and the limits of the women's human rights language as a tool capable of initiating real change in women's lives. In doing so, the aim of the paper is to question whether the human rights political discourse is still the most appropriate, accepted and effective narrative to deal with the issue of male violence against women and, more specifically, to tackle its root causes. The analytical framework used is multi-disciplinary, in that it relies on both feminist legal theory and feminist international relations theory. The methods adopted include descriptive and normative analysis of legal and recommendatory instruments as well as policy frame analysis.

After some introductory considerations about the meaning and consequences of applying a pre-eminently legal discourse to violence against women, Sections II, III and IV provide some critical reflections about the past, present and future transformative trajectories that the traditional human rights paradigm has undergone (or may undergo) as a consequence of framing violence against women in the language of 'rights'.

The article contends that each of these transformative trajectories represents a sort of paradox. On the one hand, they attest the inherent capacity of the human rights political discourse to adapt, expand and amend itself to meet the challenge of guaranteeing a life free from violence to all women. On the other hand, as they are the 'mere' development of an existing legal and policy framework, they do little to dismantle existing power structures in the human rights discourse. In other words, if not constantly challenged and tested against the real needs and experiences of women, all the remedies

developed out of the desire to give women an equal voice and place in the human rights systems risk perpetuating inequality based on sex/gender rather than dismantling it.

One thing seems evident: after the experience of feminism, the language of human rights paradigm apparently is the only one that can aggregate different dimensions and experiences at national and international levels. This confirms the potential of the human rights political discourse in the fight against male violence against women and the benefit of working along this direction.

1. Violence against Women and the Legal Discourse

The general questions posed in the introduction of this paper obviously refer more in general to the function of law. Or better, to the promotion of a 'space of rights' and their narrative as a privileged epistemic instrument in feminist legal thinking. Gender studies have never been unidirectionally aimed at highlighting the consequences of male cultural hegemony by simply re-evaluating the views of women within individual disciplines. Gender studies aimed at a deeper change in the structures and categories of knowledge. The adoption of women's points of view, as well as of the related interests and values, has also been widely applied in juridical science. In this context, the theoretical reflection is constantly confronted with instances that come from the women's movement. It moves in a continuous relationship with the judicial and legislative action, influencing and being influenced by it.

Law represents an ambiguous and controversial subject for the feminist movement (Charlesworth et al. 1991). More specifically, the feminist analysis on violence is connotated in a pluralist way. Historically, the relationship between the feminist perspective(s) and the law instruments and systems has produced interpretative models that have been structured, 'in favour of' or 'opposed to' the same political discourse on women's rights according to the dichotomy approach. Opinions about its function and its usefulness to women are very diverse and discordant (Buss and Manji 2005). While it has been and continues to be a powerful tool for improving the condition of women, it is also seen as one of the most radical and 'dangerous' expressions of male culture. It is within the recent development in the debate on male violence against women that the function of law has acquired a progressive credibility and legitimacy as the driving force for a process of progressive legitimisation of a women's human rights narrative (Coomaraswamy 1997; Nussbaum 2016). Law is both an expression of public policy and has the primary guarantee of its effectiveness on its own enforcement mechanisms. This means that, in relation to domains such as the fight against violence

and the protection of women's rights, the legal and political dimensions are almost parallel, if not symbiotic.

Laws are indeed an important policy commitment and create an environment that enables change. While legal changes do not always manage to confront the deeply embedded social, economic and cultural structures that enable gender inequalities and harms, Klugman (2017) recognises the potential power of more progressive legal norms in changing social norms around violence. When questioned starting from feminist(s) analysis, the doctrine of juridical experience not only embodies the political discourse on law, but structures a language that aims to change the approach to it, identifying links and differences, contradictions, new arguments, and useful interpretations.

Regarding violence against women, it could be said that law has played a key role in progressively attributing injustice to a reality that was long considered 'normal' if not 'natural' in belonging to the 'physiology of relationships between men and women', at least in some cultures, or an essential component of the way men 'treat' women (Pitch 1989). Through this assumption, we have progressively become aware of the socially constructed and unnatural character of this phenomenon and to the development of tools to redress violence against women of mostly normative and political nature (Sally 2003). This scenario has implied the end of the gender-neutral character of national criminal systems, at least on a formal level, and consequently, the end of impunity for severe crimes in some contexts. More generally, this implies the end of the obscurantism with which the phenomenon of violence against women has always been treated.

2. Past Transformative Trajectories

The recognition of violence against women as a human rights issue has contributed to open or expand the human rights traditional paradigm in many respects. Most importantly, the recognition of the gendered nature of international human rights law initiated a process of multiplication and specification of protected rights so as to include, among others, women's specific aspirations and peculiarities (Otto 2005). This means that for a long time, human rights have ignored the specific concerns of women, remaining inattentive to the political demand and needs of women.

The second transformative trajectory has been pushed by the recognition of violence against women as a human rights issue. This frame has strongly contributed to the process of institutionalization of the phenomenon of male violence against women, improving a multi-level perspective of political agenda and public policies on the matter. A human rights based approach

of violence against women has implied the transformation of conventional understandings of human rights beyond violations perpetrated mainly by State actors in the public sphere, thus demystifying the public/private dichotomy (Bunch 2013; Manjoo 2013). Feminist analysis and perspective, in particular, have contributed to this development through its critique of the socially constructed separation of the public and private spheres, demonstrating how human rights violations that would be denounced in the 'public sphere,' such as violence and confinement, are also today tolerated or excused when they are committed in the private domain (Romany 1994). The growing understanding of the importance of addressing human rights violations by 'non-State actors' had as a direct consequence the expansion of the doctrine of State responsibility and the development of a separate regime of State responsibility for private acts, namely the due diligence standard.

The third transformative trajectory, initiated by the identification of male violence against women as a human rights issue, concerns the progressive relevance of criminal law solutions, both at the international and domestic level.

2.1 Women's Human Rights Within the Process of Multiplication and Specification

The response that, in terms of adaptation to political inputs and to legal obligations, States adopt as member of intergovernmental organisations is part of a broader scenario of social change, and also depends on the emergence of new political aspirations identified as deserving protection.

According to this interpretation, the origin of a gender perspective that considers women 'specificity' within the human rights framework has represented, beyond being an inescapable step in the fight against discrimination, a manifestation of the evolutionary and historical character of this body of law as well as of the policies that stem from it. The human rights catalogue and the machinery inherent to their protection have developed in a progressive way, manifesting a strong tendency towards expansion. This is the case both in terms of the number and content of protected rights, and of the effectiveness and vigour of the procedures through which international organisations can promote and safeguard the applicability of these rights.

The process of multiplication and specification of human rights is then related to the growing number of conditions considered as deserving legal protection and to the widening the ownership of certain rights to subjects that cannot be assimilated to a generic 'man'. The impossibility to consider the individual as a generic entity has obliged international law and decision makers to look at the specificity of different modes of being and of living in

society (Otto 2009; Charlesworth and Chinkin 2000). It is within this scenario that women's human rights and the related issue of women's protection from violence or, more properly framed, women's right to live free from violence, should be understood (Degani and Della Rocca 2014).

Women have made it clear that human rights must imply an essential content that requires an effective application that considers the social practices that feed them. Hence, the importance of their translation into public policies. With regard to the issue of male violence against women and, more generally, with reference to the recognition, effectiveness and justiciability of women's rights, both the progressive improvement of the human rights machinery and the broadening of the scope of application of international human rights law play a leading role.

Indeed these two processes help to understand the scenarios within which it is now possible to propose a concrete reflection on the issue of violence by using the tools that human rights themselves can offer to more thoroughly recognise their dignity and safeguard women's freedom.

2.2 Doctrine of State Responsibility and Due Diligence Standard

The development of feminist approach on the role of international law and human rights in promoting the status of women has significantly contributed to defining the context and content of State obligations on male violence. While, however, there has been acceptance that violence against women is an affront to women's physical and moral integrity and to their dignity as human beings, there is far less agreement as to the scope and extent of State accountability and obligations for that violence (Edwards 2010).

Violence against women primarily refers to State obligations established by the Convention on the Elimination of All Forms of Discrimination Against Women. As a rule, State responsibility is based on acts or omissions committed either by State actors or by actors whose actions are attributable to the State. An exception to this rule is that a State may incur responsibility where there is a failure to exercise due diligence to prevent or respond to certain acts or omissions of non-State actors (Crawford, et al. 2010). From a policy framework point of view, the law on State responsibility represents the original matrix of international public law, whose principles are set out in the Draft Articles on State Responsibility, submitted to the UN General Assembly by the International Commission of Law in 2001¹.

¹ International Law Commission, Draft Articles on Responsibility of States for Internationally Wrongful Acts, November 2001, Supplement No. 10 (A/56/10).

While the due diligence standard has been considered a welcome development in that it provides a conceptual framework to hold States accountable for episodes of violence against women committed by private individuals, its effectiveness as an answer to protect women from violence has been challenged. First of all, the extent to which working with two separate regimes of responsibility for 'private' as opposed to 'public' acts has an effect on accountability for protection of human rights has been questioned. According to some, the existence of such a distinct standard could represent a *de facto* unequal treatment of women under international law (Edwards 2010).

The second critique directed at the existing due diligence standard concerns its appropriateness as a tool to combat gender stereotypes. Indeed, in its practical application, it focuses primarily on violence against women as an isolated act and fails to take into consideration the structural inequalities and the complex and intersecting relations of power in the public and private spheres of life that lie at the heart of sex discrimination (Pividori 2016). The general trend in the way States have dealt with their due diligence obligation with respect to violence against women has been guided by a victim subject perception. Therefore, they have responded to violence when it occurred rather than taking preventive action.

To counter this trend, the Special Rapporteur on violence against women, its causes and consequences, Rashida Manjoo, in her report (A/HRC/23/49) submitted in 2013, argued that there was a need to challenge the previous formulations of due diligence by separating the due diligence standard into two categories: individual and systemic. While the former refers to the obligations that States owe to particular individuals, or groups of individuals, to prevent, protect, punish and provide effective remedies on a specific basis, the latter refers to the obligations States must take to ensure a holistic and sustained model of prevention, protection, punishment and reparations for acts of violence against women.

Consistent with the attempt to develop increasingly more tangible, measurable, comparable, and implementable indicators for State response with regards to violence against women, the new CEDAW General Recommendation No. 35 (GR 35) worth considering Compared to General Recommendation No. 19 (GR 19) adopted in 1992, GR 35 devotes significant and extensive language to State party obligations. It does so in relation to both the most 'classic' notion of responsibility for acts or omissions of State actors and the due diligence obligations for acts and omissions of non-state actors. In relation to the former, GR 35 devotes two extended paragraphs (22-23) to explain the categories of States organs, agents and officials whose conduct may entail State responsibility in detail. As for the latter, GR 35

provides specific guidance on measures to be adopted at the legislative, executive, and judicial level, focusing on their variety (laws, public policies, programmes, institutional frameworks, monitoring mechanisms), scope (individual and systemic) and effectiveness in practice (Cook 1994b). Interestingly, GR 35 also stresses the existence of international humanitarian and criminal law provisions recognising direct obligations on non-State actors in specific circumstances. Lastly, GR 35 significantly devotes one paragraph to clarify the notion of State responsibility for acts or omissions by non-State actors attributable to the State (para. 24). While this is well-known under general international law of State responsibility (art. 5 Draft Articles on State Responsibility), this specific area of responsibility has rarely been declined in international instruments dealing with violence against women. GR 35 fills an important gap: it complements the broader frame of State party obligations by explicitly attributing those acts and omissions of private actors empowered to exercise elements of governmental authority to the State, including private bodies providing public services such as healthcare or education or operating places of detention. It takes account of the increasingly common phenomenon of parastatal entities, which exercise elements of governmental authority in place of State organs. Considering the relevance these categories of private actors have about the phenomenon of violence against women, both in terms of frequency they may enter into contact with (potential) victims and the potential impact on women's lives, the fact that GR 35 explicitly mentions them is an interesting development.

2.3 Material and Symbolic Relevance of Criminal Law

The recent development of women's human rights has undoubtedly favoured the revision of the way the separation between public and private spheres has been built. The dismantling of the rigid divide between these two fundamental social (and legal) dimensions is certainly one of the results, precursory and consequential at the same time, of the recognition of male violence against women as a human rights issue. The latter is a passage that, it must be emphasised, takes shape in a framework in which the phenomenon of violence is still represented as exceptional and ascribed to distorted manifestations of the relationship between man and woman. This is evident from the high occurrence of arguments such as 'passion' or 'cultural attitude' in the reconstruction of facts of male violence against women, instead of genuinely attempting to highlight the elements of 'structural' oppression that violence is fuelled by and expressive of.

The process that has led to the representation and consideration of gender-based violence against women as a 'problem' to be dealt with by traditional

public policy tools consequentially has the access of this right to the 'private dimension'. The progressive attention with which we now look at situations occurring within intimate relationships or in the domestic sphere is nothing more than an immediate evidence of the capacity of human rights law to impact on individuals' lives, increasingly beyond the mediation of the state and national institutions (Degani and Della Rocca 2014).

Over the past decades, this trend has favoured the adoption of institutional strategies that privilege the criminalisation of a series of behaviours (Randall and Venkatesh 2015). Institutions have thus turned to criminal law as the main solution to a problem that, due to its characteristic and scale, in reality cannot be reduced to the simple, often individualistic, dimension of the relationship that binds the victim to the offender. This is especially true considering the relevance of underreported violence and the significance of the oppression that violence expresses.

Both at the material and symbolic level, the current legitimacy and progressive relevance of criminal law within the debates regarding male violence against women are undoubtedly a concrete manifestation of the response, to the demand for an extension of both civil and social rights, provided by States and, in recent years, also by intergovernmental organisations. These were brought by a series of collective actors between the late 1960s and the early 1980s (Belknap 2007). Among them was the feminist movement, which strived to put an end to men's power over women by criticising family and reproductive patterns and by deconstructing the 'neutrality' of legal norms (Walby, et al. 2010).

Furthermore, over the years, a lower threshold of what is conceived as violent, offensive, unacceptable, discriminatory, abusive behaviour has certainly gained public recognition so that women have been able to develop a different attitude towards criminal justice. Over the past two decades, a debate on the potential of human rights as a tool to promote the status of women has paved the way for policies that are inspired by the principles of freedom and substantive equality. They have been functional in helping to eliminate oppressive and discriminatory behaviours. By virtue of the social disvalue attributed by the legislator, this process has undoubtedly contributed to frame social problems as criminal issues, and therefore to the definition of new areas of victimisation (Buzawa and Buzawa 2003).

In practical terms, the recourse to criminal law solutions has created the conditions to put real and symbolic expectations in the domestic and international criminal response to violence against women as well as for the protection of victims. On one hand, such expectations have implied a precise and rigid definition of acts of violence; on the other, the focus on the victim-perpetrator relationship, which is typical of criminal solutions,

has partly overshadowed the endemic dimension and socio-cultural context that is at the root of such phenomena. That is, it risks overshadowing the broader framework of affliction and subjugation within which violence manifests itself in the forms and proportions that many researchers today have highlighted.

Although an appreciation of women's experiences as victims of human rights violations was and is important and necessary, while there is an exclusive focus on women, these dimensions continue to be absolutely partial even if women's victimisation is a real dimension of women's subordination.

If the recognition of male criminal accountability marks the end of the State's failure to assume a direct role in protecting women against violence, it is equally important to understand that recourse to repressive instruments is a limited tool in addressing what is a social, political, and economic problem (Bailey 2010). Indeed, not only it is ineffective with regard to the protection of the victims of violence, but it also inadequate concerning the need to rethink the phenomenon, starting from a proper analysis of the reasons why, for many women, violence is an ordinary component of their lives. It is evident, in fact, that there are many stages in the criminal justice system where a gender perspective may have an impact on decision making. Once again, the relevance of considering how and whether justice is really gender sensitive, in conjunction with other characteristics that potentially interact with gender, is crucial in order identify new perspectives (Pividori and Degani 2018).

3. Present Transformative Trajectories

3.1 CEDAW General Recommendation No. 35 on Gender-based Violence against Women

The political significance of General Recommendation No. 35 on gender-based violence against women, updating General Recommendation No. 19, adopted by CEDAW on 26 July 2017, is of paramount importance, especially considering the legitimacy that CEDAW has progressively gained, with regard to the development of a feminist perspective to human rights law.

Reading through the text of the new General Recommendation No. 35, there are some paragraphs providing a detailed break-down of CEDAW's related obligations, and therefore of the normative and policy framework that governments should set up to eliminate all forms of male violence against women as suggested by many feminist stakeholders and institutional representatives during the drafting process of this act. In this connection, it

is possible to find several references to substantive issues that, in these years, have arisen both at the operational and legal level. These emerging issues reflect the attempt of international law-makers to find a different approach to the problem of violence compared to the one which characterised General Recommendation No. 19².

Overall, General Recommendation No. 35 proposes and interprets several issues with an innovative approach compared to the 1992 text. It stresses the importance of monitoring violence in relation to the development and effectiveness of policies, the systems of protection for victims and the treatment of perpetrator, the relevance of risk assessment (Baldry 2011) and of the empowerment approach as a basis for the work with women involved in situations of violence. Other innovative elements concern ex-officio proceedings for acts of violence that, according to other international instruments, should not be wholly dependent upon a report or complaint filed by a victim; the protection of women - also from the proceedings itself - and the recognition of the severity of situations involving minors who witness violence.

Most importantly, General Recommendation No. 35 recognises that the prohibition of violence has reached the status of international customary law. It certainly is a text that focuses on the explanation of an extended notion of State responsibility (see above, Section II. a) rather than on the classification of different forms of violence. Moreover, another element which distinguishes GR 35 from GR 19 is the increasing attention given to issues related to intersectionality. Such issues are summarised by CEDAW General Recommendation No. 28 on the Core Obligations of States Parties under the same Convention³, in the recognition of the indissoluble link between the multiplicity of factors affecting women's lives. But the number of elements that can affect women to different degrees or in different ways has been considerably extended in GR 35 (para 12) compared to GR 28. That is the intersectional dimension of many of the conditions and belonging that contribute to shape female identities and biographies, and that therefore can contribute to situations of social disadvantage not limited to individual situations. In other words, intersectionality refers to the need to carry out a proper evaluation of the connection between sexism and male violence in consideration of the fact that sexism cannot be dissociated from other lines of differentiation. It is about recognising the fluidity of women's roles by

² Committee on the Elimination of Discrimination Against Women, General Recommendation No. 19, Violence against women, adopted by the, Eleventh session (1992).

³ CEDAW, General Recommendation No. 28 on the Core Obligations of States Parties under Article 2 of the Convention on the Elimination of All Forms of Discrimination against Women, 16 December 2010, CEDAW/C/GC/28.

highlighting the relational dimension and the historical character of social power relationships. Intersectionality, therefore, is an essential analytical tool to understand the realities of women's lives. Yet, it also poses several challenging questions about the actual meaning of treating the phenomenon of violence against women as something different or peculiar from other forms of structural discrimination or human rights violations.

4. Future Transformative Trajectories

4.1 A Universal Ad Hoc Treaty on Violence against Women

Besides the process of multiplication and specification that in the past decades contributed to opening a 'space' for women's rights, the international community continues to look at the adoption of an ad hoc international treaty on male violence against women as a possible step in the progressive development of international women's human rights, also considering new policy scenarios (Degani 2017).

The Addendum No. 5 to the June 2015 Human Right Council Thematic report of the Special Rapporteur on violence against women, its causes and consequences (A/HRC/29/27/Add.5), R. Manjoo, presents an analysis of the critical issues associated with the international normative gap in the field of violence. The work proposed by the Special Rapporteur is an eloquent example of the absolute centrality of the multi-level perspective in the violence-related agenda-setting and starts from a series of considerations concerning the development of several political negotiation fora within intergovernmental organisations at the regional level. Such venues have made it possible to adopt rules on prevention, contrast, and protection from violence, representing the development and binding translation of the provisions enshrined in the United Nations Declaration on the Elimination of Violence against Women adopted in 1993.

As for the European region, the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence frames violence as a human rights violation by identifying it as a form of gender-based discrimination that requires the strengthening of State obligations with respect to the systems for the prevention, investigation, punishment, protection, and compensation of victims. In the American region, the Inter-American Convention for the Prevention, Punishment and Elimination of Violence against Women (Belém do Pará Convention 1994) explicitly recognises the relationship between gender and violence, discrimination and women's human rights. It also recognises the existing critical issues in terms

of human rights justiciability for women and therefore the limits that these standards still have with respect to one of the key steps of positivisation, that is their full effectiveness.

It is precisely by looking at this dimension, and therefore at the political implementation of these standards, beyond the symbolic dimension and, of course, beyond any apologetic rhetoric, that the need to set forth a series of political and legal elements regarding the issue of male violence against women in a universal legal instrument has become relevant.

Of course, there is a risk of adopting a less protective treaty than those existing at the regional level. This would, of course, be unacceptable, even if the risk could really exist in the event that well-established standards were to be called into question. There is a need for a definition of violence that is as comprehensive as possible, but it is also equally evident that the normative translation of women's rights related to the need to live free from violence requires a deep reflection on some crucial issues.

These are the need to empower women on a social level, to develop an inclusive approach, to develop complementary strategies in the employment and health sector, as well as to develop an authentically participated and bottom-up process. These should be fuelled by the myriad of more or less structured realities working on this area at the operational and political level. In the last few decades, the effort of numerous feminist civil society organisations engaged in advocacy in the field of human rights has made it imperative to challenge the meaning of this void. Since 1991, the viability of a claim for the opening of a negotiation on 'Issues in the Development of an International Instrument on Violence against Women' has been considered⁴. It is well-known that the adoption of CEDAW General Recommendation No. 19 was possible thanks to this process. The latter is a document that inaugurates and promotes a period marked by a much stronger political dynamism in terms of protection and, more generally, in terms of justiciability of women's rights, without however leading to the adoption of a legally binding act in the matter of violence.

In her report, the Special Rapporteur presents the findings of a research study involving 196 countries, from 2007 to 2010, on the normative frameworks on violence. Significantly, the lack of legislative provisions on violence seems to be prevalent where women are excluded from political decision-making, where there is a low level of protection of economic and social rights, and in those contexts that resist the influence of international and regional intergovernmental organisations.

⁴ United Nations Documents, EGM/VAW/WP.1.

The current draft for an international ad hoc Convention on the Elimination of Violence against Women and Girls originates from a call of the Special Rapporteur herself in November 2012 at the 67th session of the United Nations General Assembly. The call was then presented again during the 57th session of the State Commission on Status of Women in March 2013. The draft is the result of several institutional consultations, along with other Human Rights Council special procedures and of the contribution of feminist academics and anti-violence activists. The text, presented by Special Rapporteur Report, is structured in seven parts and is characterised by several issues: its adaptability about the diversity of existing legal systems, an extensive approach to the plural profiles of violence, a robust set of substantive provisions, and the establishment of a monitoring mechanism composed of independent experts. Overall, it is characterised by a break-down of provisions that reveals a clear trend towards the real possibility that women have to effectively access justice. Moreover, the documents accompanying the draft convention give full account of how far the boundary between public and private is a purely conventional demarcation at this stage.

Without entering into the merits of the draft (which, should the drafting process continue, is still subject to significant changes), the adoption of an ad hoc treaty on male violence against women by the United Nations would unequivocally mark the social and institutional relevance of this phenomenon in relation to the strengthening of women's human rights at the political level. However, this outcome does not seem to be shared by a multiplicity of realities which have been consulted on the opportunity and appropriateness to adopt a separate legally binding United Nations treaty.

Within this discussion, it would be necessary to find a solution to a whole series of issues that may still constitute major obstacles to the adoption of a binding treaty that is able to mark a significant development in this domain, beyond the risk of rhetoric that confronts human rights today.

As correctly highlighted during the preparatory work, the issues that such a treaty should address are the following: the doctrine of State responsibility regarding violence, the need to develop an inclusive approach, above all with respect to the notion of acts of violence (think about the reproductive dimension, e.g. forced sterilisation, selective abortion, as well as the conflict and post-conflict related behaviours, torture, cyber-bullying, forced disappearances, etc.), women empowerment through adequate material and economic support; the recognition that violence is rooted in social inequalities between men and women, the acknowledgement of the complexity of the situations of violence, especially where there are complicated vulnerabilities, the development of complementary strategies in the employment and health sector, the need to examine the 'ordinary' dimension of violence, and the

recognition of the potential contribution that women's organisations engaged in the fight against violence have expressed and continue to express in the work with women and in raising awareness at social level. Certainly, once again, the multi-level character of these instruments can only increase their legitimacy.

Conclusion: the Conundrums of Human Rights

In the last two decades, the human rights discourse has become ubiquitous, the predominant framework for political and legal struggles aimed at contesting gender discrimination in general and pervasive levels of gender violence in particular (Sally 2006). Applying a human rights perspective to violence has created a momentum for breaking the silence around violence and for connecting the diverse struggles across the globe thanks to many transnational advocacy feminist and women's networks as well as a common global political commitment in the struggle against violence. Therefore, the right to a life free of violence is nowadays accepted as an entitlement rather than merely a humanitarian concern and the prohibition of gender-based violence against women has evolved into a principle of customary international law.

However, while grounding male violence against women on the notion of gender-based discrimination or, more practically, on the full recognition of the substantive dimension of the principle of equality on the ground of sex (Peters and Wolper 1995; Lacey 2004), allowed an important gap to be filled in international human rights law as well as in the public policy perspective connected to this framework, a concrete translation of the principle of substantive equality on the ground of sex has not been sufficiently achieved yet.

It is now recognised that gender-based violence refers also to the social subordination of women to men and to the various forms of discrimination with which this subordination takes shape. Yet, while the political discourse on violence that has developed through the human rights discourse has been able to influence several crucial issues, at least from the political interpretation or political narrative point of view, such political discourse does not currently seem to be as effective in fighting violence against violence. The difficulty of the human rights framework to initiate a process of real change may stem from the fact that human rights standards provide far more established rules for the protection of individuals from discrimination arising from specific violations, rather than promoting measures that eliminate structural differences between men and women (Estrada-Tank 2016; Edwards 2010) that are able to eradicate and dismantle structural patriarchal social dimensions of sex/gender-based relationships.

Moreover, on the one hand, the interlinkage between violence against women and sex/gender-based discrimination has allowed violence to be framed as a matter of social justice rather than considering it as a phenomenon related to private dimensions and individual abuses; on the other hand, in its concrete normative translation, this assumption risks leading to the need to recognise discrimination in order to identify violence as something relevant in the judicial dimension. For example, according to Edwards (2010), covering only gender-based violence creates a hierarchy of oppressions to the extent that it requires women to characterise the violence they suffer as sex discrimination rather than as violence *per se*⁵. In this connection, the legal need to anchor episodes of violence to an anti-discriminatory perspective represents this difficulty, both symbolically and materially. Such a need is also confirmed in many international interpretative statements and recommendations which express a systematic attempt to frame male violence against women as severe consuetudinary, and even *ius cogens*, violations of human rights.

Although the system of international human rights law could no longer exclude women entirely, it seems to be set up to continue to treat them unequally. Indeed, each of the transformative trajectories previously identified, if not constantly challenged and tested against the real needs and experiences of women, risks perpetuating rather than dismantling inequality based on sex/gender. By doing so, the gender bias in the system is supported and any deeper transformation is difficult to achieve. For women, this can only be described as the 'conundrum' of international human rights law.

The link between male violence against women as sex/gender-based discrimination, for example, represents a strategy to include violence within the system of women's human rights. At the same moment, this create a binding (inescapable) binary dimension that risks reinforcing many of the feminist critiques of the international system, rather than responding to them, even though they arose from feminist activism and the desire to give women an equal voice and place within the existing system. Another example is represented by expansion of the doctrine of State responsibility and the development of the due diligence standard (Ertürk 2006⁶; Benninger-

⁵ This approach has been recently confirmed by CEDAW in adopting GR 35, whose heading is, contrary to GR 19, 'Gender-based violence against women'.

⁶ U.N. Econ. & Soc. Council, Comm'n on Human Rights, Special Rapporteur on Violence Against Women, its Causes and Consequences, Integration of the Human Rights of Women and the Gender Perspective: Violence Against Women: *The Due Diligence Standard as a Tool for the Elimination of Violence Against Women*, (U.N. Doc. E/CN.4/2006/61) (prepared by Y. Ertürk in accordance with Commission on Human Rights Resolution 2005/41)

Budel (ed.) 2008) While it is crucial to hold States accountable for human rights violations committed by private actors, it is questionable whether the existence of two separate regimes of responsibility for 'private' as opposed to 'public' acts could de facto discriminate women under international law (Edwards 2010; Radacic 2007).

Today, it is evident that institutional fora are called upon to provide solutions to the many problems that are arising from national political responses to legal duties and from violence itself as a global phenomenon. These are issues that, on the one hand, obviously cross-national boundaries, requiring a multi-level governance both at the structural and procedural level, on the other hand, need transformative potentials that are not now easily identifiable. Firstly, it is necessary to have an anti-discriminatory policy that can work on the 'roots' of violence, that is on the economic, social and cultural level, on intersectionality and on dismantling societal patriarchal structures. It is imperative to create a vision that can shape a strategy directed at producing change starting from recognising the relevance of the preventive and protective dimensions of the public policy outputs and outcomes. Such a strategy needs to be supported by a mobilisation that gives voice to the contents of feminism, its meaning and outputs when the focus is on violence.

There is no doubt that the current historical moment, during which gender-based violence is massively present in the media, requires much attention on the part of those who have always worked on a political level together with women. First of all, it is necessary to refuse a neutral reading of male violence. The signals that the international community is sending in this regard are those of an attempt to frame the issue of violence within the mainstreaming approach of those international organisation dealing with human rights, and this is definitely important.

It is irrefutable that the fight for the recognition of new rights or the extension of existing ones implies a review of what is considered normal or natural, unjust or oppressive, abnormal or unnatural, adequate or inappropriate, etc. This means that human rights standards can still be a relevant topic in the agenda-setting as well as in policy-making. They can become a tool for analysing, supporting and defending a whole set of legislative reforms and programs, including economic ones.

Furthermore, it is argued that the rampant intensification of human rights discourses and the progressive expansion of demands for new rights could generate a gradual inflation and debasement of the value of their content, or in any case, a progressive abstractness of their meaning and related obligations. However, there is an increasingly widespread and heartfelt need to invoke human rights. The reason for this is that in situations where there

is resistance to their recognition or where there is no possibility of following the principles set forth in them, human rights become a perspective of cultural, political, and social struggle, even before being a legal one. In other words, human rights represent a discourse that can be used against their own manipulation and, in this respect, the promotion and protection of women's rights and the fight against violence represent one of the most significant challenges in these years. The language of human rights therefore can still be a powerful force for change for women, representing as it does a (relatively) universal language in which to frame women's grievances.

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