Chapter 2

EXPLORING THE CONSEQUENCES OF THE NORMATIVE GAP IN LEGAL PROTECTIONS ADDRESSING VIOLENCE AGAINST WOMEN

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Abstract

This chapter provides a conceptual and empirical examination of the consequences of the normative gap in international law addressing violence against women and girls. In the first section, we provide some background on the concept of normative gaps in international law, address why the normative gap relating to gender violence is of particular concern, argue that the consequences of normative gaps in domestic laws addressing women and girls provide a reasonable proxy for the international gap, and provide some examples of normative gaps in domestic laws. In the second section, we use data about 173 countries to demonstrate the consequences of normative gaps in domestic laws. We find the domestic normative gap complicit in higher levels of domestic violence, higher rape prevalence, higher female HIV rates, lower human development, and higher acceptance of violence against women and girls. Consequently, we suggest that women and girls would be well-served by an explicit treaty addressing gender violence.

Introduction

Are the rights of women and girls against violence secure in the hands of the Convention on the Elimination of All Forms of Discrimination Against Women's (CEDAW) General Recommendation 19 and three regional treaties? Or, does a normative gap between rhetorical commitments made to women and girls on one hand, and the extant binding international law protecting them on the other, require a standalone, international treaty on violence against women and girls? Currently, there is some debate about these questions. This chapter adds a voice to the discussion by providing an empirical examination of the consequences of the normative gap in international law addressing violence against women and girls. In the first section, we provide some background on the concept of normative gaps in international law, address why the normative gap relating to gender violence is of particular concern, argue that the consequences of normative gaps in domestic laws addressing women and girls provide a reasonable proxy for the international gap, and provide some examples of normative gaps in domestic laws. In the second section, we use data about 173 countries during 2007-2014 to demonstrate consequences of normative gaps in domestic laws from which reliable generalizations may be drawn. We find reliable evidence implying that the domestic normative gap is complicit in higher levels of domestic violence, higher rape prevalence, higher female HIV rates, lower human development, and higher acceptance of violence against women and girls. From this, we suggest that women and girls would be best-served by an explicit treaty addressing gender violence than the current framework resting on CEDAW General Recommendation 19 and regional treaties, alone.

2.1 The Idea of a Normative Gap

The idea of a normative gap is a simple one. It is a condition that exists when some widely-accepted moral principle has insufficiently-binding rules to guide and/or impel actors' behavior in line with that principle. Put most simply, it is a gap between aspiration and firm commitment. In the context of international human rights law, a normative gap is a condition where states have widely agreed upon some standard of human dignity (which includes principles of equality and non-discrimination) but have failed to institute binding rules to hold states accountable to this standard in terms of their human rights laws and practices.

One situation that could produce a normative gap in international human rights law would be states having difficulty achieving consensus on what new rules would be best for universal attainment of an agreed-upon principle. A second cause for a normative gap could be the emergence of a new threat. Volker Türk (2012, pp. 127-128), Director of International Protection at the office of the UN High Commissioner for Refugees (UNHCR), made it clear that refugees being displaced by sudden climatological events related to climate change is an issue "well beyond the UNHCR's remit", and thus "there is indeed a normative gap affecting people who may be obliged to cross an international border owing to the impact of rapid-onset meteorological events linked to climate change".

A third reason for a normative gap might be disagreement among both states and civil society actors about whether new rules are necessary to address a new norm, as some might feel existing rules are sufficient. For example, Brabandere (2010, p. 143) argues there is no normative gap with regards to laws governing the transition from conflict to peace because, in his view, peace treaties already fulfill this role adequately. On the other hand, one could argue new rules are necessary to protect some group that is disproportionately affected by a threat. In 2012, civil society actors submitted a statement to the UN Human Rights Council urging address of a normative gap in international human rights law where, "while peasants [constitute] half of the world population and the backbone of the food system … they [are] … disproportionately affected by poverty, discrimination and other human rights violations" (States News Service 2012, p. 3). There may even be different beliefs about how to eliminate the same gap. For example, some actors advocating to fill the same normative gap as the peasant-advocacy groups do not focus on protections for any particular group but, rather, a broader "right to development" (Saul 2006, p. 13).

To be clear, one prime reason for the existence of the normative gap in international law addressing the issue of violence against women and girls is that some international actors assert that existing legal frameworks works are sufficient. However, there is reason to doubt the assertion that extant frameworks can bear the weight of the ideal of a gender-violence-free world. First, there is the issue of the legal character of General Comments made by treaty bodies.

Then-Special Rapporteur on Violence Against Women Rashida Manjoo emphasized in her 2015 report to the UN Human Rights Council that:

> The current norms and standards within the United Nations system emanate from soft law developments and are of persuasive value, but are not legally binding. The normative gap under international human rights law raises crucial questions about the State responsibility to act with due diligence and the responsibility of the State as the ultimate duty bearer to protect women and girls from violence, its causes and consequences (Manjoo 2015, p. 19).

And, certainly, there is a foundation for her position that the norms emanating from General Comments are soft law.[1] Steiner et. al. (2008, p. 874) note there exists a "broad spectrum" of opinions about the legal force of General Comments, ranging from "those which seek to portray them as authoritative interpretations of the relevant treaty norms … to highly critical approaches which classify them as broad, unsystematic, statements … not deserving of being accorded any particular weight in legal settings". Further, "the great majority of national courts continue to take little or no notice of [General Comments]" (p. 874). Likewise, "[i]t is generally accepted as a matter of international law that the decisions of the Human Rights Committee and other committees under individual complaints procedures are not as such formally binding under international law" (International Law Association 2002, p. 516).

General Comments are not without value. There does exist a consensus that General Comments can be important "signposts" or "aids for interpretation" for treaties (Mechlem 2009, p. 929). However, states are on record that General Comments are not, in their view, legally binding. For example, General Comment No. 24 (52) of the committee interpreting the International Covenant on Civil and Political Rights contains an element stating "a reservation that rejects the Committee's competence to interpret the requirements of any provisions of the Covenant would also be contrary to the object and purpose of that treaty". The United States of America noted in a formal response that "it is unnecessary for a State to reserve as to the Committee's power or interpretive competence since the Committee lacks the authority to render binding interpretations or judgements."[2] In the same matter, the United Kingdom noted that it "… is of course aware that the general comments adopted by the Committee are not legally binding."[3]

The limitations of regional treaties is the second reason we believe existing frameworks to be insufficient. Women's rights are universal human rights, but regional treaties –except in a purely theoretical sense-- cannot provide universal protections for universal standards of dignity. Special Rapporteur on the Rights of Women in Africa Lucy Asuagbor offers:

> [I]nternational standards differ from regional standards that collectively suffer a lack of implementation at the domestic level. The resultant fragmentation works to the disadvantage of victims who may be faced with several but non-inclusive and non-complementary avenues of redress. (2016, p. 4).

Fragmentation has negatively affected other issue areas, thus our belief that this concern is not immaterial. For example, despite a patchwork of various laws on the matter, a normative gap in "post-conflict property repossession" existed until the "Pinheiro Principles" (United Nations Principles on Housing and Property Restitution for Refugees and Displaced Persons, 2005), which "produced a more precise articulation and … new phase of institutionalization" (White 2015, p. 600).

Moreover, relying on a patchwork of regional treaties and existing soft law brings with it the danger of inconsistency due to overlap. Henkin et. al. (1999) offer the following example. Article 6 of the Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women (1994) asserts that "The right of every woman to be free from violence includes, among others: (a) The right of women to be free from all forms of discrimination". On the other hand, CEDAW's General Recommendation 19 asserts that violence against women is a form of discrimination. Henkin et. al. raise the question of whether this is the same thing stated two ways. The answer to this appears to us to be "no", as on one hand CEDAW states that *some* forms of discrimination constitute violence against women, and on the other hand, the Inter-American treaty states that *all* forms of discrimination constitute violence against women. How could such a state be expected to create stability in either policy or adjudication? Moreover, the existing state of overlap is indeed acute. In her statement to the 61st Session of the Commission on the Status of Women (CSW)(2017), Special Rapporteur On Violence Against Women Dubravka Šimonović noted seven separate mandates relating to violence against women and called for "stronger cooperation between global and regional mechanisms dealing with …

violence against women and for a joint and complementary use of global and regional instruments on violence against women with the aim of ensuring synergies".[4]

Some, such as former Special Rapporteur Manjoo, have suggested that a standalone treaty on violence against women is the best means to bring a binding, uniform international response to the pandemic that is violence against women and girls. This idea continues to be actively debated. In the autumn of 2016, Special Rapporteur Šimonović issued a call for submissions "on the adequacy of the international legal framework".[5] The questionnaire consisted of five questions gathering opinions relating to whether a normative gap exists, the fragmentation of current law, and whether a new, binding treaty is required. In her March 2017 statement to CSW, the Rapporteur stated that 292 submissions from civil society had been received, along with requested submissions from eight regional and international mechanisms. The latter's submissions, available online, can be grouped as follows with regards to their attitudes towards the question of a new treaty:

> A New, Separate, Binding Treaty is Favorable: Special Rapporteur on the Rights of Women in Africa
>
> A New Optional Protocol to CEDAW is Favorable: Committee of Experts of the Follow-up Mechanism to the Belém do Pará Convention
>
> A New, Separate, Binding Treaty is Unfavorable: ASEAN Commission On The Promotion And Protection Of The Rights Of Women And Children, ASEAN Intergovernmental Commission On Human Rights, Committee On The Elimination Of Discrimination Against Women, Council Of Europe Group Of Action Against Violence Against Women And Domestic Violence, Working Group On Discrimination Against Women In Law And In Practice
>
> Did Not Answer Question Directly: Inter-American Court of Human Rights

As of the time of writing, the disposition of the 292 responses from civil society are unknown.[6]

2.2 Examining the Characteristics of the Normative Gap

2.2.1 The Domestic Normative Gap as Proxy

If there is indeed a gap between international rhetorical commitments and legal protections afforded women and girls, the key question becomes, "What are the characteristics of this gap?"

However, it is unfortunately impossible, given the paucity of necessary data, to empirically demonstrate the precise consequences of the normative gap in international law addressing violence against women and girls. Nonetheless, normative gaps in domestic law can serve as a reasonable proxy via which we can ascertain the cost of the lack of explicit international law on violence against women and girls. The basic logic of this proxy is simple. Because both international and domestic law perform many of the same functions – they create explicit rights, crimes, duties, penalties, and compensations based on agreed-upon principles meant to affect state behavior -- we would expect the consequences (effect on state behavior) of a normative gap in international law to be similar to those from a normative gap in domestic law. That is, if explicit domestic laws addressing violence against women and girls are more protective than general laws, we would expect strongly that explicit international laws would be likewise more protective than general international laws.

We would also expect similarity across these two levels of law because of the similar role played in each by implementation processes. Betts and Orchard (2014, p. 2) define "implementation" as a process whereby international norms are institutionalized into formal domestic law in such a manner as to bring routine compliance. Among the benefits of implementation processes, they argue, is increased precision in a domestic, societal understanding of what a new norm means. That is, "clear and observable standards" (p. 3). We would also expect the development of a new, binding international instrument to be associated with increased precision in international standards-setting. This was certainly true in the case of the 1984 Convention Against Torture (CAT). Before this treaty, prohibitions against torture and ill-treatment could already be found in multiple international instruments such as the 1948 Genocide Convention, 1957 Standard Minimum Rules on Treatment of Prisoners, and the 1966 International Covenant on Civil and Political Rights. However, it was not until torture was so clearly articulated in the CAT (at least compared with extant formulations), coupled with the mandate that each state party have a compatible and clear definition of torture in its legal code, that one could say there existed an international standard with precision enough to hold states to greater account for their actions with regards to a type of human rights violation that was not declining in practice. In short, a specific, legally-binding and precise international instrument creates precise international standards and this, in turn, can help states produce precise domestic standards.

Having precise legal standards –at any level-- is crucial, as human dignity can suffer greatly when those who may require motivation to comply are afforded the opportunity to hide in spaces created by ambiguities. Former Special Rapporteur on the Right to the Highest Attainable Standard of Health, Paul Hunt, has written about how a normative gap (defined by him as an "absence of detailed guidance") hindered his work in the area of access to medicine:

> Without "detailed guidance" pharmaceutical companies could legitimately remark that while they wished to comply with their right-to-health responsibilities, nobody could tell them what they were. Also, uncertainty about the contours and content of these right-to-health responsibilities made it very difficult to hold the pharmaceutical companies accountable (Lee & Hunt 2012, p. 221).

Finally, the process of implementing a principle, either internationally or domestically, creates dialogue that leads to clarity of expectations and, as Betts and Orchard posit, standards for which state fulfillment can be reliably and validly observed.

2.2.2. Empirically Assessing the Domestic Normative Gap

In our book, *Violence Against Women and the Law* (2015), we rated domestic laws addressing rape, marital rape, domestic violence, and sexual harassment in 196 countries on the following scale:

> Legal guarantees prohibiting [type of violence against women] are:
>
> 3 Fully Provided For
>
> 2 Correlative
>
> 1 Incomplete / Weak
>
> 0 Nonexistent / Discriminatory

For assessing the consequences of a domestic normative gap, we are interested in the difference between a correlative law (2) and a law with full protective provisions (3). Some countries have laws purportedly addressing violence against women, but do not mention these forms of violence by name. We call these "correlative laws", because they are laws that states say can be used for purposes similar to that which actual explicit legal guarantees would address. We believe this situation is akin to the argument that a standalone treaty on violence against women and girls is

unnecessary because legal frameworks already exist that can address this problem. Burundi offers an example of a correlative law. In that country, "[t]he law does not specifically prohibit domestic violence; however, persons accused of domestic violence can be tried under assault provisions" (United States Department of State 2008). So, while the assault law can be used to address domestic violence, it is important to note that it neither explicitly defines the crime nor distinguishes particular penalties related to gendered violence.

There exists a normative gap between a general law which states assert *could* be used to prosecute violence against women (a correlative law) and a law that explicitly defines, prohibits, and penalizes a form of violence against women (a full legal guarantee). We would add that this domestic gap qualifies as "normative" in a manner similar to the international normative gap because, with the exception of Iran, Palau, Somalia, Sudan, Tonga, and the United States, all other states have made one or more soft law commitments to improve laws addressing gender violence.[7]

Further, the lack of explicit definition in domestic correlative law is an important analogue to the international gap. For example, the Council of Europe Secretariat issued a comparison of the Istanbul Convention and General Recommendation 19 frameworks. One of the key takeaways from this document is that the Istanbul Treaty is superior to the CEDAW Framework in providing explicit definitions of forms of violence. For example, General Recommendation 19 limits sexual harassment to the workplace, provides a limiting definition of family violence, and does not include economic violence against women. In addition, the binding CEDAW framework does not include definitions of "gender", "gender-based violence", or "Violence against women, including domestic violence" (Council of Europe Secretariat 2012, p. 3).

How important is a definition? The issue of marital rape provides a clear example. In 35 countries it is legally permissible to sexually assault a spouse. In Lebanon in 2014, "when passing legislation to address domestic violence" that country "not only declined to criminalize marital rape, but legally entrenched a 'marital right of intercourse'" (Randall & Venkatesh 2015, p. 154). Many countries have laws that criminalize marital rape only where there is in effect a *decree nisi* of divorce, meaning that a husband can only commit marital rape if he and his spouse

are legally separated (Richards & Haglund 2015). In other places, such as Singapore, a husband can only commit marital rape if there exists against him a personal order of protection (AWARE 2011). In India, Section 375 of the criminal code defines rape. The description is quite detailed in its attempt to better-clarify the crime than did previous expositions; it consists of four paragraphs, seven descriptions, and two explanations. However, it also includes two exceptions, with the second being "Sexual intercourse or sexual acts by a man with his own wife, the wife not being under fifteen years of age, is not rape."

In all cases that we found to be similar to India, the CEDAW Committee has been careful to note "with concern" that "marital rape is recognized only in the case of judicial separation" (Committee on the Elimination of Discrimination Against Women 2002, p. 34). However, the CEDAW treaty does not offer a particular binding formulation for marital rape. That is, there is no question the intent of the CEDAW Committee is that marital rape is illegitimate in any form, under any circumstances. However, without a binding formulation, the Committee's strength of rebuke is greatly diminished, as states have not willingly signed onto a particular formulation of the crime of marital rape.

But what of the interaction between a domestic normative gap and the international framework? Tajikistan serves as an example of a country with a corollary domestic violence law where the current international framework seemingly cannot provide enough leverage for improvement towards full criminalization. Tajikistan's formal embrace of international human rights norms and civil society actors is matched only, it seems, by the epidemic of violence against women playing out every day in that country. Tajikistan is a place where violence against women and girls is "endemic"; a place where, as a non-governmental organization lawyer described, "In ninety-nine percent of families, domestic violence occurs, in different forms, (Advocates for Human Rights 2008, pp. 10-11). On the other hand, Tajikistan is a country that has been party to CEDAW for nearly two decades, party to all other major international human rights instruments except the Convention on the Rights of Persons with Disabilities, and within which international and domestic civil society organizations are vibrant. Further, Article 10 of the Tajikistan Constitution states that "International legal documents recognized by Tajikistan shall be a component part of the legal system of the republic. In case the republican laws do not stipulate to

the recognized international legal documents, the rules of the international documents shall apply." Yet, despite all this, the soft law-based international norms regarding violence against women --and domestic violence, in particular-- have not permeated the country's gender-violence-related legal framework.

Tajikistan is of corollary law status with regards to domestic violence because its criminal code outlaws physical assault and injury generally, but does not specifically criminalize domestic violence. This is a less-than-optimal arrangement, as "the absence of protections and penalties for violence in the home undermines efforts to support victims" (Kurbanova 2010) due to the great latitude afforded privacy in the family sphere. So, despite there being a law that could be used in cases of abuse, many women have remained in abusive relationships because there is little-to-no-protection afforded them for leaving. A 2012 shadow CEDAW report constructed by a coalition of 98 Tajikistan civil society organizations made clear that, key among the factors impeding women's access to justice were:

- Inadequate legislation and lack of special law for prevention and protection from domestic violence. Current Tajik legislation, including the Criminal Code and Code of Criminal Procedure, has clear contradictions preventing protection of victim's rights (From de-jure Equality to de-facto Equality 2012, p. 13).
- Imperfect legal framework for promotion of gender equality (p. 17).

After much campaigning by international and domestic civil society groups, the *Law on the Prevention of Family Violence* was enacted in 2013. UNWomen (2013) described the key facets as including:

> …abused spouses will no longer be the only ones who can file legal complaints. Law enforcement officers will also be able to identify domestic violence cases based on accounts from eyewitnesses or other parties. Moreover, those who commit violence, or even threaten to do so after divorce, can be held accountable and punished.

Yet, a constellation of actors has pointed out that, despite this new law, domestic violence still is not a specific crime in Tajikistan. The new law "does not criminalize domestic violence, and if women wish to press charges against perpetrators, those cases must be prosecuted under general provisions for violence, such as battery" (Center for Gender & Refugee Studies 2016, p. 65).[8] An

International Partnership for Human Rights (2017) report notes that -- despite the 2013 law -- there: lacks a clear definition of "family" for purposes of "family violence"; is a failure to recognize all forms of domestic violence as crimes; lacks routine enforcement of existing law; and lacks necessary supportive services for victims, among other deficiencies. Rounding out the call for a better law, a 2015 report from the Special Representative of the OSCE Chairperson-in-Office on Gender Issues, recommended "including domestic violence as a specific crime in the criminal code" (Zeitlin 2015, p. 5).

It would be imprudent to place the lack of legal protections against violence against women and girls in Tajikistan purely on the back of CEDAW's soft law approach to gender violence. The full causal spectrum of any type of pervasive human rights violation is complex, as the ecological model of violence against women well-establishes (Heise 1998; 2011). However, we think it is fair to say that the full practical weight of international and domestic law and civil society has been applied to Tajikistan with regards to violence against women and girls and it appears that a soft law approach clearly has not been sufficient.

So, what are the prospects for justice for those victims of gender violence who live in countries with corollary laws? The answer is "Not good". This answer lies in why states evolve away from general laws and towards specific criminalization of violence against women and girls – and not the other way around (Richards & Haglund 2015). This answer is also a good reason why the international legal framework needs to move past general soft law towards a universal and specific criminalization of this violence.

One way a corollary law could block access to justice is through privileging the preservation of the family unit over the protection of women against all forms of violence. In 2005, Bulgaria adopted the "Protection Against Domestic Violence Act". However, after the passage of the law, civil society groups in Bulgaria continued to make the case that "Laws and criminal justice procedures do not recognise [domestic violence] as a separate crime, and prosecutions have to be brought under the general law of assault and battery or bodily harm" (Gender Alternatives Foundation 2012, p. 27). A key part of this is that only victims can file a complaint of abuse.

What is wrong with complete reliance on victims to file complaints? Much, it turns out. The NGO Gender Alternatives Foundation describes the problem:

> Light and medium bodily injuries, among other similar offenses, caused within the context of domestic violence, are prosecuted in a private complaint procedure, i.e. on the initiative of the victim … it is expected [of] the victims of domestic violence –who are usually humiliated, threatened, beaten, coerced and their life and health are in danger - to initiate private criminal proceedings against their abusers and to become "private prosecutors" to the perpetrators: an impossible option for a victim of domestic violence who is usually only thinking how to physically survive and take her children in order to save their life. The burden of proof would be upon her and she would face all the difficulties of an expensive and a time consuming judicial process which would require her to meet her abuser whom she just managed to escape… (p. 27).

Indeed, Article 161(1) of the Bulgarian penal code provides that injuries that are "inflicted on a relative of ascending and descending line, a spouse, brother or sister" are prosecuted "on the basis of complaint by the victim". Requiring victims' complaints for intra-familial violence is a way for the legal system to privilege the family unit over victims. This can be deadly. Amnesty International (2006) relates the story of "Vera" from Belarus, who was abused for 23 years by her husband, Oleg, who would lock the two of them inside a room to perpetrate abuse. Vera's mother called police many times but, each time, recanted, as she was afraid of Oleg's vengeful threats. If she tried to protect Vera, she'd get beaten, too. Vera's sister reported four hospitalizations of Vera due to Oleg's abuse. And, "On each occasion, Oleg, a former policeman … boasted that he could bribe policemen and medical personnel so that his crimes would not be reported" (p. 2). In 2005, Vera was found dead from hanging. Was Vera in a situation to report her abuse?

When compared against other sections of the penal code, this bifurcation of the official state response to violence in Bulgaria makes no sense as anything other than a way to preserve patriarchal dominance in family units. For example, under Article 163, violence against someone "in connection with their national, ethnic or racial affiliation" does not require a victim-based complaint and explicit ranges of imprisonment are set. The same goes with violence committed

during an assassination attempt of a public official (96(2)), hostage-taking (97(2)), theft (Articles 198(4), 199(2)), attempt to invoke war (99(2)), general negligence 124(1-4), threat of violence via blackmail ((213a(2)(3)(4), 214(3)), violence committed by negligence via fireworks and/or firearms (338(3)), and damage of transportation vehicles (340(3), 341, 341a(4), 341b(3), 342(1-3).

Bulgarian women are sent the clear message by this bifurcated state response to violence that they, as sentient humans, are worth less than an ancient, tainted ideal: the traditional ideal of a male-dominated "stable family unit". Unfortunately, this type of devaluation is not unique, as it is much the same given by Russia's 2017 decriminalization of domestic violence. The bill, passed by a 380-3 vote in the Duma and signed into law by Vladimir Putin, stipulates a penalty of an administrative fine for domestic violence except in cases of repeat offenders. As Russian Duma member Vitaly Milonov, a supporter of the legislation, put it:

> I don't think that we should violate the rights of family and sometimes a man and a woman, wife and husband, have a conflict. Sometimes in this conflict they use, I don't know, a frying pan, uncooked spaghetti, and so on. Frankly speaking what we call home violence is not home violence -- it's sort of a new picture of family relations created by liberal media (Sebastian & Mortensen 2017).

The indignation to women doesn't end there, unfortunately. The fine for beating one's wife is 40% less expensive than for beating one's children (Mangan 2017).

And thus, a state can pass a law with the words "domestic violence" in the name, but not criminalize anything. As a result, the resulting corollary law not explicitly criminalizing violence against women and girls is left to allow an uneven and discriminatory state response to violence that leaves women at risk for sustained abuse from which there is -- given the reality of the dynamics of abusive relationships -- little-to-no hope of escape. The domestic normative gap, in this way, can come with a cost. Finally, inasmuch as the existing soft-law international legal system provides no binding demand that the corollary law situation be fixed, the international normative gap is complicit in this costly domestic normative gap.[9]

2.3 The Size and Nature of the Normative Gap in Domestic Legal Systems

While we cannot assess the normative gap in *international* human rights law addressing violence against women, we can look to *domestic* law for evidence of the impact and influence of this gap. We begin doing so by first presenting cross-national evidence of the size and nature of the normative gap. To assess the presence of this normative gap, we utilize data from Richards and Haglund (2015) that rates countries annually from 2007-2010 on a four-point scale for each of four forms of violence: assessed are rape, marital rape, domestic violence, and sexual harassment.[10] Rather than provide an indicator of the presence or absence of legal protections, these data are unique in that they provide an assessment of the *strength* of legal protections using a four-point ordinal coding scheme. For each of the four forms of violence, each country receives one of the following scores: (0: Nonexistent/Discriminatory), (1: Incomplete/Weak), (2: Correlative), (3: Fully Provided For).

A score of 0 indicates there are no laws prohibiting the form of VAW being considered or that the code of law is based on traditions that are fundamentally biased against women. A country receives a score of 1 if a law exists that prohibits one of the four forms of VAW being considered but the law is incomplete or limited in scope. Incomplete laws include cases where the law does not extend to all minority groups, customary law is contradictory to national statutes and takes precedence in one or more minority groups, the law provides for systematic light or reduced sentencing, or the law is written to be unenforceable or difficult to apply. A country receives a score of 2 when there are correlative laws in place. Countries receive a score of 3 when the form of VAW is legally prohibited, this means that the state explicitly forbids the type of violence being considered.[11]

< Figure 2.1 Here >

To demonstrate evidence the size and nature of the cross-national normative gap in domestic laws, we compare in Figure 2.1 countries that provide an explicit legal guarantee to those that provide a correlative legal guarantee. Displayed are the number of countries with nonexistent/discriminatory laws, incomplete/weak laws, correlative laws, and full legal protections in 2010 for each of our four forms of VAW. Immediately, one can see there are a number of countries using correlative legislation to address domestic violence and marital rape,

instead of specific legislation. In 2010, 18 countries addressed domestic violence, and 34 countries addressed marital rape, using correlative laws. One clear lesson here is that the normative gap regarding violence against women and girls should not be expected to be uniform across types of violence.

The more countries using correlative laws instead of specific legislation with regards to violence against women, the larger the normative gap around that form of violence. This, because these countries have -- through CEDAW at the minimum -- made public attestations of support that women and girls should be free from gendered violence. Thus, Figure 2.1 shows that the normative gap is largest with regards to marital rape, with domestic violence following. This is evidenced by the similarity in the number of states employing correlative and specific legal guarantees against marital rape. For domestic violence, a good number of states still need to make the leap to specific guarantees, but there is a sizable difference in the number of states with correlative and specific guarantees.

< Table 2.1 Here >

Table 2.1 offers the regional distribution of the cross-national normative gap shown in Figure 2.1.[12] Each country that does not provide an explicit legal guarantee addressing domestic violence or marital rape is listed by region. Unmistakably, countries with correlative laws are not concentrated in any specific region of the world. Indeed, these countries are quite regionally diverse. Just as the size of the normative gap varies across forms of violence, its strength-of-presence varies across regions, as well.

Countries that provide correlative laws are also diverse politically, as well as geographically. For example, there is substantial variation in the level of democratic institutions in the countries listed in Table 2.1. Cingranelli and Richards' (2010) empowerment rights index measures a state's level of substantive and procedural democracy. It includes seven democratically-oriented empowerment rights: freedom of foreign movement, freedom of domestic movement, freedom of speech, freedom of assembly and association, workers' rights, electoral self-determination, and freedom of religion. The index ranges from 0 (no government respect for any of these seven

rights) to 14 (full government respect for all seven of these rights). Using this index in conjunction with the VAW legal data, we find that countries with correlative laws vary quite considerably in their provision of democratic-oriented rights. In fact, the average empowerment rights score for countries with correlative domestic violence laws is 8 and the average empowerment score is 10 for those countries with correlative marital rape scores. On average, then, the groups of countries with correlative laws can be labeled as having partially-democratic and/or transitional regimes. And indeed, by encouraging social mobilization, these are indeed precisely the types of regimes in which international human rights law is likely to have its largest impact (Simmons 2009). What this means is that the strategy of adopting a treaty explicitly addressing violence against women should likely have significant and beneficial effects in those regimes currently providing only correlative legal protections.

Are normative gaps in national legal protections associated with higher levels of violence against women? While cross-national data collection efforts on the prevalence of violence against women have grown substantially over the last decade, much work remains to be done as most data are limited in one of two ways. First, cross-national data on the prevalence of VAW are often temporally limited, covering only a small number of years. Second, data on VAW prevalence often only cover a subset of countries, with coverage of some regions being particularly thin. This lack of coverage poses problems for conducting rigorous data analysis, including problems in determining statistical reliability.

Given such limitations, our own evidence of the consequences of the national normative gap in VAW is limited both temporally and spatially. In what follows, we first assess the gap in national domestic violence and marital rape legislation by looking at correlations between specific VAW legislation and both VAW prevalence and societal attitudes about VAW. Then, we conduct a number of statistical analyses assessing the influence of full VAW legal protections and correlative legal protections on women's rights outcomes.

To compare those countries that include specific provisions in their laws with those countries that have more-general legislation, or no legislation, protecting women from violence we utilize the World Bank Women, Business, and Law Group data on laws and regulations protecting

women from violence (World Bank 2016). These data are available for 173 countries for a single year (2014). To assess the prevalence of and attitudes toward VAW, we utilize the Organization for Economic Cooperation and Development's (OECD) Social Institutions and Gender Index (SIGI 2014), which provides cross-national measures of discrimination against women in social institutions for 160 countries for a single year. We chose these data to assess the presence of the normative gap, because although both datasets are limited temporally, these data were collected for the same year and to the best of our knowledge, are the only available data providing information on specific legislation *and* both VAW prevalence and attitudes for the same period of time (2014).

< Figure 2.2 Here >

The left panel of Figure 2.2 presents a cross tabulation of specific domestic violence legislation and prevalence of domestic violence. The darker a cell's shading, the higher the percentage of countries falling in that cell, and vice versa. The left-hand column is populated by countries without specific domestic violence legislation. In the right-hand column are those countries with specific domestic violence legislation. In the World Bank's (2016) data, a country is considered to have *specific* domestic violence legislation in place if domestic violence legislation exists that protects women *and* covers physical violence, sexual violence, emotional violence, economic violence, and protects unmarried intimate partners. A country is considered not to have explicit domestic violence legal protections if the law does not cover all forms of domestic violence. The vertical axis displays three levels (low/medium/high) of domestic violence prevalence for each country. Prevalence of violence (SIGI 2014) is measured as the percentage of women who have experienced physical and/or sexual violence at the hands of an intimate partner in their lifetime. The "low" category indicates 0-25% of women, "medium" indicates 26-50% of women, and "high" indicates 51-78% of women experiencing violence in their lifetime.

In the lower-right-hand cell of the left panel of Figure 2.2 are countries who have specific domestic violence legislation compared with a low prevalence of domestic violence. This accounts for 30.91% of the countries in the 173-country sample.[13] On the other hand, the lower-left-hand cell shows that only 14.55% of countries without specific legislation in place have a

low prevalence of domestic violence. That is, countries with specific legislation are twice as likely as those without to have a low prevalence of domestic violence.

The World Bank and SIGI data do not provide an indicator of the prevalence of marital rape, so the vertical axis in the right panel of Figure 2.2 indicates *attitudes* on violence against women. Specifically, the values on the vertical axis represent the percentage of women who agree with the idea that *a husband/partner is justified in beating his wife/partner under certain circumstances*. The "low" category indicates that between 0-30% agree that violence is justified in some circumstances, "medium" indicates 31-60% believe violence is justified in some circumstances, and "high" indicates 61-92% believe violence is justified in some circumstances. The horizontal axis indicates whether a state has specific marital rape legislation. A country without such specific legal protection might be one in which legislation on rape and sexual assault contain exemptions preventing spouses from being charged with the offense, maintains that there can be no crime of rape between husband and wife or within marriage, or one where rape is not codified as a crime.

The lower right cell in the right panel of Figure 2.2 shows that 36.36% of countries having specific marital rape legislation are also countries where 30% or fewer of women believe violence by a husband or partner is justified in some circumstances. This is also the modal attitudinal category for countries with specific legislation. In contrast, among those countries with no specific marital rape legislation, the modal category is "medium" (31-60% of women believe violence is justified in some circumstances). Further, in only 6.06% of countries without specific marital rape legislation did 30% or fewer women oppose the justification of beating a female spouse – almost a full third of female respondents fewer than in countries with specific legislation. As in Figure 2.1 and Table 2.1, the associations shown in Figure 2.2 are simply that -- associations, neither assertions nor evidence of causal relationships. However, for there to be a causal relationship such that specific laws bring better outcomes, it is necessary for these associations to exist. Thus, we are encouraged to look further into the matter in the next section.

2.4 Effects of the Normative Gap in Domestic Legal Systems

So far, we have seen empirical suggestion of a relationship whereby explicit legal guarantees against domestic violence and marital rape are associated with lower prevalence of violence and lower acceptability of violence, respectively. In order to more-rigorously examine the consequences of the normative gap in domestic legal systems, in this section we use statistical analyses to examine whether, and how strongly if so, the presence of a full legal protection (as opposed to a correlative legal protection) is associated with better outcomes for women in society.[14] It is because we find evidence of the normative gap in national domestic violence and marital rape legislation that our analyses focus on these two forms of violence.

In our statistical analyses, we utilize a number of variables to empirically examine the relationship between specific VAW legislation and outcomes for women.[15] An independent variable (or, explanatory variable) is an indicator that we expect will help explain the dependent variable (the thing we wish to explain). Our primary independent variable of interest is derived from Richards and Haglund's (2015) four-category measure of states' legal protections against gender violence. For the purpose of comparing countries against one another, the normative gap in domestic law is essentially the gap between countries with correlative laws and those with specific laws. Thus, we created a variable with two possible values: countries that have adopted full, specific legal protections related to domestic violence or marital rape receive a score of "one", whereas countries with correlative laws in place receive a score of "zero".[16] Using this measure, we are able to systematically compare whether countries with explicit legal protections have better outcomes for women than countries with only correlative legislation. If countries with domestic correlative laws are shown to reliably have worse outcomes for women than those with explicit guarantees, we would argue there is danger in letting the international normative gap stand.

A dependent variable is the variable whose quantity or quality we seek to explain. We examine a number of dependent variables in our analyses, all of which represent outcomes related to the enhanced dignity of women. While data on the prevalence of domestic violence or marital rape would be the ideal outcome to examine, no such data exist cross-nationally for multiple years. The lack of specific data on VAW outcomes makes the ability to conduct robust statistical analyses problematic, if not entirely unfeasible. As such, we cannot assess whether the presence

of an explicit law (compared to a correlative law) addressing domestic violence or marital rape is associated with lower levels of domestic violence or marital rape. So, instead, we examine whether explicit legislation is associated with other important development and health outcomes, for which data exist cross-nationally for many years.

We look specifically at human development and female HIV rates. We use the United Nations' Human Development Index (HDI) as our indicator of human development. This is an index ranging continuously from 0 to 1, composed from the following sub-indicators: life expectancy at birth, mean years of schooling and expected years of schooling, and gross national income (GNI) per capita. Higher values on this index indicate greater levels of human development. Our indicator of female HIV rates is the percentage of women living with HIV out of all persons living with HIV in the country (Richards & Haglund 2015, p. 147 FN 5). These two dependent variables were selected for several reasons. First, we expect strong legal protections to be associated with higher levels of human development. This claim is supported by the UN's sustainable development goal (SDG) 5, achieving gender equality and empowering all women and girls. The UN SDG 5 specifically mentions the need for "legal frameworks, to counter deeply rooted gender-based discrimination that often results from patriarchal attitudes and related social norms."[17] When women experience violence in the home, they are less likely to participate in the public sphere, including education or the formal economy, which provide women with important alternative social networks to mobilize around issues that influence them. In fact, substantial costs of VAW are attributed to lost productivity and lifetime earnings for women each year.[18] We expect that countries that have adopted strong VAW legislation provide legal recourse for women, placing women in a better position to seek justice, escape situations of violence, and participate in the formal economy, which should be associated with higher levels of human development. Second, high VAW prevalence is associated with a heightened risk of contracting HIV/AIDS and other sexually transmitted diseases (WHO 1997). We expect that strong legal protections should be associated with a lower prevalence of VAW, which subsequently is associated with lower risk of HIV/AIDS. Also, the presence of strong VAW legislation places women in a better position to pursue preventative healthcare and develop social networks that facilitate the provision of information on health-related issues. The adoption of strong VAW legal protections also represents changing societal norms, providing an

environment in which women are better able to obtain necessary healthcare. Finally, both indicators (HDI and female HIV rates) provide substantial cross-national and temporal coverage, allowing us to assess variation between countries and across time via statistical analysis.

In order to ensure that the relationship between legal protections and women's outcomes is not due to some other, intervening, factor, we also include a number of "control" variables in our model accounting for alternative explanations of HDI and HIV outcomes. These control variables add context to our study of the relationship between legal protections and HDI/HIV outcomes. First, we control for the level of gender-violence-related societal discrimination, or the social acceptance of abuse against women in society. We use an ordinal variable from Richards and Haglund (2015), on which countries can be assigned any of three possible values: 0 (high levels), 1 (moderate levels), and 2 (low to nonexistent). Second, we account for whether a country is majority Muslim or majority Christian, as religious institutions and practices are argued to be associated with violence against women (Narayan 1997; Weldon 2002). Third, we account for gender violence policy in neighboring countries, as norms and policies related to VAW (and human rights, more generally) have been shown to diffuse regionally (Berry & Berry 1999; Htun & Weldon 2012). Our indicator of diffusion is the average strength of VAW laws in countries sharing a border with any particular country in our sample.

Fourth, we include a variable indicating the number of years a country has been party to CEDAW. If CEDAW indeed encourages social mobilization (Simmons 2009), then we would expect that the longer a country is party to the treaty, the better will be outcomes related to that treaty's goals. Fifth, we include a variable using gross national income (GNI) as a proxy indicator of state capacity to provide better outcomes for women.[19] Sixth, we account for a country's level of economic globalization as it is undetermined whether, *in toto*, economic globalization creates an environment in which the advancement of women's rights becomes increasingly likely, or is ultimately detrimental to women (Richards & Gelleny 2007; True 2012). To do so, we include a variable capturing merchandise trade (imports plus exports, divided by gross national product) (World Bank WDI 2013). Seventh, we use data from Gleditsch et. al. (2002) to account for civil war, as violence against women is often exacerbated by civil conflict.

Eighth, we include a variable denoting the percentage of women in parliament (Inter-Parliamentary Unions' Women in National Parliament Statistical Archive). Greater descriptive representation of women has been shown to be associated with better women's outcomes (Thomas 1991; Lovenduski & Norris 2003). Ninth, we include a variable representing levels of respect for women's economic rights (Cingranelli & Richards 2010) because women with opportunities outside the home are able to develop alternative social networks and increased opportunities to mobilize (Renzetti 2011). Finally, we include a number of regional variables (Africa, Asia, and Latin America) because countries in these regions are often associated with women's outcomes that are different than other regions based on factors (e.g. traditional customs outside of religion or state activities) that we fail to account for with the other nine indicators. These regional variables take on a value of 1 for countries located in each region, and 0 otherwise.

< Table 2.2 Here >

Table 2.2 presents results from our first set of statistical analyses. The first and third columns are the results of regression analyses exploring the relationship between the fifteen independent variables (each displayed in a row on the table) and one of the dependent variables, human development (HDI). The second and fourth columns represent the relationship between our second dependent variable, female HIV rates and each independent variable. The first-row independent variable ("specific legal protection") is domestic violence in the first two columns, whereas in the last two columns, it is marital rape

Reported in the table are several key pieces of information. First, the letters indicate the *direction* of the relationship between the independent variables in the far left column and the dependent variables at the top. Positive relationships are represented by **P** and p and negative relationships are represented by **N** and n.[20] Second, we are interested in the *extent* to which these relationships are statistically reliable. Statistical reliability indicates that we are confident that the relationship between an independent variable and dependent variable (HDI or female HIV rates) is not entirely due to chance. To determine reliability, we utilize a p-value threshold of 0.10, which

indicates that we are at least 90 percent confident that the relationship between the two variables is not due to chance. Bold capital letters indicate that the relationship meets that test. For example, "**P**" represents a statistically significant positive relationship and "**N**" represents a statistically reliable negative relationship. On the other hand, "p" represents a statistically unreliable positive relationship and "n" represents a statistically unreliable negative relationship. Consequently, we are most interested in findings displayed in boldfaced capitalized letters.

Looking at the first row of results in Table 2.2, we see that the specific legal address of VAW is reliably related to human development levels and female HIV rates in all four models (as evidenced by the boldfaced capital letters next to "specific legal protection" in each column). That is, in all four models --no matter the type of law (domestic violence or marital rape) or outcome being measured-- the fact that a country has specific laws against gender violence, instead of correlative laws, is a significant factor associated with outcomes benefiting women. Put another way, having a specific domestic violence law or marital rape law --instead of a correlative law-- is associated with a higher HDI score and lower female HIV rates; even controlling for 14 other factors. On the other hand, how long a state has been party to CEDAW is reliably associated with increased female HIV rates in the marital rape model. The percentage of women in a national legislature fares better than CEDAW party years, as it is statistically reliable in three of the four models and always in a beneficial direction: lower female HIV rates and greater HDI. Finally, African countries fared poorly in Table 2, being associated with lower HDI and greater female HIV rates, even controlling for all the other factors in the table.

< Figure 2.3 here >

While Table 2.2 specifies the *direction* of the relationship between numerous variables, it does not provide evidence of the *size* of these relationships. Figure 2.3 presents effect sizes of the statistically reliable variables from the models in Table 2.2. The values presented in Figure 2.3 represent standardized regression coefficients, showing the influence of a one-standard deviation change in the independent variable (i.e. specific legal protection) on a one-standard deviation change in the dependent variable (human development or female HIV rates). Standardizing coefficients allows direct comparison of the size of the coefficients across independent variables

that are measured on different scales. Bars extending to the right of the vertical zero line indicate a positive relationship between the independent and dependent variable and bars extending to the left of the zero line indicate a negative relationship. Longer bars indicate greater change in either human development or female HIV rates for a particular independent variable, relative to the change in human development or female HIV rates of the other variables. Similarly, shorter bars indicate less change.

The top row of Figure 2.3 represents domestic violence law results (columns one and two in Table 2.2) and the bottom row represents marital rape results (columns three and four in Table 2.2). The top right-hand chart of Figure 3 displays some interesting findings – notably, the presence of a specific domestic violence law (bottom row on vertical axis, labeled "Specific Domestic Violence Law"), as opposed to a corollary law, has the largest attenuating effect on female HIV rates of all the variables included in the model; even more than the strength of laws in neighboring countries (contiguity), capacity (GNI), CEDAW ratification years, and percent of women in the legislature. More specifically, this chart shows that the presence of a specific domestic violence law (as opposed to a corollary law) is about twice as effective as an additional 7 years of CEDAW ratification (a one-standard deviation change in CEDAW ratification years) and more than twice as effective as a 10 percent increase in the number of women in the legislature (a one standard deviation change in the percent of women in the legislature) in reducing the female HIV rate.[21] That is, adopting specific domestic violence legislation has not only a reliable, but also a strong influence on women's outcomes.

Similarly, the bottom row of charts in Figure 2.3 show that the adoption of specific marital rape legal protections (as opposed to corollary protections) is associated with higher levels of human development and lower female HIV rates. While the lower left-hand chart shows the relationship between the control factors empowerment rights, women in the legislature, and contiguity to have a greater positive (enhancing) relationship with human development than does having a specific marital rape law, the presence of a specific marital rape law is more-strongly related to greater levels of human development than is levels of VAW-related societal discrimination.[22] Figure 2.3 (top and bottom right-hand charts) also shows that the difference in how a country's CEDAW party-status relates to female HIV rates infers that not all VAW laws affect outcomes

equally, or in the same way. In the context of marital rape laws, the longer a country has been party to CEDAW, the higher its female HIV rates. With regards to domestic violence laws, the longer a country has been party to CEDAW, the lower its female HIV rates.

To better understand the relationship between the normative gap and specific gender violence outcomes, we offer two additional analyses. First, we look at the relationship between a specific legal guarantee against marital rape (independent variable) and the prevalence of rape (dependent variable). We use a measure of rape prevalence from the WomanStats Project (2017).[23] This ordered variable assigns countries one of five scores, with higher scores representing a higher prevalence of rape:

0: rape is virtually nonexistent
1: rape is rare
2: rape is common
3: rape regularly occurs
4: rape is the norm

Second, we look at the relationship between full marital rape legal protection (independent variable) and enforcement of VAW laws (dependent variable). Data on the enforcement of VAW laws comes from Richards and Haglund (2015). On this indicator, a score of 0 indicates that enforcement is rare or nonexistent, a score of 1 indicates that enforcement is selective or uneven, and a score of 2 indicates that enforcement is routine or effective.

< Table 2.3 Here >

One difference from the model estimates reported in Table 2.2 is the inclusion of additional control variables accounting for fertility rate, level of judicial independence, federal/unitary state status, and transparency.[24] These control variables are important to include because they represent potential alternative explanations of the dependent variables: rape prevalence and VAW law enforcement. Fertility rate is a proxy measure of traditional attitudes toward women, as scholars suggest that fertility rates often decline when women have greater control over reproductive decisions and larger numbers of women enter the formal economic sphere (Furuoka

2009).[25] Judicial independence has been found to be related to many different human rights outcomes, as an independent judiciary provides a more effective legal recourse for victims because it maintains autonomy from other governmental actors (Powell & Staton 2009; Conrad & Ritter 2013). Federal states may have more uneven law enforcement due to differences in enforcement across subnational political units. Finally, transparency captures corruption in public office, and we expect enforcement and VAW to be lower when there is rampant corruption in office (CPI 2010).

Otherwise, Table 2.3 can be read the same as Table 2.2. Importantly, specific legal protection against marital rape (the first row in Table 3) displays bold capitalized letters in the first and second columns of Table 2.3. The results presented in the first column show that the presence of a specific protection against marital rape (instead of the correlative legal protection) is reliably associated with lower rape prevalence. CEDAW party years, trade (economic globalization), VAW law enforcement, fertility rate, and government transparency (lack of corruption) are also negatively and reliably associated with rape prevalence. In the second column, the presence of a specific legal protection against marital rape is reliably associated with greater enforcement of gender-violence laws. Lower VAW-related societal discrimination, federalism, and government transparency (lack of corruption) are also positively and reliably associated with better VAW law enforcement.

< Figure 2.4 Here >

The two charts in Figure 2.4 can be read much like the charts in Figure 2.3, with a few differences. First, marital rape is the only legal protection examined. Second, the dependent variables are rape prevalence and levels of VAW-law enforcement. Finally, the bars in Figure 2.4 represent probabilities. For example, each of the bars in the left chart of Figure 2.4 represents –for each variable -- the change in the probability that rape is nonexistent or rare in a country, given a one-standard deviation increase in the value of that variable, and simultaneously taking into account all other variables in the model.[26] Bars extending to the right indicate that these factors increase the probability that rape is nonexistent/rare. Bars extending to the left indicate that these factors are associated with a lower probability that rape is nonexistent/rare. The right-

hand chart of Figure 4 shows the change in probability that enforcement is routine or selective (as opposed to rare or nonexistent), given a one-standard deviation change for a given variable, taking all other variables in the model into account.

The results from the left-hand chart of Figure 2.4 show that eliminating the normative gap is associated with lower rape prevalence. Countries that have specific legal protections in place against marital rape are around 26 percent more likely than those with correlative laws to have rare or nonexistent rape prevalence, taking into account all the other alternative explanations. This improvement in the probability of rare/nonexistent rape prevalence is greater than an additional 7 years of CEDAW party status (which produces only a 1.9 percent improvement in the probability that rape is rare/nonexistent). Additionally, lack of corruption seems vital to ensuring low rape prevalence. A two-category increase on the 11-category transparency indicator is associated with a 22.3 percent greater probability of nonexistent or rare rape prevalence. As an example, consider New Zealand and Japan. New Zealand specifically criminalizes marital rape in its national legislation, while Japan does not have legislation in place that explicitly criminalizes marital rape (World Bank 2016). Both countries have been parties to CEDAW since 1985. Government corruption is lower in New Zealand than Japan, as New Zealand scores an average of 9.35 and Japan scores an average of 7.58 on the transparency index (higher values indicate greater government transparency). However on the rape prevalence variable, New Zealand scores a 2 (rape is common) and Japan scores a 3 (rape occurs regularly). While rape still occurs, its prevalence is lower in New Zealand, a country with specific marital rape legislation in place and relatively lower government corruption.

Finally, in the right-hand chart of Figure 2.4, the presence of a specific marital rape law is associated with a 7.3 percent increase in the probability of selective or routine enforcement of VAW laws. Displaying a similar effect to the specific marital rape law in Figure 4 is VAW-related societal discrimination. When VAW societal discrimination improves (higher values indicate lower levels of societal discrimination) by one-standard deviation (around .71 on the 0-2 scale), the probability of selective or routine enforcement increases by 7.7 percent. Majority Christian, majority Muslim, and countries in Africa are reliably associated with a lower probability of selective or routine enforcement of VAW laws. To illustrate, contrast VAW

enforcement in Chile and El Salvador. Chile has specific marital rape legislation in place, but El Salvador does not specifically address marital rape in the law, though marital rape may be considered a crime if the actions meet the criminal code definition of rape. Chile ratified CEDAW in 1989, while El Salvador has been a party since 1981. With respect to VAW enforcement, Chile receives a score of two, indicating that enforcement of VAW laws is routine. On the other hand, El Salvador receives a score of zero on enforcement, indicating that enforcement is rare or nonexistent; the United States State Department report for El Salvador in 2009 specifically mentions that "laws against rape were not effectively enforced" (United States Department of State 2009) While illustrative, this example shows that for a country with specific legislation in place (Chile), enforcement of the law can be reliably more effective than in a country with only correlative legislation in place (El Salvador).

2.5 Conclusion

The normative gap related to violence against women and girls is the gap between the standard of dignity states have declared they wish for women and girls, and the rules by which these same states are willing to be legally bound to achieve that goal. It is the gap between rhetoric and reality. The results of our conceptual and empirical analyses in this chapter strongly point towards the conclusion that the persistence of this normative gap is a threat to the human right of women to live a life free from violence or to obtain justice if victimized.

While it is not possible, due to lack of existing data, to empirically assess the nature and consequences of the international normative gap itself, in this chapter we used what we call the "domestic normative gap" as a proxy with which to evaluate what transpires as a result of gaps between rhetoric and binding law. First, we found the size and nature of the domestic normative gap to differ across types of violence and across geography. Second, we found explicit legal guarantees (as opposed to general laws) against domestic violence and marital rape to be reliably associated with lower prevalence of violence and lower acceptability of violence, respectively. Further, our analyses showed that no matter the type of law or outcome being measured, the fact that a country has specific laws against gender violence is a significant factor in outcomes such as lower female HIV rates and greater human development. And, time and again in our analyses, explicit legal guarantees against gender violence were shown to be a more-effective safeguard of

women's rights than how long a state has been part of the CEDAW framework. This last finding is of particular significance given the current environment wherein CEDAW's ability to persist without a counterpart explicitly addressing violence against women and girls is being assessed by many international actors. For our own part, we can only conclude from our findings that a specific international treaty specifying explicit, binding provisions protecting women and girls from violence would make a valuable contribution towards greater objective enjoyment by women and girls of their human rights to be free from violence and to have recourse to justice if victimized.

Aside from that key finding regarding the normative gap, two other findings from our analyses reinforce our conclusion that an explicit international VAW treaty is desirable. First, we found evidence that the diffusion of laws addressing violence against women affects outcomes such as HDI and female HIV rates. Indeed, research on sexual harassment laws indicates that countries look to neighboring countries in their emulation and adoption of legislation. Such a global diffusion of laws reinforces the call for a specific international instrument on violence against women for two reasons. An important part of the strength of international norms lies in homogeneity of concepts and application; also, with the guidance of a universal norm (emanating from a specific international instrument), domestic laws should diffuse somewhat evenly across countries, providing a more equitable pattern of access to redress for this human rights violation. Second, our previous work (Richards and Haglund, 2015) demonstrated that international law can be influential in the adoption of strong gender-violence laws at the national level; particularly domestic violence laws. Were it viewed in isolation, this finding may seem to make the case that CEDAW is sufficient. However, this is not the case. Pair that finding with our discovery in this chapter (see Figure 2.1) that legal protections in gender-based violence laws, apart from rape laws, are sorely lacking in most countries. It then becomes clear that while CEDAW -- which has been in force for over 35 years -- helped change the picture of legal protections from abysmal to lacking, it lacks the binding force (so far as violence against women and girls) necessary to nudge domestic legal protections any further towards acceptability. It is our conviction then, considering all our evidence, that something beyond CEDAW is necessary for further progress on the issue of violence against women and girls. Single-issue treaties (e.g. Convention Against Torture (1984)) that have built on earlier omnibus treaties (e.g. International

Covenant on Civil and Political Rights (1966)) provide firm precedent that, in this case, the creation of a binding international treaty explicitly addressing violence against women and girls seems a logical path forward from the current situation.

Table 2.1: Countries with Correlative Laws By Region, 2010

Regional	Domestic Violence	Marital Rape
Africa	Cape Verde, Central African Republic, Chad, Equatorial Guinea, The Gambia, Rwanda	Benin, Cape Verde, Mali, South Africa
Asia-Pacific	Brunei, Cambodia, Fiji, Marshall Islands	Cambodia, Fiji, Japan, Kiribati, Kyrgyz Republic, Nauru, Vietnam
Eastern Europe	Belarus, Estonia, Georgia, Lithuania	Albania, Bosnia-Herzegovina, Bulgaria, Estonia, Latvia, Lithuania, Russia, Ukraine
Latin America and Caribbean	Cuba	El Salvador, Nicaragua, Paraguay, Peru, Saint Vincent and Grenadines, Suriname, Uruguay
Western Europe and Others	Canada, Denmark, Finland	Canada, Iceland, Italy, Luxembourg, Malta, Norway, Portugal, Spain

Figure 2.1: Legal Protections Addressing Violence Against Women, 2010

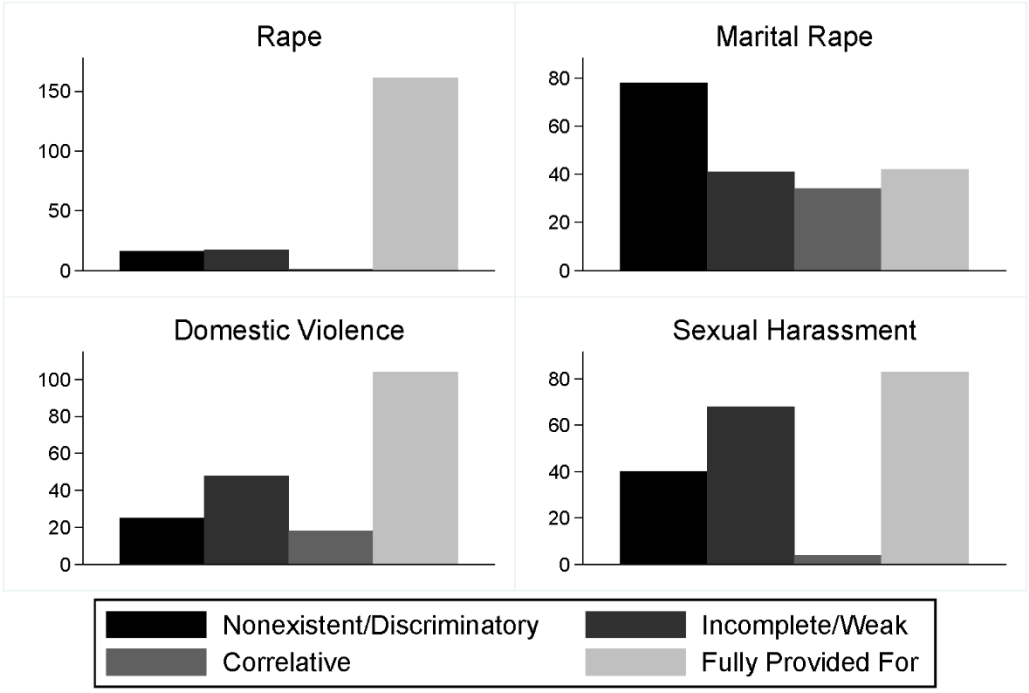


Figure 2.2: VAW Prevalence and Attitudes by Specific Legislation

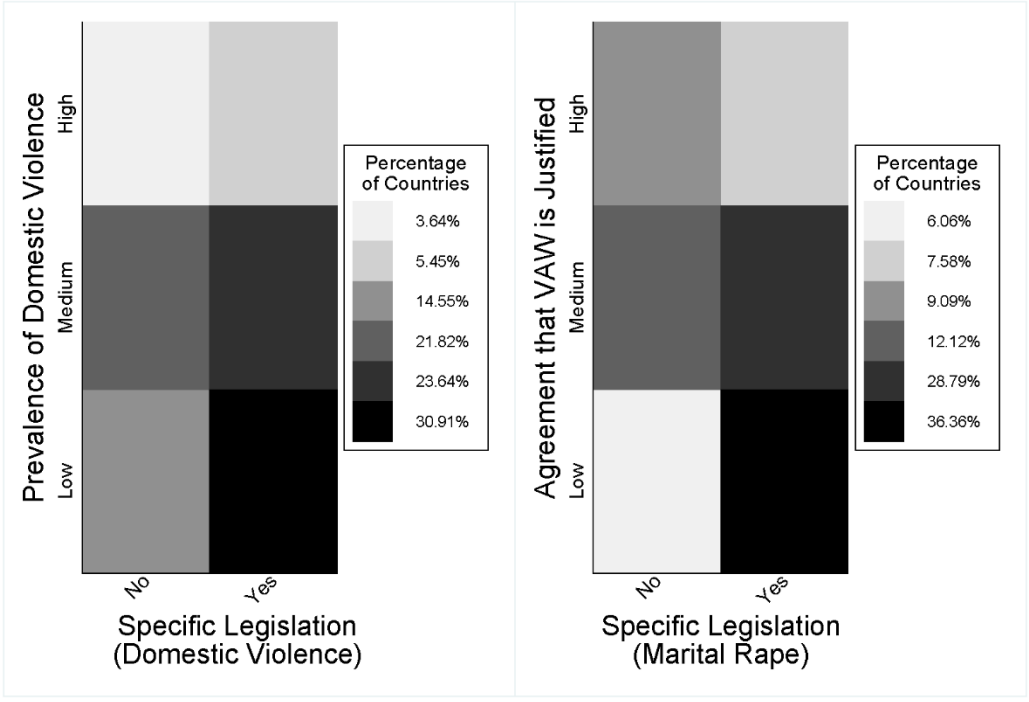


Table 2.2: Influence of Full Legal Protections on Women's Outcomes

	Domestic Violence		**Marital Rape**	
	HDI	*Female HIV Rate*	*HDI*	*Female HIV Rate*
Specific Legal Protection	**P**	**N**	**P**	**N**
Societal Discrimination	**P**	**P**	**P**	p
Majority Muslim	N	**P**	**N**	**N**
Majority Christian	N	**P**	n	p
Contiguity	**P**	**N**	**P**	n
CEDAW Party Years	P	**N**	n	**P**
Empowerment Rights	**P**	n	**P**	p
GNI (logged)	--	**N**	**--**	**N**
Trade	P	p	**N**	**P**
Civil War	P	**N**	**P**	n
Women in Legislature	P	**N**	**P**	**N**
Women's Economic Rights	**P**	n	p	p
Africa	**N**	**P**	**N**	**P**
Asia	**N**	p	p	p
Latin America	**N**	**P**	**N**	**N**
N	282	274	192	186
R^2	0.807	0.634	0.854	0.778

P = Statistically reliable positive relationship

p = statistically unreliable positive relationship

N = Statistically reliable negative relationship

n = Statistically unreliable negative relationship

Table 2.3: Influence of Full Marital Rape Legal Protections on Rape Prevalence and VAW Enforcement

	Rape Prevalence	*Enforcement*
Full Legal Protection	**N**	**P**
Societal Discrimination	n	**P**
Majority Muslim	p	**N**
Majority Christian	n	**N**
Contiguity	n	n
CEDAW Party Year	**N**	p
Empowerment Rights	p	p
GNI (logged)	P	n
Trade	**N**	p
Civil War	n	n
Women in Legislature	p	n
Women's Economic Rights	**N**	p
Africa	**P**	**N**
Asia	p	n
Latin America	**P**	**n**
Enforcement	**N**	**--**
Fertility	**N**	p
Judicial Independence	p	p
Federalism	**P**	**P**
Transparency	**N**	**P**
N	247	262
R^2	0.454	0.323

P = Statistically reliable positive relationship
p = statistically unreliable positive relationship
N = Statistically reliable negative relationship
n = Statistically unreliable negative relationship

Figure 2.3: Influence of Full Domestic Violence and Marital Rape Laws on Women's Outcomes (Standardized Regression Coefficients)

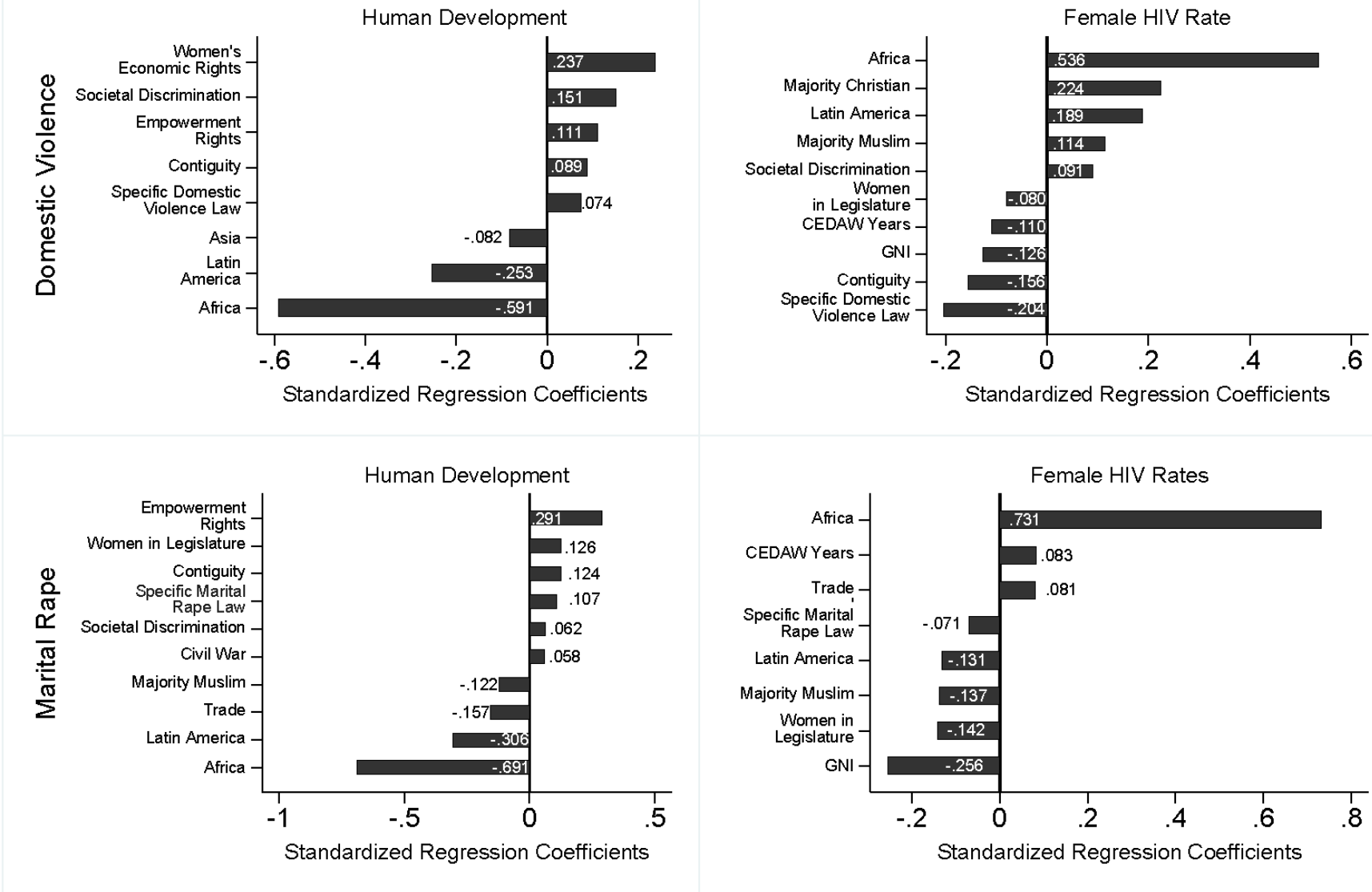
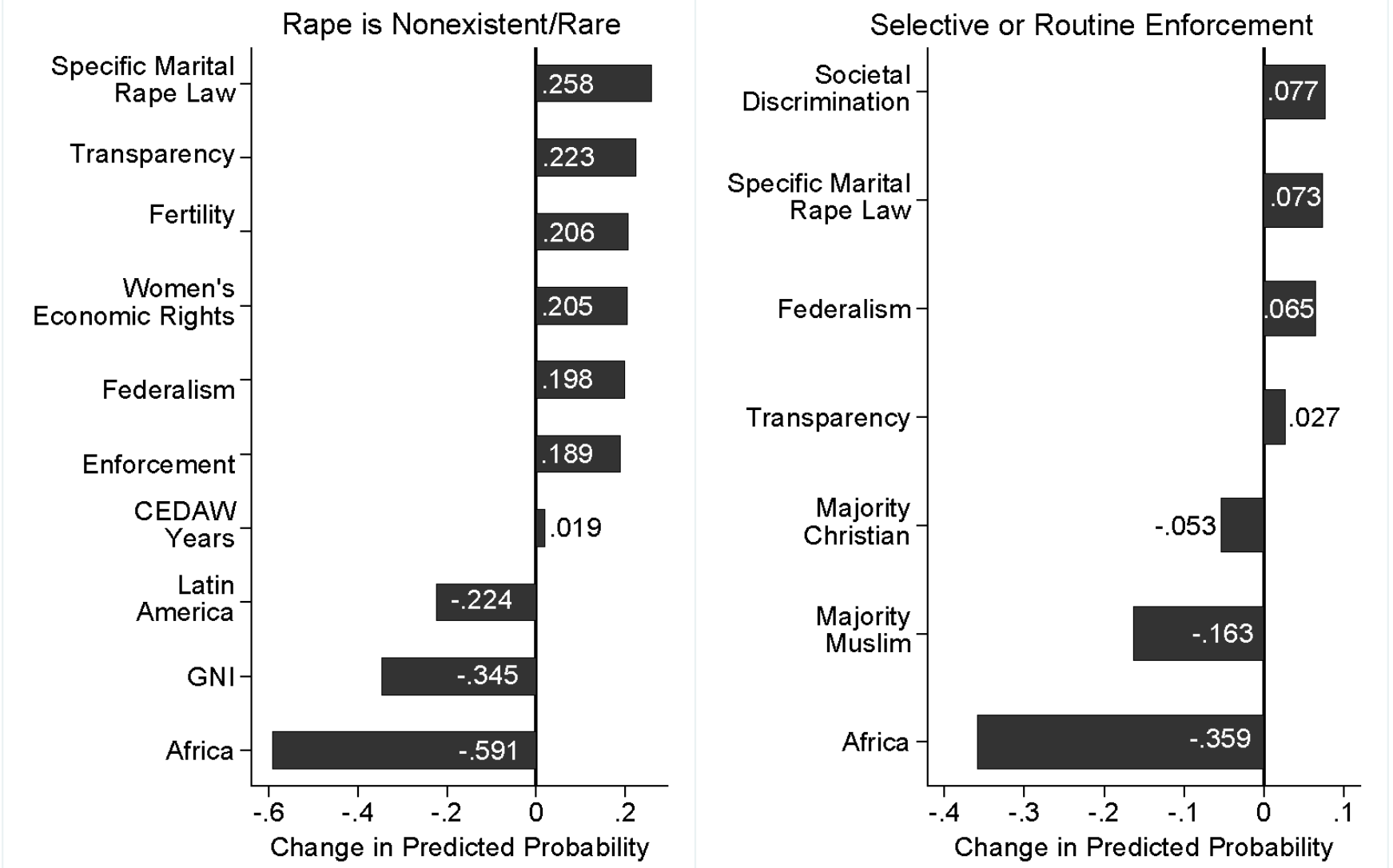


Figure 2.4: Probability of Nonexistent/Rare Rape and Selective/Routine Enforcement (Ordered Logistic Regression)



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[1] The CEDAW framework uses "General Recommendations" for what is more-commonly called "General Comments".

[2] General Comments - Government Responses, CCPR A/50/40/Vol.1, ANNEX VI, United States of America, Observations of States parties under article 40, paragraph 5, of the Covenant, Observations on General Comment No. 24 (52), on issues relating to reservations made upon ratification or accession to the Covenant or the Optional Protocols thereto, or in relation to declarations under article 41 of the Covenant

[3] General Comments - Government Responses, CCPR A/50/40/Vol.1, ANNEX VI, United Kingdom of Great Britain and Northern Ireland, Observations of States parties under article 40, paragraph 5, of the Covenant, Observations on General Comment No. 24 (52), on issues relating to reservations made upon ratification or accession to the Covenant or the Optional Protocols thereto, or in relation to declarations under article 41 of the Covenant

[4] http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=21382&LangID=E

[5] http://www.ohchr.org/EN/Issues/Women/SRWomen/Pages/InternationalLegalFramework.aspx

[6] An author's inquiry to the VAW Secretariat about this matter received the following reply on April 5, 2017: "The SRVAW is committed to full transparency. Please note that the responses uploaded so far are only the ones that were sought, as a first step in the process of collecting input, to the international and regional mechanisms addressing VAW. So it would be incorrect to say that some CSOs submissions have been uploaded while others not. None of the CSOs submissions have been uploaded as of yet. We are currently working on all the reports that need to be presented at the June session of the HRC and have been so far unable, for work load reasons, to upload the 200+ submissiond (sic) received by CSOs. In addition, to add to the difficulty, some of the submissions received were in the format of emails or consecutive emails. You will understand that we have very limited capacity but are fully committed to make sure that all submissions received will be uploaded on the web in due time." On August 13, 2017 the VAW Secretariat sent out an email to authors of submissions, asking for clearance so that those submissions whose "format allows" could be published online at the SRVAW website.

[7] And some, through regional treaties, have made legally-binding commitments to do so.

[8] We acknowledge there exists some disagreement among advocates of women's rights about whether criminalization is an appropriate strategy to reduce violence against women and girls. However, there is some reasonable support that criminalization provides protection. International Partnership for Human Rights (2017, p. 69) notes that "The CEDAW Committee has reiterated that all violence against women, including domestic violence, needs to be criminalized, and urges Tajikistan to amend its legislation." A 2002 study in the United States found that in states where domestic violence was a felony, as opposed to a misdemeanor, the odds are 1.59 times higher that an officer will discover an incident (Dugan 2002, p. 22). In a cross-national study of 196 countries, Richards and Haglund (2015, p. 119) find explicit criminalization of violence against women to be associated with less gender inequality, higher levels of human development, and lower female HIV rates.

[9] Bulgaria signed the regional Istanbul Treaty in April 2016, but has not ratified it as of writing -- one year later.

[10] These data were gathered by analyzing multiple sources of information on legal protections. The United States State Department (USSD) Reports on Human Rights Practices provided the primary source of information. The information provided in USSD reports was supplemented by information from criminal and penal codes, case law, UN-based resources, NGO reports, and news accounts.

[11] See Richards and Haglund (2015) for more detailed information on the coding rules and decisions used to create these data.

[12] These regions were defined using UN Statistics Division parameters.

[13] The shading in each cell allows for easy comparison of the percentage of countries that fall into various cells both across and within panels in Figure 2.2.

[14] More specifically, we utilize regression analyses to examine the direction and size of the relationship between specific legal protections and women's rights outcomes.

[15] Variables are elements that vary or change.

[16] Our sample is limited to countries that have some form of legislation in place, either the explicit legal protection (1) or general legislation that can be used to effectively prohibit VAW (0).

[17] See https://sustainabledevelopment.un.org/sdg5 for more on discussion of SDG 5.

[18] See the 2003 study done by the National Center for Injury Prevention and Control at: https://www.cdc.gov/violenceprevention/pdf/ipvbook-a.pdf.

[19] GNI is omitted from the models in which HDI is the dependent variable because GNI per capita is included as a part of the HDI measure.

[20] In a positive relationship between two variables, as one variable increases in value the other variable also increases. Likewise, both variables can simultaneously decrease. So, in a positive relationship, both variables move in the same direction (increase or decrease). For example, a positive relationship might be one where, as strength of legal guarantees increase, there is a corresponding increase in the human development index. In a negative relationship, one variable is decreasing in value while the other is increasing in value. So, in a negative relationship both variables move in different directions. For example, a negative relationship might be one where, as the strength of legal guarantees increase, the female HIV rate decreases.

[21] A one standard deviation change in the domestic violence and marital rape legal protections is around 0.4 and 0.5 respectively, indicating that a two-standard deviation change represents the movement from corollary laws to full legal protections.

[22] Of course, it may be the case that societal discrimination is positively associated with the adoption of full marital rape legal protections. However, modeling that process is beyond the scope of this chapter.

[23] The specific legal guarantee variable is the same as we used above, taking on two values, where a 1 indicates the presence of specific marital rape legislation. A zero indicates the absence of specific marital rape legislation, with marital rape being applied through use of correlative legislation in practice.

[24] Another important difference between these two models and the models presented in Table 2.2 is the nature of the dependent variables. The dependent variables in these models are ordered, making estimation of an ordered response model appropriate. We estimate ordered logit models with robust standard errors (results presented in Table 2.3).

[25] In statistics, a proxy variable is a variable that is not in itself directly relevant, but serves in place of an unobservable or immeasurable variable. It has a strong correlation with the variable of interest.

[26] We only report changes in predicted probabilities for the statistically reliable variables in the models presented in Table 2.3.