
RESEARCH MEMORANDUM

FOR: INITIATIVE ON VIOLENCE AGAINST WOMEN; CARR CENTER FOR HUMAN RIGHTS,
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FROM: KRISTEN PANCIO
SUBJECT: BARRIERS TO IMPLEMENTING VAW LAW AGAINST DOMESTIC VIOLENCE IN THREE
ASIAN COUNTRIES (CHINA, PAKISTAN, AND SRI LANKA)
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Subject: This research memorandum presents key findings from desk research conducted in January and February 2014, on the barriers to instituting appropriate VAW laws against domestic violence (DV), and to effectively implementing them in three countries in Asia (China, Pakistan, and Sri Lanka).

Background and Cross-Cutting Findings: China, Pakistan, and Sri Lanka have all ratified CEDAW; however, both China and Pakistan have not passed the Optional Protocol to CEDAW. Research found four cross-cutting barriers impeding the institutionalization of appropriate VAW laws against DV in these three countries:

- 1) The predominant public discourse on DV is fragmented. As a result, an overall sense of urgency and severity of the problem is not felt among key stakeholders in all 3 countries.
- 2) Other national policies regarding housing, marriage, fertility, migration, etc. undermine both the international (CEDAW) legal framework, and the national policies set up for service provision and protection across all three countries.
- 3) There is an overall lack of appropriate resource allocation among all 3 countries for comprehensively implementing appropriate VAW laws against DV. A large body of evidence suggests multiple root causes for VAW-DV, and States disagree on where and how to allocate resources to VAW-DV (prevention, intervention, prosecution, and protection).
- 4) Incomparable and unreliable data is the 4th major barrier to instituting appropriate VAW laws against DV both internationally through CEDAW, and nationally within all 3 countries. Transparency of data collection methodologies is also a noted concern.

Relevant Background—China: China’s legal definitions of Violence against Women law aligns with CEDAW, and China has adopted a mix of civil and criminal laws to address VAW-DV, including a National Action Plan. According to China’s January 2013 CEDAW Report, preventing and combating DV is one of the priorities of the Law on the *Protection of the Rights and Interests*

of Women, which was amended in 2005¹. The law “prohibits” DV against women (article 46), and the Law on the *Protection of Minors* (amended 2006) added a provision stating that, “domestic violence against minors is prohibited”.

The P.R.C. national government asserts that it “takes measures” to prevent and stop DV through an inter-agency collaboration. The departments of public security, civil affairs, judicial administration, as well as public organizations at the grassroots level are authorized to engage in the prevention of DV, and to provide assistance to victims. All provinces in China (including autonomous regions and municipalities) have enacted measures for implementing these Laws, but fall short of actually defining DV.

For cases of DV that involve criminal offences, the prosecutors are responsible for carrying out duties regarding the review of arrests, the review of prosecutions and the supervision of litigations; and the courts are responsible for taking up the cases in a timely manner, in order to minimize harm to victims and survivors. For civil cases involving DV, some courts have set up special trial chambers or panels. China’s CEDAW report states, “Efforts have been made to involve women’s federations and other organizations in the handling of the cases”². Public security institutions have been actively involved in handling DV cases as well, accepting complaints, accusations and reports regarding violations against women’s rights. For instance, more than 10,000 police stations and community policing offices have reportedly established complaints stations to alert police of DV in the area. The law enforcement response rate to those calls is unavailable.

Finally, the General Principles of the Civil Law of P.R.C., the Criminal Law of the P.R.C, the Marriage Law of the P.R.C³, and the Law on Penalties for Administration of Public Security have all added provisions for preventing and curbing violence against women. The 2001 amended Marriage Law was the 1st inclusion of the prohibition of DV in Chinese law.

Summary of Findings—China:

- Despite the legal approach to criminalization and prosecution of DV, the law does not define DV, nor does it provide a clear decree of protection. Examination of DV case studies in China suggests that the inter-agency approach is fragmented, and the division of responsibilities is unclear among those designated to provide assistance, protection, and guidance⁴. Research suggests that there is jurisdictional confusion, as well as an overarching lack of coordination among the relevant ministries. Similarly, there is no guidance for litigation of DV claims. As China has not adopted a National Action Plan on VAW-DV, standard operating procedures do not exist.

¹China Report to CEDAW 2012 retrieved from:
<http://www.un.org/womenwatch/daw/cedaw/cedaw20/china.htm>

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³ Marriage Law of the People’s Republic of China. Retrieved from:
<http://www.hsph.harvard.edu/population/domesticviolence/china.dv.80.htm>

⁴ Pers. Comm., LiuLin (DV Prosecutor, Beijing, P.R.China), February 2014.

- China's national statistics office is capable of producing reliable statistics, although there is an overall lack of transparency in both the release of official figures on DV, and the methodologies used in obtaining this data. Evidence suggests that prevalence is high⁵, and is disproportionately high among rural women, and migrant women. Efforts to address root causes of VAW-DV do not appropriately target populations where DV is most prevalent, and protection orders are rarely granted⁶. This finding diverges at the community level, where research suggests that apathy from law-enforcement agents prevents reports from being filed⁷, further skewing the prevalence statistics.
- The demand for services is greater than what is currently being provided. Efforts to increase support services, such as shelters, legal and medical aid meet only a small fraction of the demand⁸. Authorities have established limited community-based women's shelters, but research indicates that the shelters do not have the capacity to provide appropriate and adequate services to survivors of DV⁹. All shelters are state run, and are reportedly understaffed, and under-resourced. Personnel running the shelters also report a need for capacity-building and technical training on how to best assist victims of gender based violence (including DV). This further hinders effective implementation of the law as it relates to the provision of psycho-social-medical services for victims of DV.
- China's housing and fertility policies hinder implementation of VAW-DV laws, and undermine efforts to prevent VAW-DV.
 - China's Hukou System (household registration system) hinders female migrant workers from obtaining access to social, medical, educational, and legal services for DV victims-survivors. This includes migrant children.
 - There is evidence that China's One Child Policy has created a highly imbalanced sex and age ratio. These demographic challenges echo the patriarchal undertones of the dominant discourse on gender equality within China, and hinder the effective implementation of VAW-DV law. As traditional patriarchal views are still the norm in rural China, wives who do not produce a son are more prone to experiencing DV. The sex ratio imbalance will eventually leave tens of thousands of men without wives, which in turn, is expected to increase the

⁵ The All China Women's Federation reports that domestic violence occurred in 24.7% of households in 2011. Other sources estimate a much higher number.

⁶ The 1st reported DV protection order granted in Beijing was the result of a very public case. It was granted in 2012, for a 3 month span. It expired in May 2013, and the woman has not been granted another protection order since. (<http://sinosphere.blogs.nytimes.com/2014/02/26/pushing-for-a-law-against-domestic-violence-in-china/>)

⁷ Pers. Comm. LiuLin, 2014. Email.

⁸ ACWF, 2011.

⁹ Pers. Comm. IOM, China, 2012. Programme Consultant; and the Asia Foundation (<http://asiafoundation.org/in-asia/2013/10/30/breaking-pattern-of-silence-over-domestic-violence-in-china/>)

demand for cross-border human trafficking¹⁰ (Many villages in Southwest China already traffic hundreds of girls in from Myanmar, Laos and Viet Nam to be brides for Chinese eligible bachelors in towns where women are scarce)¹¹. Women identified as cross-border survivors of human trafficking also commonly report being abused in these forced marriages. Protection under the law and access to services for these women and girls is problematic, as China engages in forcible return for cross-border cases of trafficking, and seldom provides comprehensive reintegration plans for trafficking victims of forced-marriages. For these women, any DV endured while being held under force or coercion will not be tried under the DV law. Men who buy brides (cross-border) are subject to China's criminal laws regarding human trafficking, but act with impunity when it comes to civil cases of DV endured by the captive women and girls.

- Standard Operating Procedures (SOPs) are vague or non-existent for health care professionals responsible for preparing medical records that will be admissible in courts as evidence of DV. Evidence must demonstrate “constant and frequent” abuse. According to incomplete statistics, 21 provinces (autonomous regions and Municipalities) have established a total of 258 DV injury identification centers, but the collection of evidence to be used in court is not standard across all injury identification centers, and regular health centers are not required to screen for DV in new patients, or during annual check-ups. Requiring standard screenings in the national legal framework would require a corresponding appropriate allocation of funds and resources, and this is another barrier to implementing an appropriate VAW-DV law in the P.R.C.
- A lack of monitoring and evaluation of programs (or lack of transparency in evaluation outcomes) hinders implementation of VAW law regarding DV in China, as there is a lack of comparable data, and lessons learned are not disseminated amongst all key stakeholders—resulting in ineffective laws because of an inability to incorporate results-based learning in VAW programs.

Relevant Background-Pakistan: Women and girls in Pakistan face VAW in myriad forms: DV, forced marriage, child abuse(including sexual), honor killings, sexual harassment and physical violence, deprivation of rights within marriage, dowry violence, acid crimes, human trafficking, child marriages, and anti-women customary practices (including Swara, Vanni and bride price¹²). According to the Human Rights Commission of Pakistan, up to 90% women in Pakistan face some form of DV in their families¹³.

Efforts to pass legislation on VAW and DV have been problematic. To date, no national legislation has passed that criminalizes and penalizes VAW-DV. A Bill to prevent and stop VAW in DV failed in 2007, and passed through the National Assembly in 2009 with opposition from

¹⁰ Al Jazeera, China, 2012; report on Skewed Sex Ratios in China and Human Trafficking

¹¹ International Organization for Migration; China Office, 2012.

¹²UNWOMEN. Asia-Pacific, countries: Pakistan

¹³ HRC, 2011

religious parties as well as with some reservations from the civil society organizations. The Bill then lapsed in 2009. One objection was that it was not 'male-friendly', and that it contradicted Islamic Law. The Bill was also termed 'unnecessary' adding that implementation would increase the rate of divorce in the country. A new draft was issued in 2011, and is awaiting passage.

The most recent draft Bill on DV (Criminal Law Amendment Bill) was submitted to the Ministry of Human Rights by the National Commission on the Status of Women in 2011. To combat DV, another draft of the Bill, which seeks to introduce effective penal clauses in the Pakistan Penal Code, has also been prepared after consultations with civil society and other stakeholders. On 20 February 2012, the Bill applicable in the Islamabad Capital Territory was passed unanimously by the Senate; the Bill also extends protection to household domestics. In April 2012, the revised Bill became a subject of great opposition and controversy, and was strongly contested. The Bill has now been delegated to another committee for further examination and discussion.

Pakistan was ranked in 2011 as the third most dangerous country for women after Afghanistan and the Democratic Republic of the Congo¹⁴. The UK Foreign and Commonwealth Office states that this ranking is due to the prevalence of DV, "honor killings", acid attacks, forced marriage, rape and physical and sexual abuse¹⁵.

Findings-Pakistan:

- In Pakistan, the predominant cultural discourse on VAW and DV is one of acceptance, and overpowers the demand for a comprehensive national legal framework and the need for prevention, protection, and prosecution. Knowledge, attitudes, and practices hinder the implementation of appropriate VAW-DV laws in Pakistan. This dominant cultural discourse surrounding anti-VAW laws sometimes stems from extremists' interpretation of Islamic Law as incompatible with anti-VAW laws, which hinders the institution of appropriate VAW laws against DV in Pakistan.
- Pakistan's national statistics offices do not produce comparable or reliable data on VAW-DV, and are not transparent in the methodologies used in obtaining the data that is released, making it difficult to allocate resources appropriately, or to understand the nuanced nature of the problem. For example, the Aurat Foundation found that, from 2010 to 2011, there was a 25 percent increase in DV cases, a 49 percent increase in sexual assault cases, and a 37.5 percent increase in incidents of acid-throwing (AF, 2012, 2). However, it further stated that, of the 610 reported DV cases, a total of 348 took place in one province, the Punjab Province (AF, 2012, 4). Its research could not explain why the Punjab Province had such a high prevalence as compared to other geographic regions.

¹⁴ Reuters, 15 June 2011. Retrieved from: <http://www.trust.org/item/?map=factsheet-the-worlds-most-dangerous-countries-for-women>

¹⁵ Embassy Reporting, Apr. 2011 (SBU cable).

- As DV is not criminalized, Pakistan does not have a complaint system for victims of DV, or comprehensive mechanisms in place for survivors to receive appropriate psycho-social-medical services, or legal aid.
- Property and inheritance rights in Pakistan further hinder the institutionalization of appropriate VAW-DV laws, as they reflect a strong patriarchal dominance and exude misogyny. For example, bride prices and dowry's are commonly viewed as women's inheritance, although they are not given directly to women, and are instead transferred directly to the male head of the household.

Relevant Country Background—Sri Lanka: Sri Lanka ratified CEDAW in 1981 and the Optional Protocol in 2002. VAW is widespread in Sri Lanka, and occurs in the contexts of rape, sexual harassment, DV, incest, assault, obscenity against women, unwanted advances, forced pornography, forced prostitution, media violence, and forced labor for commercial sexual exploitation of both women and children. The vote on the Prevention of Domestic Violence Act (PDVA) (2005) passed unanimously, but a number of Members of Parliament expressed anxieties regarding the Bill during the parliamentary debate, questioning the need of such a Bill, condemning its 'western' NGO origins, as "antithetical to Sri Lankan culture and its negative impact on the family"¹⁶.

Seven years after its enactment, the PDVA is a remedy of last resort for women victim-survivors of DV. Research by the International Centre for Ethnic Studies (ICES) reveals that 11 organizations supported the filing of 304 DV cases under the PDVA between 2005 and June 2011, i.e around 50 cases per year. The Children and Women Bureau Desks (CWBD) of the Police were involved in filing 55 cases and 247 cases in 2009 and January to September 2010, respectively. All this constitutes less than 1% of the number of complaints of DV recorded by these institutions¹⁷. This only confirms other studies, that the law, if accessed at all, is a remedy of last resort in these cases mediated by dominant cultural and ideological norms.

Sri Lanka has proposed a National Plan of Action¹⁸ (NAP) to accompany the PDVA. Its goals include psycho-social-medical service provision for VAW-DV victim-survivors. However, the NAP has yet to obtain cabinet approval or funding for its goals, and therefore has not been implemented. Appropriate resource allocation is a barrier to instituting appropriate VAW laws against DV in Sri Lanka.

Findings—Sri Lanka:

- The predominant Sri Lankan discourse on VAW and DV is fragmented, and this is a primary barrier to the institution of appropriate VAW laws against DV and their implementation in Sri Lanka. Both the legal framework and the public discourse remain

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¹⁷ICES, 2011, accessed from: <http://www.scribd.com/doc/96385394/Domestic-Violence-Intervention-Services-in-Sri-Lanka-ICES>

¹⁸ National Plan of Action Supporting the Prevention of Domestic Violence Act of 2005. Retrieved from: http://www.hsph.harvard.edu/population/domesticviolence/srilanka_domesticviol.05.pdf

gender-biased. Women's rights advocates and organizations supporting victim-survivors of DV, including by filing cases under the PDVA, are seen as promoting divorce, undermining the family, etc. Furthermore, while it is impossible for the State to police and regulate women's rights work across the nation, it is doing so where it can. There are numerous reports from Northern Sri Lanka that women's organizations are not allowed to undertake 'mobilizing' and 'advocacy' work on issues such as DV and child abuse. On the other hand, micro-credit programs and construction of toilets are considered acceptable. Such regulation and policing is made possible by the fact that development work is being closely monitored by the Presidential Task Force and the military on the ground. Elsewhere, the focus is on generating and sustaining a public discourse that strongly reinforces respect for patriarchal family values and traditional gender roles.

- Even though the amount of cases being registered under the PDVA are low, survivors are seeking access to services, and are making their needs known. According to a study on DV intervention in Sri Lanka¹⁹, at least 86 organizations around the country are providing DV intervention services and 35 of these organizations had received 12,000 DV complaints in 2009 alone. The CWBD/Police also recorded around 94,000 cases in 2009. Police records also indicate a steady increase in the number of complaints received by them, underlining the need to strengthen the gender sensitivity of these institutions.
- The PDVA of Sri Lanka does not recognize the responsibility of the government to provide services to victims and survivors of DV, or to provide protections; additional reasons why cases are only filed under the PDVA as a last resort.
- Sri Lanka's PDVA does not align with CEDAW's recommendations on DV and marital law. Marital rape is not recognized as a form of DV in Sri Lanka, and is therefore not an offense (for instance, in general, the minimum marriage age in Sri Lanka is 18; for Muslims, the rule is that a girl must be no younger than 12 years of age and have a Qadi's (or *Quazi*) permission to marry before contracting into marriage.
- Divorce laws in Sri Lanka further hinder appropriate institutionalization of CEDAW-VAW laws against DV. The effectiveness of any proposed DV legislation will be dependent on amendments to the laws relating to divorce. As the concept of "no fault" divorce does not exist in Sri Lankan law, those seeking divorce have to prove malicious desertion, which has been interpreted to include cruelty, adultery or incurable impotence. This places a huge burden on a woman seeking divorce who in addition to battling the social stigma attached to divorce also has to deal with the gender-biased legal system. Though the definition of constructive malicious desertion has been held to also include spousal abuse it is possible to use this ground to apply for divorce, but once again the woman

¹⁹ Ibid: ICES, 2011

carries a heavy burden of proof as she will have to prove she was forced to leave the matrimonial home due to fear of harm to life and limb.

Although rigorous further research is needed, the barriers to instituting appropriate VAW laws against domestic violence in China, Pakistan, and Sri Lanka show the need for an international legal framework that addresses violence against women; which could help serve set minimum standards and guidelines for states to address this widespread human rights abuse.

RESEARCH MEMO: DOMESTIC VIOLENCE (CHINA, PAKISTAN, SRI LANKA)
