

*An International Criminal Justice Strategy To Eliminate Violence Against Women*¹

As I began to write this article ABC television² screened a chilling report on 'honour killings' whereby men, sometimes with the assistance of other members of their family or community killed, women and girls who had 'dishonoured' them. The cases depicted included: a couple who had decided to marry without the consent of the woman's father; a fifteen year old girl killed by her father and brother for running away from home; a young woman killed by her in-laws during her husband's absence because it was considered that she had an inappropriate relationship with another man; and a young woman killed because she had continued to have close contact with her male cousin after her marriage. Interviews with offenders and their supporters indicated no evidence of remorse and on the contrary that the killings were a source of pride. It was suggested that 'honour' killings were common and that they carried few consequences for those responsible. By contrast, women who had killed their husbands had no defence of honour and were deemed to have committed a form of petit treason. The program showed women incarcerated for killing their husbands and the narrator suggested that many of those women, including those on death row, had killed in response to violence inflicted upon them by their partner. The program was set in Pakistan.³

In addition to the horrors depicted in that program, there were a number of other factors which disturbed me. I was concerned about whether the program unwittingly may have contributed to misunderstandings of Islam by showing interviews with people claiming justification for killing by reference to their religion or culture. I was also concerned that the program may be seen by some as evidence that violence against women was the product of 'Other' places, 'Other' cultures, or other times. However, this is patently not so. In recent times in Sydney I learned of the death of another woman allegedly killed by her husband as she arrived at the Family Court, I received a plea for help from those associated with a young woman who had killed her abusive husband in desperate circumstances, and I continued to gather research evidence of the ongoing anguish of women seeking to escape a violent partner.

Violence against women is a global issue, albeit with many different manifestations (Charlesworth & Chinkin 1994). As Human Rights Watch noted '[i]n 1998 violence against women remained one of the most intractable violations of women's human rights' (1999:1). Notwithstanding the adoption by the United Nations of the *Resolution on the Elimination of Violence Against Women* (General Assembly resolution 52/86 of 12 December 1997) much remains to be done at the national level and in international contexts to secure the safety of women and children. This paper reports on one recent initiative to facilitate the further development of mechanisms aimed at violence against women.

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- 1 The author was the Australian delegate to the meeting. This article is based on the author's notes of the meeting. A final report from the meeting is not yet publicly available.
 - 2 Foreign Correspondent, 16 March 1999, ABC television.
 - 3 This is not to suggest that Pakistan is alone in the level of violence against women. However, the Women's Human Rights Report notes ongoing concern about violence against women in Pakistan and describes the government's response as 'negligent' (Human Rights Watch 1999: 2,3).

During December 1998 an international panel of experts met in Vancouver, Canada, to develop an International Criminal Justice Strategy to Eliminate Violence Against Women. The impetus for the meeting was the Tenth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, to be held in April 2000 in Vienna, Austria, which will focus in part on women in the criminal justice system. The meeting worked towards finalising a Resource Manual and Compendium of Promising Practices to guide Governments in their efforts to implement their commitment to eliminate violence against women to be presented at the April meeting.

The meeting was attended by 45 invited delegates from a range of countries including Austria, Australia, Canada, Finland, Indonesia, Jamaica, Lithuania, Mexico, South Africa, Thailand, Uganda, the Federal Republic of Yugoslavia, UK and USA. The meeting was a joint initiative of the International Centre for Criminal Law Reform and Criminal Justice Policy, the Centre for International Crime Prevention of the United Nations Office for Drug Control and Crime Prevention of the United Nations (CICP/ODCCP), the European Institute for Crime Prevention and Control, affiliated with the United Nations (HEUNI) and the Latin American Institute for Crime Prevention and the Treatment of Offenders (ILANUD). Financial and other support were provided by the Government of Canada.

The parameters for the meeting had been set largely by the *Model Strategies and Practical Measures on the Elimination of Violence Against Women in the Field of Crime Prevention and Criminal Justice* which were adopted by the United Nations General Assembly in 1997 as an annexure to the *Resolution on the Elimination of Violence Against Women*. These strategies are divided into eleven sections dealing with criminal law and procedure, police, sentencing and corrections, victim support and assistance, health and social services, training, research and evaluation, crime prevention measures, international cooperation and follow-up activities. Delegates were assigned to one of four working parties which each addressed several of these eleven sections. In particular the work focussed on identifying key issues which needed to be addressed in work to eliminate violence against women and providing examples of promising measures which had been adopted in one or more country.

A draft Resource Manual and Compendium of Promising Practices which had been prepared in advance of the meeting and in consultation with delegates. The meeting commenced with a discussion of the draft documents and suggestions for change. Each of the working parties then worked to develop, revise and refine the draft text as it related to the sections which they had been assigned. A final plenary session further refined this work. In developing the Resource Manual and Compendium delegates drew on their own considerable experience, relevant international instruments, legislation and practices within nation states and the important regional instrument, the *Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women* (Convention of Belem Do Para).⁴

Among the major challenges for the meeting were the need to take account of differing legal and religious traditions and levels of development across nations and to reflect the diverse experiences of women (and girls) in order to produce examples of approaches that might be widely applicable including in some nations with little or no infrastructure and few services. Delegates stressed the need to address the particular experiences and needs of

4 The regional instrument adopted by General Assembly of the Organisation of American States, 24th regular session, 9 June 1994, in Belem Do Para, Brazil.

older women, women with a disability, indigenous women, women who were refugees and to acknowledge violence against lesbians.

There was a great deal of discussion among delegates about the processes by which future work on the elimination of violence against women within nation states should proceed. It was stressed that the development of effective responses to violence against women and girls required full and active participation by women and girls to ensure that their experiences, needs and concerns were understood. Emphasis also was given to the importance of partnerships between government and non-government agencies in achieving tangible gains for women. International cooperation between states including in the use of extra-territorial legislation was seen as very important in response to the trafficking of women and children. The need for ongoing assistance from more developed nations to developing nations was also stressed.

It was recognised that where initiatives had been adopted aimed at enhancing the safety of women and girls evaluations had been rare. While it was agreed that future practice should be informed by research and evaluation this was often impossible due to the dearth of evaluative research. In addition, care needed to be taken in adapting practices from one context into another. It could not be assumed that practices were transferable or indeed were appropriate in other places. It was also recommended that meaningful mechanisms of accountability needed to be developed to ensure the strategies were being effectively implemented and had the desired outcomes.

Much of the discussion at the meeting used the three part classification of violence against women which has been adopted by the UN Special Rapporteur on Violence Against Women, that is: 'violence in the family'; 'violence in the community'; and 'violence by the state'. This classification has utility but was also seen to be a constraint on recognising some forms of violence against women which may arise in more than one of these categories. For instance much of the violence against women within the context of war, as refugees, as internally displaced persons or as detainees is committed by individuals although it may be directly or indirectly condoned by the state. It may be both 'violence in the community' and 'violence by the state'. In addition, such a classification was seen to be inadequate to reflect the particular risks faced by women in areas of civil unrest or sectarian violence.

While the focus of the meeting was on criminal law and crime prevention, it was clearly understood by delegates that violence against women is grounded in widely held attitudes and social practices and that these needed to be addressed through education, economic and social change and not solely through the criminal justice system. It was also clear that criminal law and procedures could have unintended consequences and could be a source of violence to women and girls. For example, the use of criminal law to regulate sexuality, marriage and sexual and other forms of violence has had extremely negative effects for some women. In addition, women in prison are particularly vulnerable to sexual violence and recent reports have demonstrated ongoing abuse of imprisoned women including in the US (Human Rights Watch 1998:1) which has been the subject of an adverse report by Amnesty International (1999).

It is also true that access to justice remains illusory for many women. As Human Rights Watch notes, their investigations revealed that

while some governments focused legislative attention on domestic and sexual violence, such reform was undermined by structural barriers to women's meaningful access to legal redress and protection from further violence (1999:1).

Delegates to the international meeting recognised both the limitations of the criminal justice system in bringing about positive change for women and at the same time the need to work towards making the legal system more effective in securing women's safety. They saw a need to introduce additional criminal law provisions in a number of areas where they did not yet exist, for instance to prohibit all forms of non-consensual sexual activity including rape in marriage. There was also agreement that the improved regulation and control of firearms was essential to securing enhanced safety for women and children. While in some places weapons were removed from convicted persons, this was not in and of itself a sufficient response. They stressed the need for the criminal law to be reviewed to ensure that violence against women was addressed and that women's experiences were recognised and understood within the criminal law. For instance, it was argued that women and men historically had not had equal access to defences to homicide since the defences had developed largely with respect to male experience. The use of 'honour' as a defence to homicide, where available, was exclusive to men and should be abolished. Self defence needed to be reviewed to better reflect women's life circumstances and provocation, where available, had largely benefited men. The failure of courts to adequately recognise violence against women and its effects was seen to have been implicated in the gendered application of these defences.

The meeting also discussed the crucial role of other non-criminal areas of law in securing women and children's safety and recognised the need to consider the manner in which criminal law intersected with other areas of law. For instance, in some jurisdictions intervention orders⁵ are civil rather than criminal, or are quasi-criminal. Other examples include the interrelationships between family law and criminal law, and between criminal law and immigration law. In several countries changes to criminal law without due regard to immigration law, or the reverse, have had negative consequences for immigrant women who find themselves in violent relationships.

While alternative justice measures such as mediation and family conferencing may offer benefits and may appear progressive by reference to the failings of the criminal justice system, delegates expressed a concern that in some contexts they may be inappropriate particularly where imbalances of power rendered women who had experienced violence unable to participate fully and equally.

While some areas of Australian practice were well known and judged by international delegates to be progressive, particularly in the areas of gun control, domestic violence and child sexual assault, there were also many areas in which Australia might benefit by looking to the experience of other states.

A large number of innovative practices which had been adopted in one or more state were discussed by delegates. Among these were: the inclusion of a provision condemning violence against women within the constitution of a nation state; the criminalisation of sexual harassment in the workplace; the criminalising of those who purchase sexual services; broader understandings of conduct which might be included within sexual assault or rape provisions; new constructions of consent which stipulate that consent cannot be obtained by threat, or which shift the onus of establishing consent to the accused (at least in some contexts); prohibitions on stalking; improved prosecutorial guidelines and practices to support complainants in proceeding with matters before the court; specialised family violence courts; and various models aimed at improving police training and practice.

5 These have different titles in different jurisdictions but generally are sought to provide protection to a complainant, and sometimes also for other parties, from future violence.

Much remains to be done to ensure that the energy, hardwork and commitment of those at the meeting might translate into action. Too often the rhetoric of women's human rights has offered little tangible change to the lives of women and children. Universal condemnation of violence against women is a starting point. However, the way forward first requires the recognition that the abuse of women and children arise directly from their subordinate status and from their unequal access to social and economic life.

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