

Domestic and Family Violence in Post-Conflict Communities: International Human Rights Law and the State's Obligation to Protect Women and Children

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Abstract

Post-conflict communities consistently experience high rates of domestic and family violence (DFV) against women and children. An end to violence in the public sphere is widely seen to precipitate the escalation of violence in the private sphere. This paper presents the argument that protecting women and children from DFV should be an essential public policy goal in post-conflict communities. Furthermore, the imperative for placing DFV on the post-conflict agenda is derived from states' obligations under international human rights law. Jurisprudence is clear that if a state has knowledge of DFV yet fails to take reasonable steps to ensure victims' safety and to investigate complaints, then that state may be violating the fundamental human rights to life, to freedom from inhuman and degrading treatment, to freedom from discrimination, and to health. Problematizing DFV as a violation of states' obligations under international human rights law, rather than dismissing it as a private sphere issue, should lay the groundwork for post-conflict states' conceptualization of the protection of women and children as a non-negotiable facet of peace-building agendas.

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Introduction

For women, an end to conflict does not always mean an end to violence. It is a well-documented phenomenon that post-conflict communities experience higher rates of domestic and family violence (DFV): when hyper-masculinized and traumatized male combatants leave the battlefield, often, for a myriad of reasons, their homes become new stages for violence.¹ Compounding this experience is the fact that post-conflict communities are predominantly poorly equipped to combat DFV in any way that meaningfully prioritizes the protection of women and children. Peace deals and state-building agendas are largely written by men, to the exclusion of women.² DFV is often not criminalized in post-conflict societies.³ Additionally, post-conflict regression to patriarchal gender norms sees victimized women stigmatized by authorities when they find the courage to seek help.⁴ Within this context, this paper argues that protecting women and children from post-conflict DFV should be a policy objective central to peace-building and state-building agendas. Furthermore, that the imperative for the post-conflict states' prioritization of the protection of women and children finds its roots in International Human Rights Law (IHRL), and states' inalienable obligations under IHRL.

This paper is structured into four parts. First, I provide an overview of scholarship regarding the phenomenon of post-conflict communities experiencing high rates of DFV. Secondly, I use two case studies, Bosnia and Herzegovina (BiH) and Timor-Leste, to demonstrate that post-conflict communities are also typically poorly equipped to both protect victims from DFV and combat the underlying causes of the violence.

Third, I evaluate what IHRL says, and how these laws interact with the realities of DFV experienced by women and children. I examine jurisprudence from international judicial bodies and highlight case law that clearly defines state obligations in respect to protecting vulnerable women and children from DFV. The four key IHRL norms and related jurisprudence that are evaluated are: the right to life, the prohibition on inhuman and degrading treatment, the prohibition on discrimi-

nation against women, and the right to health.

Finally, having outlined where the law stands, I review model policy documents created by international organizations and paint a picture of what prioritizing the protection of vulnerable women and children from DFV looks like, when incorporated into peace-building agendas.

Defining DFV

Violence committed against women and children can be defined in a number of ways, and laws across different domestic jurisdictions have their own definitions if these acts are criminalized.⁵ This paper will utilize the definitions employed in Australia's *National Action Plan for Reducing Violence Against Women and Children*:

Domestic violence refers to acts of violence that occur between people who have, or have had, an intimate relationship. [...] Domestic violence includes physical, sexual, emotional and psychological abuse.

Family violence is a broader term that refers to violence between family members, as well as violence between intimate partners [...] it includes the broad range of marital and kinship relationships in which violence may occur.⁶

DFV in post-conflict communities

It is well recorded that for women, an end to conflict often does not mean an end to violence. Ni Aolain observes, "Feminist international legal scholars have long noted, sexual and gender-based violence rarely conforms to the timelines of peace treaties and ceasefires but endures past them."⁷ Research confirms this: in general, post-conflict societies have higher rates of DFV.⁸ For women and children whose male partners and relatives survive the conflict, DFV increases when the former combatants return to their homes.⁹ The UN Security Council's Resolution 1325 on Women, Peace and Security, and subsequent associated resolutions, also implicitly acknowledge the vulnerability of women and girls to violence in post-conflict communities, and call for the implementation of international human

rights norms to protect women and girls from such violence.¹⁰ Therefore, an end to violence in the public sphere is widely seen to precipitate the escalation of violence in the private sphere.

Research points to myriad reasons for this phenomenon. One explanation is that men exposed to the hyper-masculinity and horrors of war may in its aftermath have difficulty returning to non-violent society. Cockburn notes, “when men, brutalized by fighting, return home, they are liable to turn the home itself into a battleground.”¹¹ Another explanation is to do with disarmament, demobilization, and reintegration, with ex-combatants often experiencing “difficulty making the transition to peacetime non-violent behavior after returning home.”¹² Furthermore, research has demonstrated that “men exposed to torture and other human rights abuses are at a heightened risk of enacting IPV [intimate partner violence] when they return to their families,”¹³ and that veterans who suffer from post-traumatic stress disorder and depression are more likely to perpetrate DFV than those with other conditions.¹⁴ One study examined veterans in post-conflict Burundi, and found that 60% reported at least one incident of violence against their children, and 36% reported an incident of violence against an intimate partner.¹⁵ In the Serbian context, studies have confirmed a relationship between masculinities magnified by conflict, DFV, and the evening news: “Women in Belgrade soon learned that the only way to avoid the almost inevitable violence after these programmes was to leave the house.”¹⁶ This research indicates that the masculinities forged by armed conflict, in combination with the psychological wounds incurred by combatants, contribute to ex-combatants having an increased propensity to perpetrate DFV when they return home to their partners and children.

Post-conflict and peace-building environments may also see communities idealizing a return to traditional gender norms that carry an inherent power disparity conducive to DFV. The patriarchal power structures of privilege and control that develop and thrive during conflict tend to carry over to post-conflict periods, to the overall detriment of women.¹⁷ Kaufman and Williams ob-

serve, “the peace that emerges after conflict is often a gendered peace, one in which domestic violence often increases and women are expected to return to their traditional gender roles.”¹⁸ Furthermore, according to Pankhurst, it is normal for domestic abuse to increase in the post-war setting, both from partners returning home from the war, and from partners who remained at home. Even though men also suffer from high crime rates, as a group they are also the main perpetrators.¹⁹ Researching DFV in post-conflict Timor-Leste, Hall noted that a return to traditional gender norms and roles in a post-conflict context created a loss of independence for women, and power dynamics that placed women at greater risk of experiencing DFV.²⁰ On this note, Maguire observed:

Gender analyses of conflict and post-conflict situations have highlighted the danger, once a society is beginning to return to some form of stability [...] of a return to what communities believe to be ‘traditional’ differentiated gender roles. Violence is a way of enforcing women’s conformity to such demands.²¹

This body of research indicates that post-conflict communities regularly see a distortion of gender dynamics and a re-emergence of patriarchal power structures that may work to condone and perpetuate violence women experience in the private sphere.

Post-conflict communities as ill-equipped to combat DFV

In addition to post-conflict states experiencing high rates of DFV, these states are also uniformly ill-equipped to combat these issues. The protection of women and children may be deprioritized in favor of state-building initiatives preferred by the officials—usually male—who dictate peace agreements and state-building agendas. Furthermore, post-conflict communities lack laws criminalizing acts of DFV. Authorities may be prejudiced against victims of DFV as post-conflict societies see a return to traditional gender norms. I will employ two case studies of post-conflict communities to

demonstrate this phenomenon: post-conflict BiH, and post-conflict Timor-Leste.

DFV in post-conflict BiH

In the wake of the horrors of the conflict in the former Yugoslavia between 1991 and 1999, an increase in DFV was observed in post-conflict BiH, but the newly independent state lacked frameworks enabling effective responses to such violence. Of note is that the Dayton Accords that ended the Balkan wars in 1995 were the result of peace talks that did not include women, and used gender-neutral language.²² In post-conflict BiH, “women were expected to focus primarily on their roles as mothers and wives.”²³ Cockburn notes, “Perversely, the Dayton Peace Agreement did not diminish, but rather affirmed, patriarchal nationalism as a dominant ideology and social system in post-war BiH.”²⁴ In 2010, a coalition of human rights organizations in BiH found that “violence against women, especially domestic violence, continues to be a widespread social problem in BiH.”²⁵ A 2000 report commissioned by USAID also found that 20% of women in one BiH town had been victims of DFV.²⁶

Cultural factors are believed to have contributed to rates of post-conflict DFV in BiH. A report found that DFV was “seen and tolerated as a ‘socially acceptable behavior’” and, moreover “justified by the traditional and patriarchal conceptions of the role and status of women in BiH society.”²⁷ Muftic and Cruz note, “research indicates that the vast majority of Bosnians believe that DV [domestic violence] is a private matter between a husband and a wife and, as such, the state has no right interfering in the affairs of family members.”²⁸ Furthermore, victims of DFV are often seen to have contributed in some way to their victimization; this is a factor contributing to low reporting rates of DFV.²⁹

In post-conflict BiH, legal, cultural, and support service frameworks all lack the capacity to provide an effective and victim-focused response to DFV. Starting with the legal domain, institutional and legal failures in post-conflict BiH leave women vulnerable. BiH did not adopt specific legislation regarding the protection of women and children from DFV until 2005.³⁰ Even though ex-

isting legislation provides for protection measures such as the removal of the perpetrator from the family home, the courts rarely order these measures.³¹ Furthermore, when DFV cases are brought before the courts, “there is often a lack of clarity on the legal reasoning behind the way these cases are ultimately decided.”³² Rather than conducting their own investigations, prosecutors rely on the testimony of victims and witnesses; this practice has been criticized as placing unnecessary pressure on victims, “who often undergo these criminal proceedings without adequate social, psychological and legal assistance.”³³ Inadequate legal responses to disclosures of DFV in BiH mean that victims have limited legal resources with which to ensure their immediate security.

There are also cultural norms in post-conflict BiH that inhibit victims’ capacity to safely come forward and report their experiences of DFV. Muftic and Cruz found that most police officers in BiH perceived DFV as “a private family affair” and held negative attitudes toward the victims.³⁴ The writers further observed that, “In Bosnia, victim advocates assert that women are acutely aware of gender prejudices held by criminal justice professionals, service providers, and the public, and as such are deterred from seeking assistance.”³⁵ State responses to DFV, such as those led by the BiH Centre for Social Welfare, are similarly characterized by a “lack of focus on victim safety.”³⁶ This means both that there are patriarchal power dynamics that disenfranchise female victims of DFV, and that law enforcement officials do not receive adequate training regarding DFV to enable them to overcome these cultural dynamics in their work.

BiH also lacks support services to assist and secure the safety of victims of DFV. A 2011 report provides that BiH lacked services to support victims of DFV: all safe houses were run by NGOs, rather than the state, and were reliant on donor funding rather than state funding.³⁷ A 2013 report of the UN special rapporteur on violence against women expressed concern that the state Centre for Social Welfare has a focus on family reunification, including in cases of DFV, and often will intervene in situations of DFV and mediate for the victim to

return to the home of the abuser, or for the victim to allow the abuser back into her home.³⁸ Available shelters are also unable to support victims without a referral from state authorities, meaning that victims may be unable to access emergency accommodation without making an official complaint about the crimes.³⁹ Therefore, post-conflict BiH lacks the critical infrastructure and resources necessary to provide victims of DFV with safety and security when they find the courage to flee or to report the violence they experience.

DFV in post-conflict Timor-Leste

During decades of occupation leading up to a brutal conflict in 1999, many Timorese women and children lived alone, while men joined resistance movements in the jungle. After the 1999 crisis, when men rejoined peaceful society in the newly independent state of Timor-Leste, many brought the violence home with them. A 2015 study found that more than 33% of ever-married Timorese women experienced DFV at the hands of their most recent partner.⁴⁰ Hall points out that “The terminology of ‘post-conflict’ is problematic as it hides the reality of conflict for many East Timorese women who endure domestic violence.”⁴¹ In 2001, 40% of all reported crime in Timor-Leste was related to DFV.⁴² Furthermore, 43% of respondents to an International Rescue Committee survey reported that they had experienced at least one incident of DFV in the preceding year.⁴³ A 2003 survey also found that 50% of women felt unsafe in their intimate relationships, and furthermore, that 25% had experienced violence from an intimate partner.⁴⁴

High rates of DFV in Timor-Leste are believed to be an echo of the conflict. Relevantly, Niner observes, “It is a generally accepted notion in East Timor that the violence of the occupation and the associated trauma has resulted in a more violent society today.”⁴⁵ Meiksin also observes that the state’s history of conflict is a key ingredient in contemporary rates of DFV.⁴⁶ Surveys have further found that Timorese women linked higher rates of DFV with men’s increased alcohol consumption post-conflict, in comparison to prior to the conflict.⁴⁷

Post-conflict Timor-Leste is highly ill-

equipped to protect women and children from DFV, with legal and cultural barriers to effectual response frameworks, as well as a tangible lack of emergency support services for victims.

Laws in post-conflict Timor-Leste have a limited capacity to protect women from DFV. Historically, DFV was not criminalized under either East Timorese customary law, or under Indonesian law during the occupation from 1975 to 1999.⁴⁸ DFV was only criminalized in Timor-Leste in 2010 under the new *Law No. 7/2010*.⁴⁹ This law is considered highly problematic as victim-consent is a requirement for prosecution, which in practice means that it is “difficult to ascertain whether the complainant is freely withdrawing his/her consent and whether he/she is subject to pressure from other individuals.”⁵⁰ Contemporary Timorese legal frameworks also have limited protection mechanisms available to women, such as through personal protection orders that would enable a court to prohibit a perpetrator from approaching or contacting a victim.⁵¹ A focus on prosecution rather than protection in Timor-Leste leaves victims of violence vulnerable, and with limited legal options to facilitate their immediate security.

Cultural norms stigmatizing DFV in Timor-Leste mean that very few victims report violence. It is estimated that three-quarters of DFV incidents remain unreported, with low rates of reporting being linked with cultural attitudes that DFV is a private issue.⁵² A 2013 UNDP report found that women often failed to report violence because they feared alienation, noting “women who do not enjoy the support of their families are unlikely to pursue their case through the formal system fearing a rupture of socio-economic support systems and potentially serious repercussions from local authorities and the community.”⁵³ Without widespread community condemnation of DFV, victims fear that reporting violence may place them at greater risk.

A further issue in Timor-Leste is a lack of support services available to assist victims. There are few safe houses and other support services available, and those that do exist are run by civil society organizations rather than the state (and

are also funded by donors rather than the state).⁵⁴ The UNDP report thereby recommends the government prioritize the funding of emergency and DFV shelters, and to fund training and microfinance programs within shelters to assist victims in achieving financial independence.⁵⁵ An absence of emergency support services designed to assist victims of DFV in Timor-Leste means that victims lack safe spaces that support disclosure of violence, and that facilitate victim security when violence is disclosed.

IHRL and the state's obligation to protect women and children

IHRL, as is derived from declarations, treaties, and customary international law, creates an imperative for post-conflict states to incorporate norms of protection for women from DFV into their peace-building frameworks.

IHRL creates responsibilities for states in relation to four essential human rights norms: the right to life, the prohibition on inhuman and degrading treatment, the prohibition on discrimination, and the right to health. Human rights judicial bodies have provided extremely clear jurisprudence on how these rights interact with the state's positive obligations to protect women and children from known perpetrators of DFV, and the circumstances in which a state will be imbued to have violated these rights.

The right to life

Where authorities are put on notice that a person is a victim of life-threatening DFV and fail to take reasonable measures to protect them, case law has demonstrated that this amounts to a violation of the right to life on the part of the state. The right to life is enshrined in both Article 3 of the Universal Declaration of Human Rights (UDHR), and Article 6 of the International Covenant on Civil and Political Rights (ICCPR).⁵⁶ It is further found in Article 2 of the European Convention on Human Rights (ECHR) and Article 4 of the American Convention on Human Rights (ACHR).⁵⁷

The European Court of Human Rights

(ECtHR) has considered the scope of the obligations created by the right to life in the context of serious and life-threatening DFV that has been reported to authorities. In *Kontrova v. Slovakia*, the ECtHR set out state obligations at the time the DFV is reported to police and held that by failing to respond to the criminal complaint appropriately, Slovakia violated the right to life at the point of the victims' deaths.⁵⁸

*The police had an array of specific obligations. These included, inter alia, accepting and duly registering the applicant's criminal complaint; launching a criminal investigation and commencing criminal proceedings against the applicant's husband immediately; keeping a proper record of the emergency calls and advising the next shift of the situation; and taking action in respect of the allegation that the applicant's husband had a shotgun and had made violent threats with it.*⁵⁹

Furthermore, in *Branko Tomašić and Others v. Croatia*, the ECtHR held that the right to life becomes a positive obligation for states in certain circumstances:

*A positive obligation will arise where it has been established that the authorities knew or ought to have known at the time of the existence of a real and immediate risk to the life of an identified individual from the criminal acts of a third party and that they failed to take measures within the scope of their powers which, judged reasonably, might have been expected to avoid that risk.*⁶⁰

A key element of the case law is the requirement for states to take "reasonable steps" or "appropriate steps" to protect victims, once a state can be imputed to have knowledge of the violence. In *Civek v. Turkey*, the ECtHR held that Turkey's failure to take measures reasonably available to them in order to prevent the victim's murder at the hands of her husband, after they had been put on notice of the serious threat posed to the victim's life, amounted to a violation of Article 2.⁶¹ In *Talpis v. Italy*, the ECtHR furthermore held that there was a violation of Article 2 of the ECHR: the police's failure to take effective action on the complaint lodged by the applicant, created a situation of impunity conducive to further acts of violence,

including the act that resulted in the murder of the applicant's son.⁶² The ECtHR has also found that the obligations created by the right to life also extend to an obligation to carry out an effective investigation into a DFV-related death.⁶³

The case law outlined above demonstrates that if states have knowledge of DFV but fail to take reasonable steps to protect the victims and investigate the crimes, this may be a clear violation of the positive obligations created by the IHRL norm of the right to life.

Prohibition on inhuman and degrading treatment

Courts have furthermore held that where a state has knowledge of DFV but fails to take reasonable steps to protect the victims, this may amount to a violation of the IHRL norm of the prohibition of inhuman and degrading treatment. The prohibition on inhuman and degrading treatment is linked to the prohibition on torture and is enshrined in Article 5 of the UDHR, Article 7 of the ICCPR, Article 5 of the ACHR, and Article 3 of the ECHR.⁶⁴ The prohibition is also found in Article 16 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.⁶⁵

The ECtHR has held that failing to provide protection to a mother and children experiencing DFV was a violation of the prohibition on inhuman and degrading treatment under Article 3 of the ECHR.⁶⁶ The ECtHR has construed the prohibition on inhuman and degrading treatment as a positive obligation imposed on states. *Eremia v. The Republic of Moldova* provides:

[...] Article 3, imposes on the States positive obligations to ensure that individuals within their jurisdiction are protected against all forms of ill-treatment prohibited under Article 3, including where such treatment is administered by private individuals. This obligation should include effective protection of, inter alia, an identified individual or individuals from the criminal acts of a third party, as well as reasonable steps to prevent ill-treatment of which the authorities knew or ought to have known.⁶⁷

The case of *E.S. and Others v. Slovakia* also holds

that Article 3 of the ECHR imposes on states a positive obligation to take adequate steps to protect victims of DFV, where the state has knowledge of that violence.⁶⁸ The ECtHR has also held that failure to conduct an effective investigation into a DFV complaint constitutes a violation of Article 3.⁶⁹

The threshold for cruel, inhuman, and degrading treatment is lower than that for torture, and “the distinctions depend on the nature, purpose and severity of the treatment applied.”⁷⁰ In *Rumor v. Italy*, the ECtHR held that “ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3.”⁷¹ Furthermore, whether or not DFV meets the threshold such that it constitutes inhuman and degrading treatment is a question of “the nature and context of the treatment, its duration, its physical and mental effects and, in some instances, the sex, age and state of health of the victim.”⁷²

The above case law means that, if a state has knowledge of a DFV situation, but fails to take reasonable steps to protect the victim so that she is not forced to remain in the situation, then this is a clear violation of the positive obligation of the state to not subject its citizens to inhuman and degrading treatment.

Prohibition on discrimination

Victims of DFV also often face discrimination from the state: in the form of police who do not respond adequately to complaints, and in the form of laws that do not exist or do not provide adequate protection from violence. A prohibition on discrimination is created by a number of human rights instruments. Article 7 of the UDHR and Article 26 of the ICCPR both provide that all persons are equal before the law and prohibit discrimination.⁷³ Article 14 of the ECHR and Article 24 of the ACHR also prohibit discrimination.⁷⁴ The Convention on the Elimination of Discrimination Against Women (CEDAW) also codifies the prohibition on discrimination against women in a number of respects: for example, Article 2 imposes on states an obligation to adopt appropriate legislation and sanctions prohibiting all discrimination against women, and Article 5 implores on states the obligation to take

appropriate measures to modify social and cultural patterns and norms that prejudice women.⁷⁵

A.T. v Hungary was the first DFV complaint to be brought before CEDAW's Committee, and, notably, held that DFV is a form of gender-based discrimination and that states have a positive obligation to take appropriate actions to prevent and respond to complaints of DFV.⁷⁶ The orders set out for Hungary provide a blueprint for states' obligations under CEDAW in respect to protecting women and children from DFV:

(b) Assure victims of domestic violence the maximum protection of the law by acting with due diligence to prevent and respond to such violence against women; [...] (d) Take all necessary measures to provide regular training on the Convention [...] thereto to judges, lawyers and law enforcement officials [...] (f) Investigate promptly, thoroughly, impartially and seriously all allegations of domestic violence and bring the offenders to justice in accordance with international standards; (g) Provide victims of domestic violence with safe and prompt access to justice, including free legal aid where necessary, in order to ensure them available, effective and sufficient remedies and rehabilitation [...].⁷⁷

The ECtHR has furthermore held that authorities' failure to respond to reported DFV effectively condones such violence, and therefore constitutes discrimination against women. In *Opuz v. Turkey*, the court held that "the state's failure to protect women against domestic violence breaches their right to equal protection of the law and this failure does not need to be intentional."⁷⁸ Furthermore, the court held that "the general and discriminatory judicial passivity in Turkey created a climate that was conducive to domestic violence."⁷⁹ In *Eremia v. Moldova*, the court noted that, "the authorities' actions were not a simple failure or delay in dealing with violence against the first applicant, but amounted to repeatedly condoning such violence and reflected a discriminatory attitude towards the first applicant as a woman."⁸⁰ A state's failure to adequately respond to DFV was also found to violate the prohibition on discrimination in *Jessica Lenahan v. United States*, heard in the Inter-American

Commission on Human Rights.⁸¹

The above case law demonstrates that if states do not respond to complaints of DFV in a way that prioritizes the protection of women, and if states do not have adequate laws in force that facilitate the legal protection of victims, then they may be in violation of the IHRL norm of the prohibition of discrimination.

The right to health

Where states lack the capacity to respond adequately to the health needs of victims of DFV, they may fall further afoul of their international obligations in respect to the right to health. The right to health is enshrined in Article 12 of the ICESCR, and provides that all persons are entitled to the enjoyment of the highest attainable standard of physical and mental health.⁸² Article 12 of CEDAW also provides that state parties should "eliminate discrimination against women in the field of health care," and Article 25 of the UDHR stipulates that, "everyone has the right to a standard of living adequate for the health and wellbeing of himself and his family."⁸³ The Convention on the Rights of the Child and the Convention on the Rights of Persons with a Disability also contain provisions enshrining a right to health.⁸⁴ The African Charter on Human and Peoples Rights furthermore contains a right to the highest attainable standard of physical and mental health.⁸⁵ A right to health is not contained within the ECHR; however, the ECtHR has read into Article 2 (right to life) an obligation of state-agents to prevent placing the health of persons at grave risk.⁸⁶ Therefore, not only is the right to health extensively codified by the above outlined international instruments, but it may potentially be included in the scope of other rights where it is not codified, as the ECtHR has demonstrated.

Arguably, in the context of DFV occurring in post-conflict communities, the right to health creates an imperative for states to create policy and infrastructure to ensure that victims' immediate and long-term health needs are met, as well as to prevent the continuance of violence. There is a limited amount of case law in this area. In *EIPR and Interights v. Egypt*, the Committee to the African

Charter on Human Rights and People's Rights examined gender-based violence (not specifically DVF) as being a violation of the right to health. The Committee observed the right to health "is crucial to the realization of other fundamental rights and freedoms and includes the right of all to health facilities, as well as access to goods and services, without discrimination of any kind."⁸⁷ Of the scope of the right, the Committee held that "States have a legal obligation to protect the right to health of its citizens, including *inter alia* taking concrete and targeted steps towards the full realization of the right, and adopting legislation or other measures to ensure equal access to health-related services and health care."⁸⁸ The Committee held that there was a violation of Article 16(1) of the Charter, because the trauma and injuries sustained by the victims affected their health adversely. The Committee also held that there had not been a violation of 16(2) of the Charter as "the victims received medical treatment after the injuries sustained."⁸⁹ This decision does pave the way for further judicial consideration of the right to health in the context of DFV, and in respect to how states are obligated to respond to such violence in order to observe the right.

Protecting women and children as a peace-building objective

The obligations created by IHRL, outlined above, create an imperative for measures to protect women and children from DFV to be built into peace-building frameworks. If states fail to implement such measures, they are in violation of key human rights norms. Furthermore, Krause and Branfors' empirical study demonstrates that women's involvement in peace negotiations contributes to the long-term durability of peace.⁹⁰ Here, I argue that the legal obligations of states created by IHRL point to an imperative for four key schools of policy and legislative measures to be integrated into peace-building frameworks in post conflict communities:

1. The state-led creation and funding of emergency support services for victims of DFV, including

emergency accommodation, legal assistance, and health services;

2. Legal steps to protect women, such as the modernization of laws to bring legislation in line with international recommendations and standards such as those presented by the UN Handbook for Legislation on Violence Against Women (UN Handbook);
3. Training of law enforcement officials in how to appropriately and sensitively respond to complaints of DFV, as well as the setting of expectations for the investigation of complaints; and,
4. The implementation of wide-ranging policy frameworks to combat social and cultural attitudes that may create environments of power disparity between genders, and therefore be conducive to violence against women.

Funding and creation of emergency support services

Case law outlined above draws attention to the fact that if states do not have the capacity to step in to protect women from the perpetrators of DFV, then they risk violating their obligations under IHRL. It is imperative that victims of DFV have support services readily available within their communities to assist with their emergency housing, legal, and health needs. Such services enable victims' safety by responding to their immediate and critical needs, and by ensuring that women do not remain in dangerous situations after reporting violence to authorities. Australia's National Action Plan to address DFV provides that "Women and their children need to receive holistic support including health, housing, education, employment and legal assistance" in the aftermath of disclosures of violence.⁹¹

States need to develop measures to provide safe housing to victims both in the weeks immediately following the disclosure of violence, and in the years after it. Spinney and Blandy find that victims of DFV are vulnerable to homelessness in two key ways: "first, because violence disrupts and violates the sense of safety and belonging that is associated with the home and second, because when

women and children make the decision to leave a DFV situation, they are usually required to leave their homes.⁹² While refuges are critical in providing a safe space supporting women to leave their homes in a hurry, research demonstrates that states require programs that ensure long-term housing security for victims who are escaping DFV.⁹³ Some programs in Australia have focused on providing support systems to victims to enable them to stay in their own homes rather than flee to refuges. These programs involve “risk assessment, safety planning and upgrading security in the victim’s home, court support, liaison with police and other services, referrals to legal advice and counseling to address financial and other issues.”⁹⁴

Victims of DFV also require access to legal advice and assistance in the aftermath of disclosures. Lawyers are able to assist victims with urgent issues such as obtaining protection orders against the perpetrator, and any family law issues that need to be addressed immediately regarding the custody of children. The UN Handbook recommends that “Legal aid, including independent legal advice, are critical components of complainants/survivors’ access to, and understanding of, the legal system and the remedies to which they are entitled.”⁹⁵ In Bulgaria, research has demonstrated that when a victim of DFV applies for a personal protection order, her application is more likely to be successful if she has legal representation.⁹⁶

It is also important that victims receive treatment for any physical and psychological health issues they are experiencing. A 2017 Australian longitudinal study found that women survivors of DFV “were more likely to report poorer mental health, physical function and general health, and higher levels of bodily pain” decades after the violence itself had stopped.⁹⁷ Additionally, an Australian study in 2004 found that DFV was the “leading risk factor contributing to death, disability and illness in Victorian women aged 15 to 44 years.”⁹⁸ The World Health Organization (WHO), in their 2013 report *Global and regional estimates of violence against women*, highlighted the imperative of the provision of health services to women who have experienced violence.⁹⁹ The UN Handbook also recommends

that “survivors of violence against women require timely access to health care [...] to respond to short term injuries, and address longer term needs.”¹⁰⁰

Changing the law

Case law presented above demonstrates that if post-conflict states do not have appropriate laws both criminalizing acts of DFV, as well as allowing for protective orders to be put in place to provide immediate security to victims, then they are contravening their obligations under IHRL. Resolution 1325 also calls on states, when negotiating and implementing peace agreements, to adopt a gender perspective and include measures to protect the human rights of women and girls as they relate to the constitution and the judiciary.¹⁰¹

Peace-building processes often see the implementation of temporary laws designed to carry the state through transitional periods while authorities work towards developing new long-term legislation. In drafting legislation, private sphere issues such as DFV are often overlooked in favor of higher-profile public sphere state-building goals. For example, in post-conflict Cambodia, under the UN Transitional Authority for Cambodia (UNTAC) between 1992 and 1993, the Criminal Law and Procedure Act of UNTAC was in force, and contained no provisions prohibiting violence against women or DFV.¹⁰² Laws specifically prohibiting DFV were not adopted in Cambodia until 2005.¹⁰³

Peace-building processes should incorporate the voices of women in legislative drafting, and drafting should follow international standards set out for the protection of women. The UN Handbook includes minimum requirements for the development of laws to protect women from DFV.¹⁰⁴ Key recommendations are that states:

1. Establish specialized courts for the hearing of matters regarding violence against women, and ensure that officials at these courts receive special training and support.¹⁰⁵
2. Incorporate a comprehensive definition of DFV, including physical, sexual, psychological and economic violence in their law.¹⁰⁶
3. Ensure protection orders are available to survi-

vors of all forms of violence against women on the basis of verbal or written testimony of the victim.¹⁰⁷

4. Ensure sentencing be both consistent and “commensurate with the gravity of the crimes of violence against women.”¹⁰⁸

Training of law enforcement officials

Case law demonstrates the imperative, under IHRL, of the training of law enforcement officials to respond appropriately to DFV complaints. Resolution 1325 also refers to the role of police in ensuring the protection of women and girls in peace-building processes.¹⁰⁹ International standards to employ when training police forces in post-conflict states can be found in the UNODC’s *Handbook on effective police responses to violence against women*.¹¹⁰ This handbook provides guidance for law enforcement agencies in relation to best practice for: the investigation of acts of violence against women; threat assessment and risk management; victim services and witness protection; responding to offenders; privacy and confidentiality, and police accountability and oversight.¹¹¹

Changing cultural norms

The discussion above draws attention to the reality of post-conflict states often seeing a return to patriarchal cultural norms that may create an environment more disposed to DFV. Case law evaluated above also highlights the imperative for states to address underlying normative contributors to such violence. Research has demonstrated that changing cultural and community attitudes towards DFV can result in both a decrease in rates of DFV, and an increase in rates of reporting violence.¹¹² WHO, in a 2013 report, notes “the economic and sociocultural factors that foster a culture of violence against women,” and “the importance of challenging social norms that support male authority and control over women and sanction or condone violence against women.”¹¹³ Diemer provides:

Attitudes influence early detection; inform responses to men’s violence against women; determine whether violence is recognized; influence how victims are

*supported and whether perpetrators are held to account. [...] attitudes are not fixed. They can be reshaped by exposure to new perspectives through peer groups, organizations and social institutions such as education and media.*¹¹⁴

Practical steps for facilitating changes to such sociocultural factors can be found in UN Women’s *Handbook for national action plans on violence against women*. This handbook recommends states launch “attitudinal change” campaigns to encourage non-violent masculinities, challenge existing gender norms, and raise awareness regarding the unacceptability of DFV.¹¹⁵ Noting the capacity of the media to influence public attitudes, it also recommends that states work with the media to “build the capacity of their professionals to avoid violence-supportive messaging and promote gender equality and non-discrimination.”¹¹⁶ Therefore, there are realistic measures that can be adopted in post-conflict communities to foster attitudinal change and create an environment that is both safe for victims to come forward, and that problematizes the issue of DFV as a public rather than a private issue.

Conclusion

DFV is a serious issue globally. However, research indicates that women and children in post-conflict communities are at greatest risk, with high rates of DFV in post-conflict states being a widely recorded phenomenon. This paper presented the argument that protecting women and children from DFV should be an essential public policy goal in post-conflict communities. Furthermore, that the imperative for placing combating DFV on the post-conflict agenda is derived from states’ inalienable obligations under IHRL. Jurisprudence is clear that, if a state has knowledge of DFV, yet fails to take reasonable steps to ensure victims’ safety and to investigate complaints, then that state may be violating the fundamental human rights norms of the right to life, the prohibition on inhuman and degrading treatment, the prohibition on discrimination, and the right to health. With these IHRL obligations in mind, there is a clear imperative for post-conflict states to incorporate the following

into peace-building frameworks:

1. The development and funding of emergency support services for victims of DFV;
2. The development of legislation both criminalizing DFV and facilitating the legal protection of victims;
3. The training of law enforcement officials in best practice relating to DFV response and protection; and,
4. The installation of long-term measures to facilitate cultural change, and address the toxic masculinities and power dynamics that may propagate DFV.

Problematizing DFV as a violation of states' inalienable human rights obligations, rather than dismissing DFV as a pandemic confined to the private sphere, should lay the groundwork for post-conflict states conceptualizing the protection of women and children as a non-negotiable facet of peace-building agendas.

References

1. See, for example, F. N. Aoláin, D. F. Haynes, and N. R. Cahn, *On the frontlines: Gender, war, and the post-conflict process* (Oxford: Oxford University Press, 2011), p. 47.
2. See J. Krause, W. Krause, and P. Bränfors, "Women's Participation in peace negotiations and the durability of peace," *International Interactions* 44/6 (2018), pp. 985–1016.
3. See J. Klugman, "Gender based violence and the law" (World Development Report Background Paper, 2017).
4. See, for example, C. Enloe, *The morning after: Sexual politics at the end of the Cold War* (Berkeley: University of California Press, 1993).
5. *National plan to reduce violence against women and their children 2010–2022* (Canberra: Council of Australian Governments, 2010), p. 2.
6. Ibid.
7. See, for example, F. N. Aolain, "Gender, masculinities and transition in conflicted societies" (SSRN Scholarly Paper, 2009).
8. See Aoláin et al. (see note 1), p. 47.
9. L. Handrahan, "Conflict, gender, ethnicity and post-conflict reconstruction," *Security Dialogue* 35/4 (2004), p. 434.
10. Security Council Res. 1325, UN Doc. S/RES/1325 (2000).

11. C. Cockburn, "Against the odds: Sustaining feminist momentum in post-war Bosnia-Herzegovina," *Women's Studies International Forum* 37/1 (2013), pp. 28–29.
12. D. Pankhurst, "Introduction: Gendered war and peace," in *Gendered peace: Women's struggles for post-war justice and reconciliation* (New York: Routledge, 2008), p. 7.
13. S. Rees et al., "Testing a cycle of family violence model in conflict-affected, low-income countries: A qualitative study from Timor-Leste," *Social Science and Medicine* 130/1 (2015), p. 285.
14. C. Nandi, T. Elbert, M. Bambonye, et al., "Predicting domestic and community violence by soldiers living in a conflict region," *Psychological Trauma: Theory, Research, Practice, and Policy* 9/6 (2017), pp. 663–671.
15. Ibid.
16. S. Maguire, "Researching 'a family affair': Domestic violence in former Yugoslavia and Albania," *Gender and Development* 6/3 (1998), p. 64.
17. Enloe (see note 4).
18. J. P. Kaufman and K. P. Williams, "Introduction," in J. P. Kaufman and K. P. Williams (eds), *Women, gender equality, and post-conflict transformation: Lessons learned, implications for the future* (New York: Routledge, 2016), p. 3.
19. Pankhurst (see note 12), p. 6.
20. N. Hall, "East Timorese women challenge domestic violence," *Australian Journal of Political Science* 44/2 (2009), p. 310.
21. Maguire (see note 16).
22. Kaufman and Williams (see note 18).
23. Ibid.
24. Cockburn (see note 11), p. 27.
25. *Alternative report on implementation of CEDAW and women's human rights in Bosnia and Herzegovina* (Banja Luka: Helsinki Human Rights Assembly, 2010), p. 6.
26. M. Walsh, *Rising to the challenge: Gendered impacts of conflict and the role of women's organisations in post-conflict Bosnia and Herzegovina* (Washington, DC: US Agency for International Development, 2000).
27. *Alternative report on implementation of CEDAW* (see note 25), p. 6.
28. L. R. Muftić and J. R. Cruze, "The laws have changed, but what about the police? Policing domestic violence in Bosnia and Herzegovina," *Violence against Women* 20/6 (2014), p. 697.
29. Ibid.
30. *Alternative report on implementation of CEDAW* (see note 25), p. 6.
31. United Nations Human Rights Council, Report of the Special Rapporteur on Violence against Women, Mission to Bosnia and Herzegovina, UN Doc. A/HRC/23/49/Add.3 (2013).
32. Ibid., p. 15.
33. Ibid., p. 16.
34. Muftić and Cruze (see note 28).

35. *Ibid.*, p. 696.
36. United Nations Human Rights Council (see note 31), 14.
37. “BiH: Domestic violence in a complex institutional setting,” *Osservatorio Balcani E Caucaso* (2011). Available at <https://www.balcanicaucaso.org/eng/Areas/Bosnia-Herzegovina/BiH-Domestic-violence-in-a-complex-institutional-setting-89182>.
38. United Nations Human Rights Council (see note 31).
39. *Ibid.*
40. R. Meiksin, D. Meekers, S. Thompson, et al., “Domestic violence, marital control, and family planning, maternal, and birth outcomes in Timor-Leste,” *Maternal and Child Health Journal* 19/6 (2015), pp. 1338–1347.
41. Hall (see note 20), p. 310.
42. *Ibid.*, p. 314.
43. *Ibid.*
44. S. Niner, “Hakat klot, narrow steps,” *International Feminist Journal of Politics* 13/3 (2011), p. 423.
45. *Ibid.*
46. Meiksin et al. (see note 40).
47. Rees et al. (see note 13), p. 287.
48. Hall (see note 20), p. 312.
49. J. Yogaratnam, “A review of the 2010 domestic violence law in Timor-Leste,” *Asian Journal of Comparative Law; Berlin* 8/1 (2013), p. 2.
50. *Ibid.*, p. 13.
51. *Breaking the cycle of domestic violence in Timor-Leste: Access to justice options, barriers and decision making processes in the context of legal pluralism* (Dili: United Nations Development Programme, 2013).
52. K. Hodal, “Timor-Leste strives to overcome culture of domestic violence,” *Guardian* (August 24, 2012). Available at <http://www.theguardian.com/global-development/2012/aug/24/timor-leste-strives-overcome-domestic-violence>.
53. *Breaking the cycle* (see note 51).
54. *Ibid.*
55. *Ibid.*
56. Universal Declaration of Human Rights, G.A. Res. 217A (III) (1948), art. 3; International Covenant on Civil and Political Rights, G.A. Res. 2200A (XXI) (1966), art. 6.
57. European Convention for the Protection of Human Rights and Fundamental Freedoms, ETS 5 (1950), art. 2; American Convention on Human Rights, OAS Treaty Series No. 36 (1969), art. 4.
58. *Kontrovà v. Slovakia*, No. 7510/04, European Court of Human Rights (2007), paras. 53–55.
59. *Ibid.*
60. *Branko Tomašić and Others v. Croatia*, No. 46598/06, European Court of Human Rights (2009), para. 51.
61. *Civek v Turkey*, No. 55354/11, European Court of Human Rights (2016).
62. *Talpis v. Italy*, No. 41237/14, European Court of Human Rights (2017).
63. *Durmaz v. Turkey*, No. 3621/07, European Court of Human Rights (2014), paras. 66–67.
64. Universal Declaration of Human Rights (see note 56), art. 5; International Covenant on Civil and Political Rights (see note 56), art. 7; American Convention on Human Rights (see note 57), art. 5; European Convention for the Protection of Human Rights and Fundamental Freedoms (see note 57), art. 3.
65. Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, G.A. Res. 39/46 (1984), art. 16.
66. *E.S. and Others v. Slovakia*, No. 8227/04, European Court of Human Rights (2009).
67. *Eremia v. The Republic of Moldova*, No. 3564, European Court of Human Rights (2013), para. 49; see also *Rumor v. Italy*, No. 7296/10, European Court of Human Rights (2014), para. 58.
68. *E.S. and Others v. Slovakia* (see note 66).
69. *Eremia v. The Republic of Moldova* (see note 67).
70. Human Rights Committee, General Comment No. 20, Article 7, UN Doc. HRI/GEN/1/Rev.1 at 30 (1994), para. 4.
71. *Rumor v. Italy* (see note 67), para. 57.
72. *Ibid.*
73. Universal Declaration of Human Rights (see note 56), art. 7; International Covenant on Civil and Political Rights (see note 56), art. 26.
74. European Convention for the Protection of Human Rights and Fundamental Freedoms (see note 57), art. 14; American Convention on Human Rights (see note 57), art. 24.
75. Convention on the Elimination of All Forms of Discrimination against Women, G.A. Res. 34/180 (1979), arts. 2(a), 5.
76. *A.T. v. Hungary*, Committee on the Elimination of Discrimination against Women, Communication No. 2/2003, UN Doc. A/60/38 (2005), para. 9.2.
77. *Ibid.*
78. *Opuz v. Turkey*, No. 33401/02, European Court of Human Rights (2009), para. 191.
79. *Ibid.*, para. 198.
80. *Eremia v. The Republic of Moldova* (see note 67), para. 89.
81. *Jessica Lenahan (Gonzales) v. United States*, Inter-American Commission on Human Rights, Case 12.626, Report No. 80/11 (2011), para. 120.
82. International Covenant on Economic, Social and Cultural Rights, G.A. Res. 2200A (XXI) (1966), art. 12.
83. Convention on the Elimination of All Forms of Discrimination against Women (see note 75), art. 12; Universal Declaration of Human Rights (see note 56), art. 25.
84. Convention on the Rights of the Child, G.A. Res. 44/25 (1989), art. 24; Convention on the Rights of Persons with Disabilities, G.A. Res. 61/106 (2006), art. 25.
85. African Charter on Human Rights and Peoples’ Rights, OAU Doc. CAB/LEG/67/3 rev. 5 (1981), art. 16.
86. *Ilhan v. Turkey*, No. 22277/93, European Court of Human Rights (2010); *Cyprus v. Turkey*, No. 25781/94, European

Court of Human Rights (2001), para. 219.

87. *EIPR and Interights v. Egypt*, African Commission on Human and Peoples' Rights, Communication 323/06 (2011), para. 261.

88. *Ibid.*, para. 264.

89. *Ibid.*, para. 266.

90. Krause et al. (see note 2).

91. *National plan to reduce violence against women* (see note 5), p. 24.

92. A. Spinney and S. Blandy, "Homelessness prevention for women and children who have experienced domestic and family violence" (Melbourne: Australian Housing and Urban Research Institute, 2011), p. 12.

93. *Ibid.*, p. 17.

94. *Women, domestic and family violence and homelessness: A synthesis report* (Canberra: Department of Social Services, 2008).

95. *UN handbook for legislation on violence against women* (New York: United Nations, 2010), p. 39.

96. *Ibid.*

97. D. Loxton, X. Dolja-Gore, A. E. Anderson, and N. Townsend, "Intimate partner violence adversely impacts health over 16 years and across generations: A longitudinal cohort study," *PLOS One* 12/6 (2017).

98. *The health costs of violence: Measuring the burden of disease caused by intimate partner violence* (Melbourne: Victorian Health Promotion Foundation, 2004).

99. *Global and regional estimates of violence against women: Prevalence and health effects of intimate partner violence and non-partner sexual violence* (Geneva: World Health Organization, 2013).

100. *UN handbook for legislation on violence against women* (see note 95), p. 31.

101. Security Council (see note 10), para. 8(c).

102. Nassrine De Rham-Azimi, "Report and Recommendations," in *The United Nations Transitional Authority in Cambodia: Debriefing and Lessons* (Martinus Nijhoff Publishers, 1995).

103. Law on the Prevention of Domestic Violence and the Protection of Victims (2005) (Cambodia).

104. *UN handbook for legislation on violence against women* (see note 95), p. iii.

105. *Ibid.*, pp. 19–20.

106. *Ibid.*, p. 24.

107. *Ibid.*, p. 45.

108. *Ibid.*, p. 50.

109. Security Council (see note 10), para. 8(c).

110. *UNODC handbook on effective police responses to violence against women* (Vienna: United Nations Office on Drugs and Crime, 2010), p. 42.

111. *Ibid.*

112. K. Diemer, "Women's safety is a men's issue: Men's attitudes to violence against women and what that means for men" (White Ribbon Research Series, December 2014); J.

Cale, "Gender, age and the perceived causes, nature and extent of domestic and dating violence in Australian society" (University of New South Wales, White Ribbon Australia, March 2015).

113. *Global and regional estimates of violence against women* (see note 99).

114. Diemer (see note 112).

115. *UN Women handbook for national action plans on violence against women* (New York: UN Women, 2012), p. 34.

116. *Ibid.*, p. 35.