Welcome to edition 25 of Aware, the newsletter of the Australian Centre for the Study of Sexual Assault. In this edition, we farewell Research Officer Rachel King, who has taken up a research position at Edith Cowan University. We’re delighted to welcome Mary Stathopoulos in this role. Mary’s research has been in the area of gender, cultural images and young women’s sexual agency, which she explored in qualitative interviews.

As always, we are pleased to bring you updates, articles and interviews from the field of sexual assault.

In this issue, our In Focus article is an exploration by ACSSA Research Officer Bianca Fileborn into human rights frameworks and how they might be harnessed in the fight to eradicate all sexual and physical violence against women. In particular, the article examines the implications for Australia of signing the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW).

We also consider the issue of online communication technologies and their intersection with sexual assault. Antonia Quadara (and Senior Research Officer Debra Parkinson) present some of the latest research addressing the legal and social implications of social networking sites. This piece highlights some future directions for research into this growing field.

ACSSA research officer Mary Stathopoulos provides a research summary on what sexual offender recidivism rates can tell us about sexual offenders. A consideration of methodological limitations in defining and measuring recidivism is discussed.

Finally, we are delighted to bring you an interview with Kiri Bear from Partners in Prevention (PIP) who spoke with ACSSA’s Senior Research Officer Haley Clark. Kiri elucidates some of the key issues around the primary prevention of sexual assault, including the usefulness of standards and frameworks that assist in identifying best practice. Kiri also includes an insightful response on the changing culture toward building in evaluation as part of program design.

We have also included in this issue literature highlights related to forensic technology and sexual assault.

All of ACSSA’s publications are available online. You are welcome to visit our website at <www.aifs.gov.au/acssa>, where you can access bibliographies, look for upcoming events and submit any research queries.

ACSSA welcomes contributions for our newsletter and is keen to hear from workers, researchers, policy advisors and others from the field of sexual assault. If you have any comments, feedback or contributions, please contact a member of the ACSSA team.
Human rights discourse has become increasingly prominent in national and international politics, signified, for instance, through the introduction of the Victorian *Charter of Human Rights and Responsibilities Act* (2006) and debate regarding the merits of introducing a national *Human Rights Act* (Australian Human Rights Commission [AHRC], 2009; Lynch, 2010; Toy & Pearlman, 2009). It is therefore timely to consider the use of existing human rights frameworks for addressing sexual violence against women.

A particularly promising development in the human rights field is the Australian government signing of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) in late 2008, thus demonstrating a commitment to achieving the equal rights of women and men, and to the elimination of all forms of discrimination against women. The signing of the Optional Protocol introduces another level of accountability for nation states through the provision of a complaints mechanism open to individual citizens, helping the Australian government to continue to strive towards achieving gender equality and the provision of women’s rights. It is worthwhile then to consider the implications and potential for the use of human rights mechanisms for promoting women’s rights in Australia, particularly as they relate to freedom from sexual violence.

This article:
- provides an overview of human rights frameworks and their relevance to women’s rights;
- outlines the mechanisms provided for by the Optional Protocol;
- considers how the Optional Protocol has been used elsewhere via the case study of Ciudad Juárez in Mexico;
- considers the rationale for signing the Optional Protocol; and
- considers the limitations and a feminist critique of human rights mechanisms to address sexual violence against women.

It concludes by suggesting that there are some notable limitations in the manner in which sexual violence, and women’s rights more generally, are conceptualised in a rights discourse. Mechanisms such as the Optional Protocol represent an important and useful tool for addressing sexual violence against women.

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1 The Attorney-General has currently ruled out the possibility of a *Human Rights Act* being introduced in Australia (Australian Broadcasting Corporation, 2010).
The United Nations and human rights: A brief overview

Established in 1945 in the aftermath of the Second World War, the United Nations (UN) is an international body that facilitates international cooperation and communication around a number of global issues, including world peace and adherence to human rights standards. Based heavily on pre-existing liberal notions of rights, the development of a series of what are considered “universal” human rights has been integral to the goals and purpose of the UN.

In 1948, the Universal Declaration of Human Rights came into being. The declaration sets out a series of rights considered to be inherent to all human beings (by the very virtue of being human), and necessary for the attainment of the minimal standard of living and dignity of human kind. In principle, failure to meet this minimal standard is considered a breach of human rights. In this way, a breach is absolute, not relative; it does not matter if country A is not as bad as country B in its human rights abuses, country A has still breached its obligations.

Universal human rights standards were developed in response to, and with the hope of avoiding a repetition of, the atrocities of the Second World War (Wall, 2008). Thus, the formation of these rights is underpinned by the liberal philosophy that “recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world” (Universal Declaration of Human Rights, 1948, Preamble, para. 1). Declarations are not legally binding under international law. As such, the many rights contained in this document have subsequently been covered in other legally recognised conventions, such as the International Covenant on Economic, Social and Cultural Rights, and the International Covenant on Civil and Political Rights.2

Human rights and/as women’s rights: Convention on the Elimination of All Forms of Discrimination Against Women

The Universal Declaration and subsequent rights protocols outline many now commonly recognised civil and political rights, including the right to life (Article 3), freedom from slavery (Article 4) and freedom of opinion and expression (Article 19). The goal of achieving gender equality is also incorporated into the Declaration of Human Rights. The preamble to the declaration states:

Whereas the people of the United Nations have in the Charter reaffirmed their faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women [my emphasis] and have determined to promote social progress and better standards of life in larger freedom. (para. 5)

Likewise, Article 2 of the Declaration sets forth that:

Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex [my emphasis] … or other status.

Despite this formal commitment towards equal enjoyment of human rights, it subsequently became apparent that this was insufficient to motivate substantive change in striving towards gender equality (UN Division for the Advancement of Women [UN DAW], 2009) and “failed to deal with

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2 Declarations are generally non-binding. That is, the state does not have a legal obligation to uphold the standards or rights outlined in a declaration. Conventions or covenants are legally binding documents. States have an obligation to uphold the rights contained in a convention to which they are a signatory, with the exception of any reservations made to the convention.
discrimination against women in a comprehensive way” (UN DAW, 2009, para. 5). Furthermore, the declaration and subsequent rights conventions did not adequately address the specific needs of women or identify the gender-specific mechanisms used to deny women their human rights, such as sexual violence and limits to reproductive rights. As a result of lobbying by the women’s movement, as well as recognition from within the UN of the failure to achieve equal rights for both men and women, the Convention on the Elimination of All Forms of Discrimination Against Women was introduced on 18 December 1979. Australia has been a signatory to CEDAW since 1983.

CEDAW seeks to uphold and strengthen a range of women’s rights relating to the discrimination faced by women, including:

- elimination of harmful cultural practices and stereotypes based on the inferiority of women (Article 5);
- trafficking and prostitution of women (Article 6);
- the right to vote and participate in government (Article 7 & 8);
- equality in employment (Article 11);
- reproductive rights (Article 16); and
- many other civil, political, and economic rights, including forms of gender-based discrimination not explicitly mentioned in the protocol.

The convention is a binding protocol under international law. Member states are obliged to ensure women enjoy the rights that CEDAW provides, as well as rights outlined in all other UN conventions and treaties to which the country is a signatory (Byrnes, Graterol, & Chartres, 2007). This obligation may be fulfilled in a variety of ways; for example, by incorporating the protection of human rights standards into domestic legislation (e.g., the Australian Sex Discrimination Act), through policies promoting and upholding human rights (e.g., through social policy initiatives, violence against women campaigns, etc.), and via independent monitoring bodies such as the Australian Human Rights Commission. States are also required to periodically report to the CEDAW committee in relation to their efforts and progress in upholding the rights provided for in the convention. Substantive (rather than formal) equality is a primary aim of CEDAW. As such, legislative and policy change alone is insufficient to fulfil government obligations under CEDAW—these formal actions must be met with actual improvement to the equality of women (McQuigg, 2007, p. 462; Public Interest Law Clearing House, Victoria, 2009). As Amnesty International Australia (2008) suggested, efforts to meet government obligations under CEDAW (through the implementation of a National Plan of Action) should be “built around targets and timeframes, and linked to accountability mechanisms” (p. 6), demonstrating the need for substantive change to be generated.

CEDAW has faced a high number of reservations from member states, meaning that the full scope of women’s human rights is generally not upheld or well enforced in many countries (Evatt, 2002; Kelly, 2005). Indeed, in some instances such reservations are so substantial that they completely compromise the purposes of CEDAW (Charlesworth & Chinkin, 2000, p. 220; Stamatopoulou, 1995, p. 38). While members to CEDAW and other rights conventions are considered bound by the convention under international law, an absence of accountability mechanisms has meant a distinct lack of consequence for non-compliance—other than potential international embarrassment and shaming. The introduction of the CEDAW Optional Protocol provides an avenue to address this lack of consequence. The key elements of the protocol are summarised in Box 1. The following section

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3 The CEDAW committee comprises 23 experts on gender and women’s issues selected from around the world.
considered how this mechanism has so far been used to address sexual violence.

The case of Ciudad Juárez

Given the limited period of time that the CEDAW Optional Protocol has been in force, only a limited body of “case law”, or precedent, has been established. Nonetheless, it is worthwhile considering the implications of previous decisions of the committee in order to demonstrate how the Inquiry Procedure may be used in addressing gender-based violence. The case of Ciudad Juárez will be employed as a key paradigm for exploring this. This particular case study has been selected because:

- it pertains in part to sexual violence (rape);
- it pertains in its entirety to violence against women (murder and abduction/“disappearing” of women); and
- the case was brought before the committee as part of the Inquiry Procedure.

Given that the case relates to a wide range of rights violations, rather than specific/individualised issues, it has been identified as having broader implications for other countries (Ensalaco, 2006, p. 417).

Box 1. The CEDAW Optional Protocol

- The Optional Protocol was introduced by the UN on 6 October 1999.
- The protocol is a complaints mechanism for CEDAW.
- Previously, citizens did not have the ability to contest rights violations under CEDAW.
- Previously, there was no way for the CEDAW committee to enforce its findings or recommendations to a country. The Optional Protocol gives it “teeth”.
- Australia acceded to (signed and ratified) the Optional Protocol on 4 December 2008.

There are two avenues of complaint provided for by the Optional Protocol: the Communication Procedure and the Inquiry Procedure.

Communication Procedure

- This procedure is outlined in Article 2 of the Optional Protocol.
- Individuals or groups of women can submit a written complaint to the CEDAW committee regarding a specific rights violation under CEDAW.
- Complaints may be submitted on behalf of the individual or group by a third party (such as a women’s rights group).
- There are some restrictions as to when a communication can be submitted, including that:
  - all domestic legal avenues generally need to have been exhausted; and
  - the incident must have occurred after the state ratified the Optional Protocol.
- If a communication is deemed admissible, the state has a right of reply before the CEDAW committee makes its final decision and recommendations.
- Refer to the Optional Protocol for a complete overview of submission requirements.

Inquiry Procedure

- This procedure is outlined in Article 8 of the Optional Protocol.
- The CEDAW committee is permitted to establish an investigation upon receiving “reliable information of grave or systematic violations” of rights by a member state.
- With the permission of the state, the committee may conduct a site visit in order to investigate the situation.
- The committee provides detailed findings and recommendations for action to the state concerned.
- The committee will conduct a follow-up procedure to ensure that the state has taken reasonable action based on the committee’s recommendations.
It should be noted that this is intended as a theoretical/speculative discussion only—the content of this discussion does not necessarily imply that the Australian government would be found to be in breach of CEDAW should an Australian communication be brought before the CEDAW committee.

Ciudad Juárez: An overview

Throughout the 1990s and early 2000s, the Mexican city of Ciudad Juárez bore witness to the widespread, systematic abduction and eventual murder of an estimated 400 women. Approximately one-third of these women were also believed to have been sexually assaulted or raped prior to death, although due to poor criminal and forensic investigation, it is likely that these numbers are even higher (UN CEDAW, 2005). Some further 4,500 women4 “disappeared” during this time, with their whereabouts or fates unknown. These heinous crimes against women took place in an environment of impunity, with the police and criminal justice system failing to investigate, charge or punish perpetrators. The investigations that did take place were frequently mismanaged, and local police were accused of corruption (UN CEDAW, 2005).

The application of the Optional Protocol

Upon receiving accurate and specific information pertaining to these systematic and/or grave rights violations from Mexican and US non-government organisations, as well as from the government of Mexico, the CEDAW committee launched an Inquiry Procedure in Ciudad Juárez. In order to fully investigate and establish the extent of the situation in Ciudad Juárez, the committee, was invited by the Mexican government to conduct a site visit. The committee (UN CEDAW, 2005) subsequently determined the following issues were relevant to the case:

- Rapid social change (initiated by rapid population and economic growth) had not been “accompanied by a change in traditionally patriarchal attitudes” (p. 9).
- This had led to a culture of impunity, creating an atmosphere in which violations of human rights may occur. As a result, violence against women became prevalent, and intensified between 1993 and 2003.
- There was a failure of government and criminal justice agencies to adequately investigate and punish offenders. Investigations were often severely inadequate—marked by failures to collect relevant (and crucial) evidence, accurately identify victims, and significant delays in initiating an investigation and processing cases.
- There was a failure to recognise the structurally and culturally embedded nature of the offences—that they were not isolated incidents, but were instead the result of an ingrained culture that was supportive of violence against women.

While the Mexican government did implement policy and legislation prior to the Inquiry Procedure in an attempt to address these crimes, the CEDAW committee held these official measures to be ineffective and insufficient, as they did not result in any marked improvement in the levels of violence against women. As the committee report on Mexico noted (UN CEDAW, 2005):

> The policies adopted and the measures taken since 1993 in the areas of prevention, investigation and punishment of crimes of violence against women have been ineffective and have fostered a climate of impunity and lack of confidence in the justice system which are incompatible with the duties of the State. (p. 14)

Furthermore, these policy changes failed to recognise the gendered (and socially embedded) nature of these crimes, and resorted to victim blaming and stereotyping rather than attempting to institute real social change. This indicates that policy and legislative changes alone cannot be viewed as being sufficient for fulfilling a state’s obligations under CEDAW. The CEDAW committee has since worked closely with the Mexican government to ensure that effective and appropriate changes are made to their policies and legislation (UN CEDAW, 2005). Some of the initiatives introduced or pending (at time of the 2005 report) include:

- establishing programs to combat trafficking in women and prostitution;
- establishing domestic violence shelters;

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4 The Mexican government claims that this number reflects the number of reports of missing women, rather than the actual number of women “disappeared” (UN CEDAW, 2005, p. 52).
establishing support and legal assistance for relatives of victims; and
• introducing public awareness and information campaigns on violence. (p. 31)

Many of these initiatives appear to represent positive developments; however, as the CEDAW committee noted, it is too early to determine whether these efforts have been effective in promoting actual change to levels of gender-based violence (UN CEDAW, 2005, p. 33).

The circumstances surrounding the Ciudad Juárez case were unique, and in many respects this represents an extreme example of violence against women, as the victims were murdered as well as in many cases being sexually assaulted and tortured. That the cases resulted in death in addition to sexual and physical violence may have influenced the need to investigate the case as a pressing human rights matter. According to the Mexican Government, a significant proportion of the murders in Mexico were linked to “ordinary” family and domestic violence (UN CEDAW, 2005), while other cases conformed more closely to a “stereotypical” stranger rape scenario, with the women abused and murdered by men unknown to them, at night-time and in isolated public locations (Ensalaco, 2006, p. 420). It is unclear what proportions of the cases involving sexual assault occurred within the context of domestic violence or as “stranger” rape/murder. Consequently, it is not clear whether the findings of the Inquiry Procedure necessarily relate to the “everyday” and less extreme (or “non-lethal”) forms of sexual violence experienced by women. Furthermore, the social and political circumstances of the Ciudad Juárez case were marked by a culture of organised crime, drug and sex trafficking, and rapid social and population change, which are acknowledged as contributing to these crimes, in conjunction with embedded social attitudes towards women and violence (UN CEDAW, 2005).

What was the rationale for signing the Optional Protocol by Australia?

Since its introduction in 1999, 94 countries have become parties to the CEDAW Optional Protocol. Australia’s reasons for doing so in 2008 were explained by the Minister for the Status of Women, the Hon. Tanya Plibersek MP and the Attorney-General, the Hon. Robert McClelland, MP (Plibersek & McClelland, 2008):

By becoming a party to the Optional Protocol, the Government is making a powerful statement that discrimination against women in any form is unacceptable … Acceding to the protocol will send a strong message that Australia is serious about promoting gender equality and that we are prepared to be judged by international human rights standards. (para. 4 & 8)

As Box 1 describes, signing the protocol provides a new complaints mechanism when there is a breach of existing rights that have been in force since the government became a party to CEDAW (Department of Families, Housing, Community Services and Indigenous Affairs [FaHCSIA], 2009). It is open to any individual who, after all domestic options have been exhausted, feels that there has been a violation of Australia’s obligations under CEDAW (Plibersek & McClelland, 2008). These rights broadly refer to political participation, health, employment, marriage, family relations and equality before the law. The CEDAW committee can also investigate claims of serious violations of CEDAW in Australia through an Inquiry Procedure (FaHCSIA, 2009).

One of purposes of the protocol is to encourage not only the development of policies and laws that uphold CEDAW obligations, but that these be effective, in substance, in protecting or bolstering
women’s human rights. The Australian Human Rights Commission (n. d.) argued that the Optional Protocol was an important addition for countries that have already signed CEDAW and provided five reasons for this:

- The Optional Protocol provides a “backup” for domestic mechanisms to ensure that they are adequate and effective.
- Domestic mechanisms often have gaps so that some women are not able to access them—the Optional Protocol ensures that an enforcement mechanism is available to them.
- In nation States with a federalist system [such as Australia], regional and federal governments may have separate and independent legislative power. Therefore, the actions of one level of government may be contrary to CEDAW while the other is not. An Optional Protocol would help to ensure that all levels of government find domestic methods to set uniform standards in accordance with CEDAW.
- Governments change, as do systems of power and cultural attitudes. Even though one nation’s government may seem supportive of women’s rights now, they may not be so in the future.
- It is important for nations with good domestic protection for women to become a party to the Optional Protocol to demonstrate leadership for other women in the region from nations with less effective mechanisms. (AHRC, n.d.)

How the Optional Protocol will be used is open to question. The Australian Human Rights Commission (n. d.) noted that there may be a gap between formal legislative provisions and their implementation, application or enforcement in particular circumstances. The Optional Protocol may be a useful mechanism to resolve such discrepancies.

It is unclear how the Optional Protocol would be used to respond to possible breaches to CEDAW obligations in matters of sexual assault. Partly, this relates to the issue of “gravity” or seriousness should an investigation ever be launched following claims of a breach. Sexual assault is prevalent in Australia and the patterns of victimisation are predictable. The CEDAW committee has in the past criticised Australia regarding the high rate of sexual and domestic violence against women, poor legal and law enforcement responses, and poor legal outcomes (UN CEDAW, 2006b). Yet, it is not clear whether this actually constitutes a failure to uphold our obligations under human rights law. For instance, it has not been clearly established what level of action or inaction is required by a state in order for it to be meeting its international obligations (Libal & Parekh, 2009). While a state can always do more to address sexual violence, it can be difficult to “make the case that the state has failed to protect women” (Libal & Parekh, 2009, p. 1484) where laws are enacted and other official action is taken (such as provision of funding and anti-violence campaigns).

A second issue to consider is the extent to which human rights frameworks and instruments in fact address sexual assault. This is an issue taken up in the subsequent sections of this paper.

**Feminist theory and human rights**

So far, it has been suggested that the Optional Protocol may provide a pathway for instigating change to current approaches to addressing sexual violence, as well as providing a means for addressing specific rights violations under CEDAW. However, it is important to note that the discourse and associated frameworks of human rights have been widely criticised by feminist scholars and other advocates for women’s rights. This section aims to outline some of the major concerns directed at human rights frameworks more broadly by feminist and other critical theorists. In doing so, it is suggested that human rights law should not be considered an unproblematic mechanism for use by women, although it is certainly a useful mechanism in many respects.

**Human rights and violence against women**

While the case study discussed above shows that human rights frameworks can be used as a means to address sexual violence against women, the manner in which sexual violence (and violence against women more generally) is included and defined within these frameworks is more problematic. Violence against women has only recently been incorporated into a human rights discourse (see Box 2 for an overview). As noted, there is no explicit mention of violence against women within the CEDAW protocol, although the protocol has been interpreted to include violence against women.
Subsequent rights documents have more explicitly located violence against women as a human rights abuse. It is the 1995 Beijing Declaration and Platform for Action that perhaps most strongly recognises and defines violence against women as a rights violation, denouncing it as:

an obstacle to the achievement of the objectives of equality, development and peace. Violence against women violates and impairs or nullifies the enjoyment by women of their human rights and fundamental freedoms … [and] is a matter of concern to all States and should be addressed (sec. D, 112)

Certainly, the Beijing Declaration represented a positive development for women’s rights, and requires member states to take action on this issue. Indeed, as indicated in Box 2 (see page 10), sexual violence is defined in a comprehensive manner that reflects feminist understandings of gender-based violence. However, while the manner in which sexual violence is conceptualised is particularly promising, the phrasing used in defining violence against women as a rights issue gives cause for concern. It is apparent from the language used above that sexual violence and violence against women are considered as violations in so far as they prevent women from enjoying their other “universal” human rights (O’Hare, 1999, p. 377). Freedom from violence against women is not explicitly labelled a human right in and of itself (Kelly, 2005, p. 482; Otto, 1996, p. 17). According to this conceptualisation, the harm or violation of sexual (and other) violence lies in its impingement on women’s ability to enjoy their “other” rights rather than being intrinsic to the act itself. Furthermore, by failing to include freedom from sexual violence as an explicit human right, a human rights discourse can exclude and marginalise women’s experiences of violation.

Human rights as men’s rights

Despite claims within rights documents deeming human rights to be “universal” (such as the Universal Declaration of Human Rights), feminist critics have argued that a human rights discourse strives to uphold those rights most pertinent to the lives of (Western) men (Friedman, 2003; Kelly, 2005; MacKinnon, 2006; O’Hare, 1999). Indeed, it would seem that many of the rights upheld in rights covenants are directly at odds with women’s rights, and are clearly in opposition to the goals of the feminist movement(s) more generally. For instance, Article 16(3) of the Universal Declaration of Human Rights states that “the family is the natural and fundamental group unit of society and is entitled to protection”. Yet feminist scholarship and research has suggested that the family and private sphere are key sites of women’s oppression and abuse (Boyd, 1997; Koshan, 1997; MacKinnon, 1989; Russell, 1982; VicHealth, 2007). As human rights ideology stems from a liberal political philosophy, protection of the “private” sphere was seen as fundamental to a rights discourse, resulting in a reluctance to intervene in “private” family life, and consequently rendering the discourse of rights as unable to locate sexual violence in the private sphere as a rights violation (Sullivan, 1995). It is indeed difficult to imagine how women could be afforded their full human rights when the institutions and ideologies central to their abuse are simultaneously protected by a rights discourse (Charlesworth & Chinkin, 2000, p. 230).

Many of the violations experienced by women on a daily basis were not (and in many cases still are not) defined as human rights abuses in many of the mainstream rights conventions (Bunch, 1995; Libal & Parekh, 2009, p. 1481; O’Hare, 1999, p. 364). An initial failure to include human rights that are essential to women’s being (e.g., reproductive rights, freedom from sexual violence) may have occurred
simply as a product of the historical time at which these human rights documents were developed. As O’Hare (1999) noted, “male hegemony over public life and institutions meant that rights came to be defined by men” (pp. 366–367). That women’s human rights are still not adequately addressed and included by mainstream rights covenants or regulatory bodies is perhaps more troublesome, in that it indicates that human rights bodies are still ingrained in patriarchal values, functioning to exclude women, despite being responsible for promoting the inclusion and equality of women across the globe (O’Hare, 1999; Charlesworth & Chinkin, 2000; Charlesworth, 1995).

For example, a recent study by Puechguibral (2010, p. 173) critiques the masculine language of UN documents for perpetuating “a vision of gender roles that reinforces inequalities and prevents
progress on gender mainstreaming”. Her content analysis of reports released by the Secretary-General demonstrates that the language used positions women in relation to children (through use of the phrase “women and children”)—thus, “women are defined predominantly as mothers and always associated with children” (2010, p. 175)—and depicts women as vulnerable or as victims, consequently denying women agency. This suggests that the language used in UN communications tends to reinforce negative stereotypes of women, thus reflecting patriarchal values and beliefs.

The language and content of mainstream rights protocols is itself inherently masculine, as most “international documents continue to use the generic male pronoun” (Charlesworth & Chinkin, 2000, p. 49) when referring to “universal” rights—although the Universal Declaration of Human Rights remains the most striking example of this embedded masculinity. Language referring to “man”, or the need to “act towards one another in a spirit of brotherhood” (Article 1) directly excludes women from human rights discourse and, consequently, labels them as something less than human (Bunch, 1995, p. 12; MacKinnon, 2006). Indeed, women become “human” only in respect to their (clearly hierarchical and possessive) relationships with men, and where their rights and experiences of violation happen to correlate with those of men (MacKinnon, 2006).

“Ghettoisation”: The sidelining of women’s rights

Given that “women’s issues” are not heard within “mainstream” rights bodies, it has been suggested by several commentators that women’s rights are consequently “ghettoised”, or marginalised, within the UN (Charlesworth & Chinkin, 2000, p. 219). As Bunch (1995) asserts, “this separation of women’s rights from human rights has perpetuated the secondary status of women” (p. 12). Furthermore, the bodies responsible for monitoring and upholding women’s rights are generally seen to have limited access to resources and have weaker enforcement mechanisms than other rights bodies (McQuigg, 2007; O’Hare, 1999, pp. 367–368).

While the “ghettoisation” of women’s rights is certainly problematic, recent initiatives have also moved away from this and represent positive developments in the field of women’s rights. For instance, a lack of accountability mechanisms, or “teeth”, has been viewed as one of the primary causes of the “ghettoisation” of CEDAW and women’s human rights (McQuigg, 2007). However, the introduction of the Optional Protocol goes some way to reversing this by providing an official means to challenge state action (or inaction) over potential human rights abuses. Indeed, as MacKinnon (2006) noted, the Optional Protocol “put a new legal tool into the hands of women, empowering them to claim their internationally protected rights” (p. 64).

Later documents, such as the Vienna and Beijing Declarations, have shifted away from the male-centric nature of rights protocols, and represent the re-orientation of a human rights discourse towards a more inclusive approach to women’s/human rights (O’Hare, 1999, p. 365). While it may be ideal to have women’s rights recognised and incorporated into “mainstream” rights protocols, the developments mentioned above and earlier in this piece clearly demonstrate concern for, and inclusion of, violence against women as a human rights issue.

The problem of non-state actors and human rights

Rights discourses have been fiercely criticised for failing to consider the actions of non-state actors (or, conversely, only focusing on the actions or failures to act of the state), resulting in an inability to recognise potential rights abuses occurring in the private sphere—which is also the site where women experience the most abuse—and maintains the public/private dichotomy critiqued by feminists (Libal & Parekh, 2009; MacKinnon, 2006). However, while human rights bodies may be unable to directly reprimand non-state actors for committing rights violations, it has subsequently been made clear by various UN bodies and conventions that it is the responsibility of the state party to ensure that its citizens do not commit acts that violate the state’s rights obligations. For instance, the CEDAW committee’s General Recommendation 19 expressly

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5 The covenants on civil and political rights, and economic and social rights are generally considered to be “mainstream” rights bodies, as they are addressing “universal” rights as opposed to “women’s” rights only.
states that “discrimination under the Convention is not restricted to action by or on behalf of Governments” (para. 9), and similar precedents have been set by other human rights committees and monitoring bodies (see Sullivan, 1995, p. 130). Actions of non-state actors can therefore clearly constitute rights violations; however, the concern of human rights law and enforcement bodies lies with the failure of states to prevent or punish the actions of its citizens, rather than with directly reprimanding the non-state actor who committed the violation.

Conclusion

Despite the clear limitations of a human rights discourse in protecting the rights of women, human rights mechanisms also represent a powerful and politically salient means of generating real change in the lives of women (Charlesworth & Chinkin, 2000; Kelly, 2005; Sullivan, 1995). In Australia alone a number of legislative and other initiatives can be attributed to our human rights obligations and use of a human rights framework, including:

- **Sexual Discrimination Act (1986);**
- **Victorian Charter of Rights and Responsibilities Act (2006);**
- the implementation of various national plans aimed at responding to and reducing violence against women (e.g., A Time for Action, 2009);
- the establishment of the Australian Human Rights Commission; and
- a constellation of initiatives that have been introduced to attempt to realise human rights in the domestic agenda.

Furthermore, as O’Hare (1999) suggested, a human rights discourse “offers a vocabulary for women to assert their needs in the language of the powerful” (p. 380). While questions may be raised as to whether this “language” is the most appropriate tool for acquiring women’s rights (in that the language of the powerful presumably reflects the needs of the powerful), it undoubtedly has the ability to express women’s rights in a manner that resonates with those in a position of power and influence (who may be able to instigate institutional change), and requires state action (though states may not always respond as they should) (Charlesworth & Chinkin, 2000, p. 210; Kelly, 2005). This provides a powerful lobbying tool for those working within the violence against women field (Kelly, 2005). Indeed, the use of optional protocols for other rights covenants has resulted in direct legislative change in Australia, most clearly demonstrated by changes to Tasmanian law, achieved in the Toonen case under the Optional Protocol for the International Covenant on Civil and Political Rights (Greenleaf, 1994).

Although human rights are not an unproblematic concept from a feminist standpoint, this should not be viewed as sufficient reason to ignore or avoid altogether human rights mechanisms such as use of the Optional Protocol. Rather, human rights approaches to addressing sexual violence need be used with caution and awareness of the limitations posed—both conceptually, and practically, given the great time and potential expense of launching a
complaint under the Optional Protocol. Use of the Optional Protocol constitutes one arm of a multifaceted approach to combating sexual violence that is not limited to the use of rights mechanisms to push for change. Such an approach would be inclusive of other mechanisms and frameworks, such as the National Plan to Reduce Violence against Women and their Children, whole-of-government strategies for prevention, capacity-building at local and community levels and social change campaigns, which can complement, as well as “fill gaps” left by, the use of human rights mechanisms. In this way, we will be able to more wholly address (respond and prevent) the gamut of violations experienced by women.

Sexual violence has been discussed in a very broad and general manner throughout this article, and issues such as ethnicity, physical disability and refugee status, among others, have not been discussed here; however, these issues all intersect with both sexual violence and human rights frameworks, resulting in distinct differences in the needs and experiences of each group. Consequently, certain social groups may face more grave rights violations than others, and this is likely to have a bearing on the implications and potential use of the Optional Protocol.

While there are some practical and theoretical limitations to the use of human rights mechanisms, they are nonetheless an important aspect of broader efforts to combat sexual violence against women.

References


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Online communication and mobile phone technologies represent areas of emerging trends in social interaction, particularly for young people. Taken at their broadest, social networking services are web-based interactive communication media such as email, chat rooms, blogging and instant messaging. Social networking sites such as Facebook and MySpace integrate all these communication tools. Users can create profiles featuring pictures and personal information in ways that enable users to express unique digital selves in the online world (Ybarra & Mitchell, 2008). Mobile phone technologies, such as file sharing of photographs and video recordings, are also emerging as key sites of communication used by young people. The adoption of these new communication methods by young people in Australia is almost universal (Australian Communications and Media Authority [ACMA], 2009, pp. 7–8). In the UK, more than one in two people (55%) aged between 13 and 17 have a social network profile (Livingstone & Brake, 2010).

As people increasingly use social networking services and mobile phone technologies to communicate and socialise with each other, their use as vehicles for the perpetration of sexual assault is becoming an issue of significant concern for those working in the sexual assault field (Powell, 2009) and is the subject of growing media debate. This concern relates partly to the way in which such technology multiplies avenues for sexual victimisation. It also relates to a lack of understanding among some groups about how these technologies work, what exactly the nature of the problem is and what solutions are required to address perpetration and its impacts. In addition, it relates to the nature of the online domain itself, in which anonymity, diffusion and speed make regulating it difficult.

This article provides a snapshot of what is currently known about the use of new technologies and sexual violence, and highlights some of the challenges for policing the online domain.

Sexual victimisation through online communication technologies: What are we talking about?

There is very little empirical research about this issue. One readily available source of information is the news media. A number of cases have been recently reported in which mobile phone and online...
Communication technologies have been connected to sexual assault victimisation.

Of the research that has examined young people’s use of online communication technologies and experiences of sexual victimisation, the following findings are notable:

- The Growing Up With Media Survey (US) of 10–15 year olds ($n = 1,588$) (Ybarra & Mitchell, 2008) found that:
  - almost 15% of the sample reported being the target of unwanted sexual solicitation;
  - chat rooms were one of the least frequented areas by respondents who reported solicitation and harassment, but they were one of the most commonly cited areas where interpersonal victimisation occurred; and
  - of those who had experienced unwanted sexual solicitation, 4% said it occurred on a social networking site, and they were more likely to be female than those solicited elsewhere.

- The Children Go Online Survey (UK) of 9–19 year olds found that 31% had received sexual comments online and 28% had received unsolicited sexual material. Eight per cent had gone to a meeting with someone first met online (cited in Livingstone & Brake, 2010).

- In Australia, it is estimated that 80% of 15–17 year olds have had multiple exposure to hard-core pornography (Choo, 2009, p. 18).

Researchers have suggested that these communications have the capacity to normalise sexual violence (Wolak, Finkelhor, Mitchell, & Ybarra, 2008; Wolak, Mitchell, & Finkelhor, 2009) and provide new ways of sexual offending (Powell, 2009). In our contact with those working in the sexual assault field and in the news media, a range of unwanted sexual behaviours and sexual offences facilitated by online communication technologies has been identified. See Box 2 (see page 18) for a description of behaviours.

Law, regulation and prevention

As in the offline world, in the online world, there is a continuum of sexually violent behaviours. Policing this space and developing prevention strategies are thus emerging as exceedingly challenging tasks. At this stage, we would identify the following reasons for this:

- The speed and reach of information circulation—The Law Institute of Victoria reported in 2009 that hundreds of millions of users posted more than four billion pieces of information each month (Law Institute of Victoria, 2009). In August 2009, Facebook reported that more than 1 billion photos and more than 10 million videos are uploaded each month, and that more than 1 billion pieces of content are shared each week (Facebook,
The limitations of current legislation—Australian legislative responses to this issue operate across varying bodies of law, including: control of the use of surveillance devices; privacy infringement, voyeurism and other summary offences; and child pornography offences (Powell, 2009). There is a sense that it is “inadequate to deal with the global phenomenon that is online social networking” (Giancaspro, 2009). Even where laws are in place—for example, Commonwealth laws in relation to using mobile phones to stalk or harass, or federal criminal law in relation to using the Internet to menace, harass or cause offence—police at both federal and state level have had few resources to equip them to deal effectively with it (Egan, 2010).

Social networking and other online communications are central forms of communication for young people—As Box 1 showed, the majority of young Australians have seamlessly incorporated their online and offline worlds. Indeed, the available research suggests that there is a significant overlap between the connections a person has in their offline and online worlds (Subrahmanyam, Reich, Waechtter & Espinoza, 2008). From an adolescent developmental point of view, both domains are spaces in which young people are in the process of constructing their independent identities.

Interest in sex and romantic “hook-ups”, the presentation of self and the creation of friendship networks have long been identified as part of the adolescent project. How this translates into online environments is yet to be well understood or documented. This presents challenges as to how regulation and policing can best be used. Some researchers argue that approaches that restrict or censor social networking opportunities will not be effective because of the contiguity between online and offline social interaction (Livingstone & Brake, 2010; Subrahmanyam et al., 2008).

Future directions

According to leading US sociologist, Dr David Finkelhor:

One of the problems with the internet is the sense that it’s no man’s land, that there’s no one in charge,

that there’s no one patrolling the neighborhood … I don’t know whether there’s actually a legislative solution or not … [however] this is something that we want our official law enforcement officials to be doing, not combinations of vigilante groups and entertainment corporations. (Lordan et al., 2007, pp. 28–29)

On the one hand, this may be an accurate diagnosis. The online domain represents new modes of social communication in which the traditional measures of authenticity, social civility and etiquette, and social regulation afforded by face-to-face contact are absent (Subrahmanyam et al., 2008). Yet it also presents a danger in that the online domain is seen as a distinct site to be controlled rather than an extension of young people’s offline connections. And, in a further complication to this, we lack information about the nature and extent of sexual assault facilitated through social networking services. The anecdotal information coming from some of our stakeholders
is that the use of these services in sexual assault is wide-ranging and of significant concern. However, we don’t know what the issues are in rural and remote parts of the country or what role education, class and social ties have to play. There is thus an important role to be played by sexual assault counsellors, police and other legal personnel and educators in guiding the research agenda in this area.

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Measuring sexual offender recidivism

Mary Stathopoulos

A key dimension of sexual assault prevention is stopping perpetrators from re-offending (often referred to as tertiary prevention). Treatment programs that aim to stop re-offending are available for adult and juvenile sex offenders throughout Australia (MacGregor, 2008). There are also numerous monitoring and surveillance mechanisms aimed at released offenders in various states and territories, the purpose of which is to minimise the chances of re-offending.

One way of monitoring effectiveness in this regard has been through the use of recidivism rates, defined below. Rates of re-offence also assist in understanding and addressing issues in the criminal justice system (Australian Bureau of Statistics [ABS], 2001). Yet, results from international studies vary quite dramatically, with recidivism rates of between 3% and 70% being reported (Lievore, 2004). In Australia, sexual recidivism rates range from “two percent in some samples to as high as sixteen percent in others” (Lievore, 2005, p. 2). Overall, this is considered low in comparison to other types of offences.1

What are the reasons for this variation and what can we reasonably consider recidivism rates to tell us? This summary describes how sexual offender recidivism may be measured and discusses the impact this may have in how rates are used.

Definitions

In general, recidivism refers to a relapse or return to criminal behaviour. However, for the purposes of measuring recidivism, this definition varies considerably. It varies first in terms of the point in the criminal justice process at which it is measured. Thus, “recidivism” may be operationalised as:

- re-offence;
- re-arrest;
- reconviction; and/or
- return to prison.

Although measuring recidivism on the basis of re-offence would provide the most accurate measure, this is extremely difficult to ascertain if it is not brought to police attention and if it is not recorded as an offence. Measuring recidivism on the basis of reconviction happens much later in the justice timeline—arrest, charge, prosecution, trial/plea and conviction need to have occurred before it is counted. Re-entry into prison is farther yet again and relies on sentencing decisions. The latter two measurement criteria are more conservative than arrest data and are unlikely to correlate with actual re-offending (Lievore, 2004)

A second variation in measurement is the repeat offence that is being counted. For sexual offenders, this could be:

- the same type of offence as the original (e.g., rape);
- another sexual offence generally (e.g., child sex offences, indecent assault, rape);
- another violent offence (e.g., assault causing serious injury); or
- any other offence (e.g., motor vehicle theft).

Decisions about how to operationalise recidivism may be informed by the purpose of the research or analysis. Looking at re-conviction for any other offence, such as violent crime, can be useful in understanding juvenile offenders. Lievore (2005) stated that juvenile offenders are at risk of “growing into” offending behaviours. Identifying and treating adolescents who have visibly offended can help break a cycle that may continue over a lifetime. They may also be informed by the accuracy of the data itself. For example, re-offending that is counted at re-arrest or warrant will yield higher recidivism rates, but the information is patchier because of jurisdictional differences in recording, and missing data. On the other hand, reconviction measures provide a more complete record, but are underestimations.

Methods/measures

Researchers use a variety of methods/approaches to arrive at a rate of recidivism.

A comparative analysis between treated and untreated offenders may offer an insight into how to prevent recidivism through perpetrator treatment programs. This can be approached in different ways. A randomised control trial may be used, however the ethical implications of denying offenders who wish

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1 There is some debate about whether this signifies effectiveness in treatment programs and law enforcement measures or whether it reflects the difficulty of detecting sexual offences and/or redoubled efforts by offenders to conceal their offending.
to be treated in order to establish a control group are questionable (Marshall & Marshall, 2007). A way to avoid this is to use an incidental untreated sample with which to compare against a sample of sexual offenders in a given treatment program. An incidental untreated sample is a group of incarcerated sex offenders who happen to not have attended any offender programs with which the treated group can be compared. However, issues of equivalence between the groups in relation to static and dynamic risk factors can affect the validity of the research.

Static risk factors refer to fixed variables such as the offenders’ sex, age, ethnicity, criminal history and their relationship to the victim. Dynamic risk factors refer to those variables open to change through treatment, including factors such as “substance abuse, general social skills, sexual arousal patterns and the quality of relationships” (Lievore, 2005, p. 2). In order to avoid these issues, another methodology adopted is one based on actuarial risk. Actuarial risk assessment measures come from an evaluation of dynamic and static risk factors. These can then be used to calculate an estimated actuarial risk rate with which to measure the effectiveness of treatment programs or to compare to untreated sexual offender recidivist rates (Marshall & Marshall, 2007).

Regardless of which methodological approach is used, accurate measures are affected by other factors, such as follow-up periods, drop-out rates, alternative and hidden offences and plea bargaining, as well as the data sources used:

- **Follow-up periods**—Follow-up periods refer to the length of time that sexual offenders are “trailed” in terms of their sexual offending behaviour. Follow-up periods can be anywhere from six months to twelve years. The longer the follow-up period allowed, the more accurate and valid will be the measure of recidivism. Follow-up periods can be affected by whether the research is retrospective and the time and economic constraints to the researchers. Retrospective as well as prospective studies of sexual offending recidivism can be plagued by low response rates and drop-out rates of sexual offenders.

- **Drop-out rates**—Drop-out rates may be due to selective attrition or geographical issues (Hanson, Broom, & Stephenson, 2004). These concerns also contribute to the difficulty of measuring treatment efficacy.

- **Alternative and hidden offences**—Alternative and hidden offences can also affect outcomes. If a sexual offender is re-arrested or re-convicted for an alternative sexual offence or another type of offence, rates of recidivism may be affected. As stated above, this can depend on the definition that is given to recidivism at the beginning of the research. Hidden offences are those that are not reported. Lievore (2005) has pointed out that within relationships of previous sexual offenders, coercion and violence in sexual activities may be viewed or experienced as normative and therefore never come to the attention of authorities.

- **Plea-bargaining**—Plea-bargaining refers to an agreement by the offender to plead guilty to a lesser offence in order for the prosecutor to secure a conviction without a trial. Plea-bargaining of offences can also contribute to the hidden nature of sexual offences. A re-offender who is arrested and convicted may plea-bargain to a lesser offence or only be charged for a more violent offence in a multiple-offence scenario.

- **Data sources**—Data sources can include official and unofficial records of sexually offensive behaviour. Unfortunately, there may not be consistency in reporting methods from region to region or across states and territories. Some records may be incomplete and others can sometimes be lost, leaving large gaps in the data required for calculation of sexual offence recidivism (Furby, Blackshaw, & Weinrott, 1998).

### Attrition of sexual offences from the legal system

The dropout of sexual assault cases from the criminal justice system—particularly in the early stages—needs to be factored in when interpreting the lower recidivism rates.

The following process of drop-out before arrest or charge affects, from the outset, the size of the population upon which recidivism rates are based. Briefly:

- 1 in 6 women who experience a sexual assault report to police;
- two-thirds of reported cases are actually recorded by police (calculation based on Gelb, 2007); and
- for incidents of sexual assault that were recorded, the offender(s) were proceeded against for approximately 1 in 4 victims (measured at 6 months after the report was made; ABS, 2004).

In addition, it is unclear whether the alleged offenders against whom the police proceeded are representative of sexual offenders who do not come to police attention. Cases that do proceed are more likely to involve: additional physical injury, an unknown perpetrator, a prior offending history of the offender, and forensic evidence (Heenan & Murray, 2007; Lievore, 2005). This does not represent the empirical picture of sexual assault provided by the Personal Safety Survey (ABS, 2006).

Figure 1 shows the decreasing size of the offender population at different stages of the justice process.

What can sexual offender recidivism rates tell us?

Rates of sexual offender recidivism are unlikely to be the whole picture in terms of re-offending. It is difficult to say whether recidivism rates are about sexual offending per se, or whether they only tell us something about the repeat offending of those most likely to be in the justice system in the first place. This is primarily due to how sexual offending comes to the attention of the legal system. That only a sixth of known sexual assaults are reported (ABS, 2006) means that detected offenders are the minority. Where recidivism is defined as reconviction, we can see from Figure 1 how small that population is relative to the number of known sexual assault victims (0.9%). Recidivism rates also cannot tell us about hidden sexual assault such as intimate partner rape. This type of offence, which may be repeated over years, may never come to the attention of police or end up in the justice system. Therefore, the true extent of these crimes and recidivist rates are not currently known.

Sexual offence recidivism rates can, however, tell us about visible offenders and the points at which they come into contact with the criminal justice system. Although statistics highlighting the rate of recidivist activity of sexual offenders are affected by variables, as is evidenced in Table 1, they can be used to understand the efficacy of treatment programs for offenders. Strategies to assist in increasing the reliability of recidivism rates of sexual offenders include researchers drawing on a range of unofficial data sources, such as the self-reported data of offenders. Self reported data can help fill in the gaps when other official records are not available. Longer follow-up periods such as 20 or 30 years can be established, as longer observation times afford greater periods in which to observe and record criminal activity (Payne, 2007). Finally, adopting consistent recording procedures nationwide so that data can be aggregated across states and territories ensures that all researchers are working with consistent data, and any changes in rates can be captured.
<table>
<thead>
<tr>
<th>Study</th>
<th>Sample (n)</th>
<th>Index sex offence</th>
<th>Definition of recidivism</th>
<th>Follow-up period</th>
<th>Recidivism offence type</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Sex offences</td>
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<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Burgoyne 1979 Australia</td>
<td>115</td>
<td>Rape (62%) Attempted rape</td>
<td>Reconviction</td>
<td>4–9 years</td>
<td>Rape/attempted rape 2% Other 5%</td>
</tr>
<tr>
<td>Broadhurst &amp; Maller 1992 Australia</td>
<td>502</td>
<td>Rape, carnal knowledge, incest, indecent dealings</td>
<td>Reincarceration</td>
<td>Up to 12 years</td>
<td>Homologous 5.2% Other 3.2%</td>
</tr>
<tr>
<td>Broadhurst &amp; Loh 1997 Australia</td>
<td>2,785</td>
<td>Not specified</td>
<td>Re-arrest</td>
<td>Average 6 years, maximum 11 years</td>
<td>10%</td>
</tr>
<tr>
<td>Greenberg, Da Silva &amp; Loh 2002</td>
<td>2,165 referred for sex offender treatment</td>
<td>Child molesters and rapists</td>
<td>Re-arrest*</td>
<td>Up to 7 years</td>
<td>Overall 15.5% Treated rapists 7% Untreated rapists 4.5% Treated child molesters 16% Untreated child molesters 5.6%</td>
</tr>
<tr>
<td>Southey, Braybrook &amp; Spier 1994</td>
<td>273 in two groups</td>
<td>Not specified</td>
<td>Reconviction</td>
<td>5 years and 10 years</td>
<td>Rape within five years 6% Various other sexual offences 4%–13%</td>
</tr>
<tr>
<td>New Zealand</td>
<td>1,556</td>
<td>Not specified</td>
<td>Reconviction</td>
<td>Up to 5 years</td>
<td>3% within 2 years 7% within 5 years 4% within 5 years for serious violations</td>
</tr>
</tbody>
</table>

* A variety of measures was used. Only selected results are reported here.
### Table 1: Recidivism rates across a sample of follow-up studies

<table>
<thead>
<tr>
<th>Study</th>
<th>Sample (n)</th>
<th>Index sex offence</th>
<th>Definition of recidivism</th>
<th>Follow-up period</th>
<th>Recidivism offence type</th>
<th>Sex offences</th>
<th>Violent offences</th>
<th>Sex and/or violent offences</th>
<th>Any offence</th>
</tr>
</thead>
<tbody>
<tr>
<td>Motiuk &amp; Brown 1996 Canada</td>
<td>570</td>
<td>Federally sentenced rapists (n = 118) Paedophiles (n = 114) Incest offenders (n = 46)</td>
<td>Reconviction</td>
<td>Average 3.5 years 52 months for 329 under community supervision 1–3 years for 241 newly released</td>
<td>Overall 5% Under community supervision Rapists 6% Paedophiles 10% Incest 4% New release Rapists 8% Paedophiles 4% Incest 3%</td>
<td>Overall 20% Under community supervision Rapists 21% Paedophiles 18% Incest 9% New release Rapists 25% Paedophiles 11% Incest 11%</td>
<td>Overall 5% Under community supervision Rapists 6% Paedophiles 10% Incest 4% New release Rapists 8% Paedophiles 4% Incest 3%</td>
<td>Overall 20% Under community supervision Rapists 21% Paedophiles 18% Incest 9% New release Rapists 25% Paedophiles 11% Incest 11%</td>
<td>Overall 34%</td>
</tr>
<tr>
<td>Proulx et al. 1998 Canada</td>
<td>172</td>
<td>70 rapists &amp; 102 child molesters taking part in 2-year treatment program (Dropouts &lt;12 months; Completed treatment 12–24 months; Extended treatment &gt;24 months)</td>
<td>Reconviction</td>
<td>1 month to 155 months Mean of 56 months</td>
<td>Child molesters Dropout 21% Completed 6% Extended 21% Rapists</td>
<td>Child molesters Dropout 21% Completed 6% Extended 27% Rapists</td>
<td>Child molesters Dropout 21% Completed 6% Extended 27% Rapists</td>
<td>Child molesters Dropout 33% Completed 6% Extended 32% Rapists</td>
<td>Child molesters Dropout 33% Completed 6% Extended 32% Rapists</td>
</tr>
<tr>
<td>Soothill &amp; colleagues 1998, 1999, 2000 England &amp; Wales</td>
<td>3,596</td>
<td>Cohort of male sex offenders convicted in 1973</td>
<td>Reconviction</td>
<td>32 years 1963 to 1994</td>
<td>Rapists For any sexual offence 17% within 20 years For serious sexual offences 10% within 20 years</td>
<td>Rapists 38% within 20 years</td>
<td>Rapists 38% within 20 years</td>
<td>Rapists 61% within 20 years</td>
<td>Rapists 61% within 20 years</td>
</tr>
<tr>
<td>Marshall 197a England &amp; Wales</td>
<td>Men born in 1953</td>
<td>Not specified</td>
<td>Reconviction</td>
<td>Calculated in relation to estimated sex offender population</td>
<td>10% within five years of first conviction</td>
<td>12% within five years of first conviction</td>
<td>22% within five years of first conviction</td>
<td>22% within five years of first conviction</td>
<td>22% within five years of first conviction</td>
</tr>
</tbody>
</table>
Summary

What recidivism rates can tell us depends on how the definition of this is operationalised. Notably, they cannot tell us about the hidden cases of sexual assault—that is, those who do not come into contact with the justice system—and there is a question about whether rates in fact tell us about re-offending per se. They can, however, map the contact that an offender has with the justice system, providing information about points of contact and, together with other research, the surrounding circumstances in offenders’ lives that may have led to this re-contact (e.g., Maruna, 2001).

References


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There are so few forums in which those working in the sexual assault field can share information with one another. ACSSA provides one of these forums through the document you are reading—ACSSA Aware. We are keen to publish articles written by you within this newsletter on the topic of sexual assault. We are particularly keen on publishing articles that will be of interest to those working in the sector, and to any and all interested in preventing sexual assault.

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Partners in Prevention (PiP) is a Victorian statewide network for workers involved in the delivery of violence against women primary prevention education projects that target young people. The project is convened by the Domestic Violence Resource Centre Victoria (DVRCV) and was established in 2007. It was modelled on the Rainbow Network for workers supporting same-sex attracted and transgender young people. The overarching goal of PiP is to shape an enabling environment for youth-targeted primary prevention of violence against women activities within Victoria. The project provides regular email bulletins, forums, seminars and evaluation support to a growing network of over 200 violence prevention workers in Victoria. ACSSA’s Haley Clark interviewed PiP coordinator, Kiri Bear, about networking, information sharing and evaluation in the violence against women prevention education field. More information about PiP can be found at <www.dvrcv.org.au/pip> as well as on ACSSA’s Promising Practice Profiles database <www.aifs.gov.au/acssa/ppdb/pip.html>.

Why are practitioner networks like PiP important to the development and delivery of violence against women prevention education programs?

I think that PiP has made a really big impact on the sector. I did a small evaluation of the first phase of the project and ran a focus group with the workers about the impact the network has had on them. The most striking comment people made is that they feel like they are part of a sector now; they feel like they’re part of something bigger. One of the very difficult things about doing primary prevention work is that you often don’t get a sense of the impact that you’re making with young people you are working with, and the work you’re doing is a “drop in the ocean”. When we’re surrounded by media images of very unhelpful relationships, our work can feel very futile. Being part of or being aware of a group of others working in the same field can be tremendous psychological support—you’re not the only one doing this work.

There are practical components of being around others and being able to problem-solve together, to form relationships, to form ideas around what other people are doing, and to have the opportunity to feed that into your own work. I know of partnerships developed between workers who have initially met up through the network—including those between policy-makers and project workers, and between sexual assault service providers and community workers. These facilitated strategic plans and the establishment of new programs.


What value do you think standards bring to the delivery of violence prevention education initiatives? What role do networking and information sharing play in improving practice standards?

Having those standards is excellent for several reasons. Firstly, the people who are entering the field have a place to start; a framework for what is the minimum requirement for an effective project that prevents violence against women. Standards for practice add potential for structure for those community sector projects and workers that may not have time, expertise, or access to resources to research effective ways of operating. A lot of the work that’s being done in Victoria is very ad hoc and somewhat piecemeal—it very much depends on the passion and commitment of workers and services. Funding or direct prevention activities are often difficult to seek out and acquire. Research enables frameworks, standards and initiation points for new programs and their workers.

PiP is planning various activities to thoroughly assess the role of networking and information sharing in improving practice standards. The NASASV standards include a component on professional development; however there has been very little professional development that targets preventing violence against women and working with schools to prevent violence against women. Projects sometimes run program-specific trainings, [but] broad-based generalist training on the primary prevention of violence against women has not
previously existed. The Sexual Assault Prevention and Education (SAPE) framework strongly identified that professional development is needed, as well as networking, self-care and supervision for workers who do prevention education. A lot of the workers across the country lack support in their roles, so networking and information sharing increases the possibility of providing professional development. There is also the opportunity for workers to help each other and to respond to those frameworks and standards of practice and to consider the implications for their projects. I’ve also noticed with PiP that a culture around how we do violence prevention is developing out of networking, which is led partly by those standards of practice. This can mean workers in the network have more accountability, as there is more conversation about how to operationalise those standards in practice.

The immediate government actions of the National Plan to Reduce Violence Against Women has included implementing, testing and evaluating violence prevention education programs in schools that promote respectful relationships, with a particular emphasis on evidencing the impact and effectiveness of programs. How can evidence be used effectively to improve primary prevention education? What are some of the challenges that practitioners face in evaluating their practice? Do you see any concerns with focusing on evidencing impacts and effectiveness of programs?

People are more likely to fund violence against women prevention activities in order to invest in our young people’s future. Also, in the community sector more broadly is a developing culture of evaluation, so that all future programs will have an evaluation component. Right now we’re in a culture shift where some people feel quite unsure of evaluation, and how to engage in it. However, what I realise is that evaluation is part of project management from the beginning to the end. Formative evaluation takes place at the start to ensure your project will meet the needs of your target community. Process evaluation is undertaken throughout the project to assess how effective processes are to tailor activities to fit in with, and meet the needs of, your community. Finally, evaluation takes place to determine how effective the intervention has been, which may feed into the creation of new projects that meet needs not met by the original project. It can be used to report back to the funding body, and to add value to the organisation you’re working within. Ultimately it’s about improving the work that we’re doing and effectively prevent violence against women.

In PiP’s Annual Forum in May, an example of the effective use of evidence to improve primary prevention education was given. A teacher spoke quite compellingly about how the information that he was collecting on the CASA House SAPPSS program [that was being run at his school], was presented to the school principal to demonstrate how that program was effective, which meant that the principal then increased his commitment to the program and expanded the program to include a whole school year level. Evidence was quite powerful for that purpose.

I ran a survey with workers at the end of last year as part of PiP’s Evaluation Working Group and the top three challenges were time, money and expertise. The process of evaluation can seem insurmountable. It can be easy for workers to become overwhelmed and feel unsure about whether their evaluation plan is good, rigorous, valid, or whether the measures used will yield the necessary information. Mostly I think that community workers don’t necessarily have the time to do high-level academic research that can be published in international journals. I don’t necessarily think we would profit by making them do evaluation at that level, but there is some confusion regarding what constitutes enough evaluation, and what is appropriate. We’re still finding our way in terms of answers to that question.

I have a number of concerns with focusing on evidence. I actually did a presentation here with workers about what an evidence base is. From my very limited research, it would seem that evidence comes from the medical field, and it has very specific connotations in terms of trying to get medical practitioners to provide uniform diagnoses that are in line with internationally published research. In theory that might sound like a good idea, but in practice you need to be able to respond to individuals in terms of their community context, which is going to be different for everyone. The idea of creating universal solutions to the issues of violence against women is very problematic therefore. When we’re talking about primary prevention of violence against women, we really mean generating social change, which needs to be owned by particular communities. They need to be empowered to make changes for themselves, which may not always be in line with “evidence-based practice”.

In relation to focusing on illustrating the impacts and effectiveness of programs, the clear message from workers in the field is that they’re not paid or
funded to do evaluation; however, there is enormous pressure on them to evaluate their practice. Without resources, this is very difficult to achieve. It seems harsh that projects that get the most attention are the ones that have undertaken self-evaluation. Again, just as preventing violence against women itself is dependent upon the commitment of individual workers and their leadership, so is evaluation. However, not everyone has the necessary level of experience or funding to achieve this.

At the PiP Annual Forum, you announced that the PiP project is directing its attention towards program evaluation. Could you tell me about this new direction?

Evaluation is an issue for workers. At the end of last year, I convened an Evaluation Working Group, which consisted of project workers from the sector and some academics. I recognised this issue early on, as did others in the network. Every time there is a topic addressed, or a guest speaker, they almost always speak about needing more evaluation of projects to get a clearer idea about what is effective in terms of preventing violence against women. Workers are concerned about this too, as they want to know the work they’re doing is the best that it can be. They also pragmatically recognise that it’s going to be increasingly a requirement of funding bodies that they include evaluation as part of their projects. Also, I identified earlier concerns regarding how much is enough, how much is too much, and measuring the expectations of projects in terms of evaluation.

I therefore convened the Evaluation Working Group to consider those issues and to consider how we can support workers in the network to evaluate their projects. So the first step has been having the Evaluation Seminar at the Annual Forum. We also plan to have another evaluation seminar with Sue Dyson from the Australian Research Centre in Sex, Health and Society in the future, and develop resources for workers, or “measurement tools” that workers can use in schools. These tools will be focused at schools or young people to measure the culture of the school, and whether it’s violence-supportive or a more healthy and respectful environment. We hope these can be used to measure change in school culture after certain interventions. We have also developed the mentor program.

Could you tell me about PiP’s Evaluation Mentoring Program?

Some members of the working group identified the need for a service or network they could contact regarding issues about evaluation. As such, the Evaluation Mentoring Program was created. This program offers mentoring about issues such as whether a survey is going to measure what it is intended to, or where someone might resource more information about evaluation of community engagement or whole-of-school cultures. It is so we can access an expert someone who has more evaluation experience to gain feedback. At the moment, there are approximately five people who have agreed to become evaluation mentors.

Evaluation mentors take part on a voluntary basis, and as such they do not receive pay. The mentors have an interest in the area, and so they are keen to share their expertise. A help-desk model is an appropriate, is a befitting description. Generally, there is phone or email contact, and the opportunity to ask questions, rather than being like a consultancy. In a way, it’s more about having an extra resource to converse with.

Finally, what other plans are in store for PiP until the end of the year?

I’m in the process of constructing a blog to trial. Initially, I aimed to have an email discussion list; however, technology was an issue, so now I’m working from conversations that I know will be of great use for the blog. There will be a post approximately every two weeks regarding a current issue and workers can make comments regarding that. We’re also in the process of redeveloping the DVRCV’s primary prevention/early intervention website targeting young women—When Love Hurts. The content has been overhauled and feedback integrated. The website has received thousands of stories—particularly from young women writing in and providing their stories about violence in relationships. We are hoping that our redevelopment will incorporate more of that material and really use young women’s voices to talk about what’s healthy in a relationship, what are the warning signs and how you might survive an experience of violence. That is due to be released around December. They are the main plans, as well as our usual network meetings and bulletins.

Haley Clark is a Senior Research Officer at the Australian Centre for the Study of Sexual Assault.
It is estimated that only 15–20% of women who have been sexually assaulted report to police, and therefore the real incidence of sexual assault in males and females is unknown. Once reported, victims of acute cases of sexual assault (within 72 hours of the allegation) may undergo a forensic medical examination to document injuries, collect forensic specimens and provide an opinion to be used by the criminal justice system. Dealing with a sexual assault case is easier and more efficient when the treating doctor has a good understanding of the issues involved in adult sexual assault and how to obtain crisis care for the victim. Early management of a victim of sexual assault, regardless of whether they want to report to police, is important for minimising associated risks, documenting injuries and obtaining forensic specimens. This article outlines the process of a forensic medical examination, as well as providing a management flow chart for medical practitioners who are caring for a victim of sexual assault who does not wish to report to police.

An estimated 13% of women and 3% of men worldwide report sexual assault in their lifetime. This article outlines the management of adult sexual assault and notes that although managing sexual assault may appear daunting, some victims want medical care only. The authors state that after disclosure, forensic assessment should be discussed. If a complaint to the police is possible, give the first dose of emergency contraception if required, and refer for forensic assessment. If medical care only is desired, determine the timing and type of assault and current contraception, manage general and genital injuries and perform relevant tests. After unprotected vaginal rape, offer emergency contraception, chlamydia prophylaxis and vaccination against hepatitis B virus. Counselling is important for all victims of sexual assault, as psychosocial consequences are more common than physical injuries. Management by a sympathetic, non-judgemental health practitioner helps the victim to regain control.

Sexual assault is a common, widespread and insidious problem that has serious physical, psychological, emotional and social consequences. In most regions, rape myths, which are a product of patriarchal attitudes, have shaped the ways in which women have been treated by health services, police and the judiciary. As a result, victims have frequently chosen not to report their assaults or have been filtered out of criminal justice systems, resulting in low charge-laying/filing and conviction rates. In many instances, the collection of medico-legal evidence, often demanded in the law or policy for corroborative purposes, has been inconsistent, severely limited in quality and scope, or not undertaken. This review was commissioned by the World Health Organization for the Sexual Violence Research Initiative to provide a global overview of the uses and impacts of medico-legal evidence in cases of sexual assault of adolescents and adults. It examines the existing peer-reviewed scholarly and grey literature from industrialised and developing regions. These documents were drawn primarily from a number of English-language sources, derived from searches of electronic databases, the Internet, and websites of international, intergovernmental organisations, governments, non-governmental organisations, civil society organisations and research centres, as well as from consultations with knowledgeable academics, policy-makers and practitioners to obtain information on potentially relevant published and unpublished materials. The review outlines the historical and contemporary medico-legal responses to sexual assault victims, broadly describing the professionals, protocols and procedures involved in the collection and processing of medico-legal evidence. Findings are presented from studies that have evaluated the legal impact of such evidence in sexual assault cases, and factors that may create barriers to its successful use in criminal justice proceedings are discussed. The review concludes with a summary, identifies salient knowledge gaps and offers research recommendations for addressing them.

The forensic use of medical examinations of sexual assault victims is discussed, with a focus on two important questions: why there are frequently no (or only minor) injuries resulting from the alleged assault; and why children who have accurately described penetration frequently have no medical injuries that are consistent with penetration. The article discusses the physical aspects of sexual assault—anatomy, functions, injuries and healing processes—in relation to adults and children and in cases of anal sexual assault. The discussion is aimed at helping courts assess the weight to be given to the medical findings in any particular sexual assault matter.


This article is an exploration of the visualisation of sexual assault in the context of adult women. In investigating the production of visual evidence, we outline the evolution of the specialised knowledge of medico-legal experts and describe the optical technologies involved in medical forensic examinations. We theorise that the principles and practices characterising medicine, science and the law are mirrored in the medico-legal response to sexual assault. More specifically, we suggest that the demand for visual proof underpins the positivist approach taken in the pursuit of legal truth and that the generation of such evidence is based on producing discrete and decontextualised empirical facts through what are perceived to be objective technologies. Drawing on interview and focus group data with 14 sexual assault nurse examiners (SANEs) in Ontario, Canada, the authors examine perceptions and experiences of the role of the visual in sexual assault. Certain of their comments appear to lend support to our theoretical assumptions, indicating a sense of the institutional overemphasis placed on physical damage to sexually assaulted women’s bodies and the drive towards the increased technologisation of visual evidence documentation. They also noted that physical injuries are frequently absent and that those observed through more refined tools of microvisualisation, such as colposcopes may be explained away as having resulted from either vigorous consensual sex or a “trivial” sexual assault. Concerns were expressed regarding the possibly problematic ways in which either the lack or particular nature of visual evidence may play out in the legal context. The process of documenting external and internal injuries created for some an uncomfortable sense of fragmenting and objectifying the bodies of those women they must simultaneously care for. The authors point to the need for further research to enhance understanding of this issue.


Forensic examination following rape has two primary purposes: to provide health care and to collect evidence. Physical injuries need treatment so that they heal without adverse consequences. The pattern of injuries also has a forensic significance in that injuries are linked to the outcome of legal proceedings. This literature review investigates the variables related to genital injury prevalence and location that are reported in a series of retrospective reviews of medical records. The author builds the case that the prevalence and location of genital injury provide only a partial description of the nature of genital trauma associated with sexual assault and suggests a multidimensional definition of genital injury pattern. Several of the cited studies indicate that new avenues of investigation, such as refined measurement strategies for injury severity and skin colour, may lead to advancements in health care, and the forensic and criminal justice systems.


The Debbie Smith or “Justice for All” Act was passed in the US in November 2004. The act addresses the problem of collecting and analysing DNA evidence from backlogged rape kits sitting in crime laboratories around the country. Presently, no empirical data exist by which to assess the soundness of the legislation. However, the act clearly affects discrete operations within the forensic and criminal justice systems. This article explores the relative merits of the Debbie Smith law, highlighting changes in sexual assault nurse examiner programs, law enforcement, court
administration, correctional treatment, and juvenile justice practices. Concerns linked to the likely impact of the “Justice for All” Act raise significant questions about its overall programmatic utility and treatment efficacy.


This review article examines rape victims’ experiences seeking post-assault assistance from the legal, medical and mental health systems and how those interactions affect their psychological wellbeing. This literature suggests that although some rape victims have positive, helpful experiences with social system personnel, for many victims, post-assault help-seeking becomes a “second rape”—a secondary victimisation to the initial trauma. Most reported rapes are not prosecuted, victims treated in hospital emergency departments do not receive comprehensive medical care, and many victims do not have access to quality mental health services. In response to growing concerns about the community response to rape, new interventions and programs have emerged that seek to improve services and prevent secondary victimisation. The contributions of rape crisis centres, restorative justice programs, and sexual assault nurse examiner programs are examined. Strategies for creating more visible and effective roles for psychologists and allied professionals are also discussed.


Relatively little is known about the characteristics of sexual assault survivors who present to the emergency room. Examination of differences in survivor, assault and exam characteristics by type of offender (intimate partner, acquaintance, acquaintance-just-met, and stranger) was conducted in this study. The authors used intake data collected from 331 women who presented to an emergency room and were examined by a sexual assault nurse examiner between 2001 and 2004. First, the data suggest there is a difference in injury patterns depending on the survivor–offender relationship. Second, there was a high rate of women assaulted by a known offender presenting to the emergency room. Third, there are important differences in survivor substance use among women assaulted by different offenders. Implications for research and practice are discussed.

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**ACSSA Promising Practise Database**

Many readers would be familiar with the ACSSA Promising Practice Database, the online database of Australian sexual assault projects and services. This has been a popular resource, recording nearly 50,000 hits during 2006–07, and we hope this will continue to be a useful source of information.

ACSSA is continuing to build its Promising Practice Database, to document and publicise promising practice and activities being undertaken in relation to sexual assault.

If you or your organisation has developed and/or has been involved in conducting a sexual assault related program or initiative, we would like to invite you to share your program with us. ACSSA welcomes practices from service providers, policy and program developers, educators and trainers, researchers and others working to address sexual violence.

For information about the Promising Practice Database, including how to submit a proposal for consideration, please visit <www.aifs.gov.au/acssa/ppdb/promisingpractice.html> or email <acssa@aifs.gov.au> to register your interest in submitting a profile.
Resources
ACSSA is building a collection of publications and best practice literature, reports, and training resources to inform initiatives and programs directed at improving the understanding of, and response to, sexual assault. These materials are available for browsing at the Australian Institute of Family Studies Information Centre, or may be borrowed through the interlibrary loan system. Bibliographic information on these resources may be searched online via the Institute’s catalogue.

Research and advisory service
ACSSA’s research staff can provide specialist advice and information on current issues that impact on the response to sexual assault. Email research queries to <acssa@aifs.gov.au>

Policy advice
ACSSA offers policy advice to the Australian Government and other government agencies on matters relating to sexual assault, intervention and pathways to prevention.

Publications
ACSSA produces Issues papers, the ACSSA Wrap (short resource papers) and newsletters, which are mailed free of charge to members of the mailing list. Publications can also be received electronically.

Promising Practice database
ACSSA is continuing to build its Promising Practice database, to document and publicise best practice projects and activities being undertaken in relation to sexual assault.

Research
ACSSA staff undertake primary and secondary research projects, commissioned by government and non-government agencies.

Email alert list
ACSSA-Alert keeps members posted on what’s new at the Australian Centre for the Study of Sexual Assault and in the sexual assault field generally.

Have you joined ACSSA-Alert?
News alert email service

Would you like to receive monthly news and updates on what is happening in the field of sexual assault in Australia and around the world?

ACSSA-Alert is an email list for news and updates to subscribers, and is compiled by the Australian Centre for the Study of Sexual Assault. You will receive an e-newsletter with announcements about news in the field, updates on the ACSSA website, the release of publications and reports, new services and other information.

You can join ACSSA-Alert through our web page on: <www.aifs.gov.au/acssa/emaillist.html>