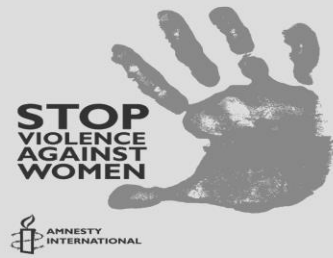


Making Rights a Reality:

The Duty of States to Address Violence Against Women



1. Introduction

What this report addresses

“Violence is a learned behaviour: part of the duty of the state to apply due diligence to prevent such crimes is to work with civil society in changing this behaviour and eradicating such violence.”¹

This report is a guide to states’ obligation to make rights a reality – to implement their obligations under treaties and customary international law to respect, protect and fulfil human rights in law and practice.

It is also a guide to international law as it relates to violence against women. It is not only an analysis of the various definitions of women’s right not to suffer violence, and the definitions of criminal acts which involve violence against women – although this is an important part.

This report and its companion report on violence against women in armed conflict (*Making Rights a Reality: Violence against women in armed conflict*, AI Index: ACT 77/050/2004) give an analysis of states’ legal duty to take action to address violence against women. States have this duty, no matter what the context – war or peace, the home, the street or the workplace, no matter the identity of the perpetrator – parent, husband, partner, colleague, stranger, police officer, combatant or soldier, and regardless of the identity of the victim.

This report therefore aims to be a tool for women who have suffered violence, and any person working with them or advocating on their behalf. It is intended to help them to appreciate how respect for women’s rights as they are defined in international law can assist in their work, and to provide legal guidelines to support and include in the materials they produce.

The international legal framework is particularly important when addressing governments and public servants who are failing to implement women’s rights or abusing women’s rights. For example, references to international law can be helpful for women survivors pressing for improved medical, housing and social services to help them achieve recovery; lawyers working as advocates for women survivors in criminal prosecutions or civil proceedings; journalists reporting on issues relating to violence against women; and advocates of women’s rights pressing to achieve change in laws and policies. States are obliged to abide by international law, and the inclusion of references to law in communications and lobbying materials can be useful in making officials take demands for change more seriously.

Human rights standards are the bare minimum of what every human being should expect to enjoy in their daily lives. They provide an internationally recognized and legally enforceable benchmark. This report cannot prescribe what survivors and advocates should ask for to assist women and girls in their communities – rights will be translated into specific goals and practices according to local conditions and needs. However, human rights standards give legal support to advocates, whose demands depend on their context and their concerns.

An activists’ toolkit

This report is part of a set of materials from Amnesty International – an activists’ toolkit – to assist women’s rights advocates in promoting their message to a variety of audiences.

The first is a general human rights education pack on the basic concepts of gender and women’s rights, *Making Rights a Reality: Gender awareness workshops* (AI Index: ACT 77/035/2004)

The second – this report – is a guide to human rights law and standards relating to women’s rights not to suffer violence. It covers domestic violence, violence in the community, criminal law addressing violence against women, and appropriate remedies for victims and survivors of violence against women.

The third – a companion report to this – is a guide to international standards relating to violence against women in armed conflict: *Making Rights a Reality: Violence against women in armed conflict* (AI Index: ACT 77/050/2004).

The fourth is a guide to advocacy. It provides information on practical methods of securing change such as lobbying, campaigning and legal advocacy in criminal and civil courts. It contains ideas on how to address civil society organizations, state authorities and intergovernmental bodies. *Making rights a reality: Campaigning to stop violence against women* (AI Index: ACT 77/052/2004).

The final part of the toolkit, to be produced later, will be a series of three human rights education packs on women’s rights in international law, building on the earlier elements of the toolkit: *Making rights a reality: Training workshop for youth* (AI Index: ACT 77/053/2004); *Making rights a reality: Training workshop for journalists* (AI Index: ACT 77/054/2004); and *Making rights a reality: Training workshop for teachers* (AI Index: ACT 77/052/2004).

How to use this report

“Despite important gains in the formulation of human rights norms and standards to address violence against women, there remains a significant gap in their application. Bridging the gap requires that standards be grounded at the local level. Communities must be engaged in the effort to translate international mandates into laws, plans and actions so that these mechanisms have meaning in daily life. This process is best served when the foundation of a clear legal framework and commitment to the rule of law exists, either through constitutional provisions or through review of existing civil, criminal or administrative laws and procedures.” *UNIFEM, Not a minute more: Ending violence against women*²

The law alone is not enough to make rights a reality. There is a wide gap between standards on women’s rights and the reality on the ground. Ensuring that the law is respected and implemented requires the hard work and advocacy of those who are committed to ensuring that violence is not inflicted on women and to promoting a holistic approach to the problem of violence against women and to solutions. Such men and women are engaged in promoting human rights and women’s right to

equality, working with their governments and communities.

The law is a tool – states are obliged to respect the law. Advocates for women’s equality can use this tool to remind states that fulfilling women’s demands for a life free from violence is not negotiable or discretionary: the state is required to ensure women’s right to freedom from violence.

Advocates for women’s human rights are essential to make rights a reality. This is demonstrated in a study which analysed the effect of the UN Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) in several different countries.³

“Implementation is hampered by continuing inattention to human rights at the national level. Human rights principles, particularly the Convention, are frequently not incorporated into domestic law... There is also a lack of knowledge of human rights and legal rights, and limited human rights or legal literacy education... [Those human rights advocates] whose work is reflected in this study are bringing about change. Their experience and needs for the basis of the link between the local to the global and the global to the local. In so doing, women are transforming the CEDAW into a truly living instrument through being active in this work.”⁴

“Translating CEDAW principles into practice is a tall order, and... efforts to do so very often run into resistance from governments and the broader community. Nevertheless, the underlying argument [is] that non-governmental organization advocacy and monitoring of national governments can stimulate a relationship with government officials and help them to recognize that integrating government objectives with CEDAW principles produces beneficial socio-economic principles.”⁵

Radhika Coomaraswamy, the first Special Rapporteur on violence against women, its causes and consequences, has pointed out that the legal framework to end violence against women is now in place. The problem is that those with power to secure such a transformation in women’s lives are not taking action. They must be challenged, pressed and inspired to fulfil their obligations in practice.

This set of reports from Amnesty International is a guide to activists and those with influence over public services and policies. These include women survivors of violence, human rights organizations, providers of services to women victims of violence, lawyers, medical professionals, school teachers, academics, social workers, statisticians, police officers, army officers, judges and many more. The toolkit aims to guide them on women’s rights under international law, so that they can challenge

states to make rights a reality for women, and can make rights a reality for women in their own professional lives.

This can be done through a variety of techniques, which will be described in the advocacy report of this toolkit. These techniques include:

- lobbying parliamentarians to change the law;
- lobbying ministries and local authorities to improve services, particularly emergency and long-term housing, medical care, and social support, to help women to escape violent situations, to secure justice, and to recover following abuse;
- bringing challenges to court on the authorities' failure to secure rights for women in practice;
- harnessing the media to promote progressive messages about violence against women;
- advocating and discussing the causes, costs and solutions to violence against women in local communities, addressing both men and women.

Under international human rights law, states – national governments – bear the primary responsibility for making rights a reality. The key aim of this report and its companion report on armed conflict is to help advocates to use international law to press governments to implement their obligations in good faith and in full. As a start, they should implement the specific actions and programs that human rights law mandates to make women's rights a reality.

Different but overlapping areas of law

“The human rights perspective... sheds light on the continuum of violence that women face: the heinous violence inflicted on women in conflict areas – mass rape, abduction and sexual slavery are the norm in many war zones – can be seen as a brutal extension of the violence women face in everyday life. Abusive husbands and partners, sexual harassers, traffickers, rapists and armed combatants who abuse women all use violence, particularly sexual violence, to assert their power and to shame and subordinate women. Through this assertion of power, men instil fear in women, control their behaviour, appropriate their labour, exploit their sexuality and deny them access to the public world.

“This comprehensive understanding of violence against women has led to the assertion that women's rights are human rights, and that women therefore have a right to a life free from all forms of violence. The language of human rights has added a new ethical thrust to women's efforts to advance their demands for equality and to combat discrimination.”

UNIFEM, *Not a minute more: Ending violence against women*⁶

Over the past 10 years, international law in various areas has addressed itself to the worldwide phenomenon of violence against women. This leads to some complexity. For example, different legal principles are applied to similar acts (for example, rape) in different contexts (war and peace time). What can be seen in the various areas, however, is that shared principles are being developed and that the development of law is mutually reinforcing.

Law – whether international or national – has various strands and disciplines. Rules are described differently, and have different consequences for different people in different circumstances, according to their respective responsibilities. Individuals and states may assume legal responsibilities through taking up particular roles or making particular agreements, for example by agreeing to be bound by treaties.

Areas of law covered in this report and its companion report

International law

International law governs relationships between states. It also governs the responsibilities of states for their acts or omissions. It is regulated by treaty law in various areas – for example, the law of the sea, diplomatic law, environmental law and human rights law.

States are also governed by general international law. General international law includes “international custom, as evidence of a general practice accepted as law” and “the general principles of law recognized by civilized nations”, with “judicial decisions and the teaching of the most highly qualified publicists [legal experts] of the various nations” as additional sources of clarification.⁷ The rules of general international law apply to all states, whether or not they are parties to a treaty expressly containing the rule.

Customary international law (also known as “customary law” or “custom”) – the principle source of general international law – comprises international rules derived from state practice and regarded as law (*opinio juris*). States create this body of law themselves through their actions and their reactions to the actions of other states. When they describe such actions as lawful or unlawful, they are developing customary international law. Even though in practice states may break these rules – such as the prohibition of torture – the fact that they say such behaviour is illegal is the source of legal principle. The Statute of the International Court of Justice describes custom as “a general practice accepted as law.”⁸

Certain rules of general international law are of such importance that they are accepted as “peremptory norms” from which states may not derogate – they may not withdraw from or limit their obligation to respect them under any circumstances. A peremptory norm of general international law, also known as a norm of *jus cogens*, is defined in the Vienna Convention on the Law of Treaties as “a norm accepted and recognized by the international community of states as a whole as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character.”⁹

International human rights law

International human rights law is a subset of international law. It addresses the rights and dignity of all human beings – women, men and children – at all times and without discrimination. It provides that states must respect and protect human rights and ensure that those within their jurisdiction enjoy their human rights in practice. Traditionally it has been seen as applying solely to the relationship of the state with individuals. However, more recently it has been recognized that the state also has a responsibility to intervene when private individuals act in ways that affect the rights of others.

The sources of human rights law are treaties, such as the UN Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), authoritative interpretations of treaty law and general international law.

International humanitarian law

International humanitarian law (also known as the laws of war) applies in situations of armed conflict - both international wars, between states, and internal armed conflicts between governments and armed groups. International humanitarian law lays down standards of conduct for combatants (those taking an active part in hostilities) and the leaders of combatants. Broadly it seeks to put limits on the means and methods of warfare (for example, there are rules against the use of indiscriminate weapons, perfidy, abusing signs of truce, or using disproportionate methods of achieving military objectives) and to protect those not taking an active part in hostilities from harm – for example, the sick and wounded, the shipwrecked, prisoners of war and civilians.

International humanitarian law prohibits particular acts, specifying that particular breaches of the rules are war crimes.¹⁰ All states have an obligation to seek out and bring perpetrators to justice. Therefore there is a strong link with international criminal law, another area of law covered in this report. The obligations of states to address violence against women under international humanitarian

law, which applies only in situations of armed conflict, are covered in the companion report, *Making Rights a Reality: Violence against women in armed conflict* (AI Index: ACT 77/050/2004). However, general principles drawn from international humanitarian law are very influential in international criminal law.

International criminal law

International criminal law relates to crimes under international law, which may be drawn from treaty (for example, the definition of torture under the Convention against Torture), custom, (for example, the definition of crimes against humanity until they were codified in the Rome Statute of the International Criminal Court) or international humanitarian law (war crimes, particularly grave breaches of the Geneva Conventions and violations of the laws and customs of war).

International criminal law has become particularly pertinent to violence against women over the last 10 years, through the establishment and work of the *ad hoc* international criminal tribunals for Rwanda and former Yugoslavia, and the adoption of the Rome Statute for the International Criminal Court. The development of definitions of crimes, the jurisprudence of the two *ad hoc* international criminal tribunals for Rwanda and former Yugoslavia, and the drafting and adoption of the Rome Statute of the International Criminal Court have defined violence against women more thoroughly than ever before, and in a manner which is more gender-sensitive and reflects to a greater extent the victim’s experience of violence. The methods of investigation and court procedures of these international tribunals are increasingly sensitive to the needs and safety of witnesses and victims, particularly of survivors of sexual violence. They provide an important model of good practice for domestic criminal law systems.

Amnesty International believes that the definitions of crimes and rules of procedure of the International Criminal Court are a model for the reform of criminal law relating to violence against women in all domestic criminal jurisdictions.

Trafficking

Trafficking is a fast-developing area of law which lies beyond the scope of this report.¹¹

According to Article 3, paragraph (a) of the [Protocol to Prevent, Suppress and Punish Trafficking in Persons](#), especially Women and Children, (the Palermo Protocol) which supplements the UN Convention against Transnational Organized Crime,

“Trafficking in persons” shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs;”

Due to its covert nature and the risks involved, including the involvement of criminal gangs, women who are trafficked are extremely vulnerable to violence.

The Principles and Guidelines on Human Rights and Trafficking of the UN High Commissioner For Human Rights,¹² and general international law relating to refugees and migrant workers, provide further protection to trafficked persons and vulnerable migrants.

Although trafficked women and girls are often subject to domestic immigration law penalties, Amnesty International holds that they should be treated as victims of human rights abuse. Often their rights have been violated by state actors, such as border guards demanding sexual services to let them pass. Given draconian refugee controls, trafficking may be the only way they can escape persecution in their own countries. Criminal sanctions should focus on traffickers, whereas the victims of trafficking should be treated as any other victim of gender-based violence.

2. State responsibility to make rights a reality

States’ responsibility to implement human rights, and to ensure that human rights are respected, is based on distinct but related theories of international law: states’ legal responsibility for wrongful acts; human rights treaty law; human rights customary law; international criminal law; and international humanitarian law (the laws of war). The general principles apply to state responsibility to implement all human rights, but this report focuses particularly on the right of women and girls not to suffer violence.

Firstly, states bear legal responsibility for their acts and omissions under international law. This general principle is borne out in many different contexts – in the law of the sea, diplomatic immunities and privileges, environmental law – and can also apply to states’ acts or omissions relating to “non-state actors” (private individuals and

groups). States are responsible if they fail to fulfil their obligations both under treaties – including human rights treaties – and under customary international law. Each of these different bodies of law underscores the international legal responsibilities of states with regard to the actions of non-state actors.

Secondly, states bear legal responsibility for respecting and implementing international human rights law within their territories, and in territories where they have effective control and jurisdiction.¹³

States are obliged not only to respect rights by refraining from violating human rights themselves through their state agents and apparatus, but also to protect rights from being abused by others and to promote enjoyment of human rights in a wider sense.

The UN Human Rights Committee, in its recently adopted General Comment 31 on Article 2 of the International Covenant on Civil and Political Rights, sets out the nature of the general legal obligation imposed on states parties to the Covenant:

“The Covenant cannot be viewed as a substitute for domestic criminal or civil law. *However the positive obligations on States Parties to ensure Covenant rights will only be fully discharged if individuals are protected by the State, not just against violations of Covenant rights by its agents, but also against acts committed by private persons or entities that would impair the enjoyment of Covenant rights in so far as they are amenable to application between private persons or entities. There may be circumstances in which a failure to ensure Covenant rights as required by article 2 would give rise to violations by States Parties of those rights, as a result of States Parties' permitting or failing to take appropriate measures or to exercise due diligence to prevent, punish, investigate or redress the harm caused by such acts by private persons or entities.*”¹⁴

The Committee on the Rights of the Child said in its general comment on implementation of the Convention on the Rights of the Child:

“*While it is the state which takes on obligations under the Convention, its task of implementation – of making reality of the human rights of children – needs to engage all sectors of society and of course children themselves. Ensuring that all domestic legislation is fully compatible with the Convention and the Convention principles and provisions and can be directly applied and appropriately enforced is fundamental. In addition, the Committee on the Rights of the Child has identified a wide range of measures that are needed for effective implementation, including the development of special structures and monitoring, training and other activities in government,*

parliament and the judiciary at all levels."¹⁵

The Committee on Economic, Social and Cultural Rights has used the implementation of the right to the highest attainable standard of health as an example to articulate states' obligations:

*"Human rights imposes three types or levels of obligations on States parties: the obligations to **respect, protect and fulfil**. In turn, the obligation to fulfil contains obligations to facilitate, provide and promote. The obligation to respect requires States to refrain from interfering directly or indirectly with the right to health. The obligation to protect requires states to take measures that prevent third parties from interfering with article 12 guarantees. Finally the obligation to fulfil requires States to adopt appropriate legislative, administrative, budgetary, judicial, promotional and other measures towards the full realization of the right..."*¹⁶

Thirdly, all states are required to pay particular attention to the issue of violence against women, and to take active steps to eradicate it, through prevention, investigation and punishment. This has been spelt out by international political bodies such as UN General Assembly in its Declaration on the Elimination of All Forms of Discrimination against Women¹⁷ and its Resolution 52/86 on Crime prevention and criminal justice measures to eliminate violence against women¹⁸; the Commission on Human Rights in its resolutions, particularly on violence against women; and the UN Security Council in its Resolution 1325 on the rights of women and children in armed conflict.¹⁹ This requirement has been reiterated by human rights treaty bodies such as the Committee on the Elimination of All Forms of Discrimination against Women, in its General Recommendation 19,²⁰ and the Human Rights Committee in its General Comment 28.²¹

This requirement has also been underlined by independent human rights experts such as the Special Rapporteur on violence against women, its causes and consequences. In her 2003 report to the UN Commission on Human Rights, the first Special Rapporteur on violence against women Radhika Coomaraswamy wrote:

"States must promote and protect the human rights of women and exercise due diligence:

(a) To prevent, investigate and punish acts of all forms of VAW whether in the home, the workplace, the community or society, in custody or in situations of armed conflict;

(b) To take all measures to empower women and strengthen their economic independence and to protect and promote the full enjoyment of all rights and fundamental freedoms;

(c) To condemn VAW and not invoke custom, tradition or practices in the name of religion or culture to avoid their obligations to eliminate such violence;

(d) To intensify efforts to develop and/or utilize legislative, educational, social and other measures aimed at the prevention of violence, including the dissemination of information, legal literacy campaigns and the training of legal, judicial and health personnel;

(e) To enact and, where necessary, reinforce or amend domestic legislation in accordance with international standards, including measures to enhance the protection of victims, and develop and strengthen support services;

*(f) To support initiatives undertaken by women's organizations and non-governmental organizations on VAW and establish and/or strengthen, at the national level, collaborative relationships with relevant NGOs and with public and private sector institutions."*²²

Over the last decade, there has been an increasing emphasis on states' obligation to intervene when non-state actors – individuals in their everyday lives and groups within the community – abuse human rights.

The term "non-state actor" encompasses people and organizations acting outside the state, its organs and its agents. It is not limited to individuals since some perpetrators of human rights abuses are corporations or other structures of business and finance. Abuses by non-state actors that infringe an individual's human rights can range from the actions of a violent husband, for example; or cruel, inhuman and degrading punishments inflicted by a group that exerts informal authority within the community such as a parallel legal authority; or killings by a group acting unlawfully, such as a criminal gang or an extremist religious group. The term non-state actors may also encompass armed political groups.²³

Under international law, the state has clear responsibilities for human rights abuses committed by non-state actors. Internationally, the state is accountable in a number of specific ways. It can be deemed responsible because of a specific kind of *connection* with the non-state actors; or it can be responsible for its *failures to take reasonable steps* to prevent or respond to an abuse.

General Recommendation 19 of the Committee on the Elimination of All Forms of Discrimination against Women (paragraph 9) states:

"Under general international law and specific human rights covenants, States may also be responsible for private acts if they fail to act with due diligence to prevent violations of rights or to investigate and punish acts of violence, and for providing compensation."

The Declaration on the Elimination of Violence against Women (paragraph 4c) calls on states to:

“[e]xercise due diligence to prevent, investigate and, in accordance with national legislation, punish acts of violence against women, whether those acts are perpetrated by the State or by private persons”.²⁴

International bodies such as the UN have reiterated that violence against women constitutes a violation of human rights and have pointed out the links between violence against women and basic human rights such as non-discrimination and torture. The commentaries of regional and international treaty bodies and independent human rights experts, the case law of regional human rights courts, the *ad hoc* International Tribunals for Yugoslavia and Rwanda, the definitions in the Rome Statute for the International Criminal Court and developments in domestic legislation around the world have made clear that violence against women (particularly rape and other serious sexual assault) is a violation of international law.

International wrongful acts

The legal responsibilities of states under international law are real and binding, even though in practice, their enforcement seems very different from the ways laws are enforced against individuals – police action, criminal courts and prison sentences or fines. States’ legal obligations are enforced in a variety of ways. They may be enforced through international courts and tribunals where states are found responsible for breaches of human rights law, for example, at the International Court of Justice. They may also be enforced through inter-state complaints under human rights treaties.²⁵

More frequently differences over states’ legal obligations are resolved through diplomatic pressure and negotiation. Exceptionally they are resolved through armed intervention. States work hard to avoid being condemned as law-breakers and to maintain their legitimacy among other states.

States’ legal responsibilities are expressed in a number of ways. They are articulated through treaties which they have committed themselves to respecting, and through customary international law, which develops through a state’s own actions, and the determination that these actions can be considered lawful, with the agreement of others in diplomatic arenas.

The International Law Commission²⁶ has outlined the principles of state responsibility in Draft articles on Responsibility of States for internationally wrongful acts. These define what is an unlawful act under international law, and the consequences of unlawful acts.

Unlawful acts can be acts of state agents, or omissions – failures to act appropriately, for instance when states could have acted to protect or ensure human rights.

“Article 2: Elements of an internationally wrongful act of a State. There is an internationally wrongful act of a State when conduct consisting of an act or omission:

- a) *is attributable to the State under international law; and*
- b) *constitutes a breach of an international obligation of the State.”*²⁷

In its explanatory note for this general principle, the International Law Commission says:

“Conduct attributable to a State can consist of actions or omissions. Cases in which the international responsibility of State has been invoked on the basis of an omission are at least as numerous as those based on positive acts, and no difference in principle exists between the two.”

It gives two examples of omissions which implicated state responsibility from international law cases.²⁸

In the *Corfu Channel* case, the International Court of Justice held that it was a sufficient basis for Albanian responsibility that *it knew, or must have known*, of the presence of the mines in its territorial waters and did nothing to warn third States of their presence.²⁹

In the *Diplomatic and Consular Staff* case, the Court concluded that the responsibility of Iran was entailed by the “inaction” of its authorities which “*failed to take appropriate steps*” in such circumstances where such steps were evidently called for.³⁰

The International Law Commission also refers to a very important case in international human rights law – *Velásquez Rodríguez* – in which the Inter-American Court of Human Rights confirmed that “under international law a State is responsible for the acts of its agents undertaken in their official capacity and for their omissions...”³¹

In this case, “death squads” of armed men, not apparently connected to the Honduran state’s armed forces, were killing and abducting political activists and making them “disappear”. The Inter-American Court acknowledged that the state was not involved directly, but held that it was still responsible under international law as it had failed to stop these private citizens from abusing the rights of other private citizens. This principle is the basis of the legal concept of due diligence.

The Court judgment states:

“...in principle, any violation of rights recognized by the Convention carried out by an act of public authority or by persons who use their position of authority is imputable

to the State. However, this does not define all the circumstances in which a State is obligated to prevent, investigate and punish human rights violations, nor all the cases in which the State might be found responsible for an infringement of those rights. An illegal act which violates human rights and which is initially not directly imputable to a State (for example, because it is the act of a private person or because the person responsible has not been identified) can lead to international responsibility of the State, not because of the act itself, but because of the lack of due diligence to prevent the violation or to respond to it as required by the Convention."³²

The legal concept of due diligence has led to the development of the theory of state responsibility to make rights a reality in cases where the perpetrator as well as the victim is not an agent of the state, including domestic violence. The general principle of state responsibility requires that when states know or ought to know about violations of human rights, and fail to take appropriate steps to prevent the violations, then they bear responsibility for the action. This does not detract from the individual civil or criminal liability of the person who commits the violation. The man who rapes or murders his partner is the person liable under criminal law for this act and should still be brought to justice. However, the state also bears a responsibility for failing to prevent or investigate and address the act appropriately and should make reparation to the victim or her family.

According to the International Law Commission's Draft articles on Responsibility of States for internationally wrongful acts, international law principles require states which have acted illegally to:

- cease the violation and not repeat it (Article 30)
- provide reparation to the victim (Article 31)

Article 32 also provides that any deficiencies in internal or domestic law cannot mitigate a state's responsibility for a wrongful act. A state cannot deny responsibility for its failures to ensure that rights are respected, and must ensure that abuses perpetrated by non-state actors are dealt with appropriately under domestic criminal law.³³

The Vienna Convention on the Law of Treaties has more detail on general requirements to abide by treaties, and states' general responsibility to implement treaties. The key responsibility is "good faith" (described in Latin as *pacta sunt servanda* – agreements must be fulfilled). States undertake their treaty obligations freely, and give their consent to be legally bound to fulfil their obligations.³⁴ Treaties are agreements which must direct the behaviour of states: they must be fulfilled in practice, they are not just pieces of paper.³⁵ Treaties must be

fulfilled even where they contradict domestic law: states which ratify or accede to a new treaty are obliged to change their laws so that the treaty can be honoured and fulfilled in practice.³⁶

Most states are parties to CEDAW, the International Covenant on Civil and Political Rights or the International Covenant on Economic, Social and Cultural Rights. All states except Somalia and the USA are parties to the Convention on the Rights of the Child. Therefore the obligation to protect the rights of women and girls from violence is a freely-entered into and legally binding treaty obligation on almost all states.³⁷

States' obligations to implement human rights standards

The UN Charter, the founding document of the UN, affirms the "equal rights of men and women", "the dignity and worth of the human person" and the realization of fundamental human rights as core UN principles and objectives.

Article 1 (3) of the Charter notes that a purpose of the UN is "[t]o achieve international cooperation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion;" Article 55 (c) commits the UN to promote "universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion".

The Universal Declaration of Human Rights,³⁸ the founding document of international human rights law, refers in Article 2 to the entitlement of all human beings to rights without discrimination, including on the ground of sex:

"Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status."

Although the Universal Declaration of Human Rights is not a treaty, and therefore not legally binding in itself, many of its provisions, for example, the commitment to non-discrimination and the rule against the use of torture, are part of general international law.

This fundamental founding commitment to equality between men and women is reflected in various human rights treaties which follow the Universal Declaration of Human Rights.

The International Covenant on Civil and Political Rights³⁹ states in Article 2 (1):

“Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”

Article 3 states:

“The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all civil and political rights set forth in the present Covenant.”

Article 26 requires strict equality before the law.

Similarly, the International Covenant on Economic, Social and Cultural Rights,⁴⁰ in Article 2(2), requires States Parties to:

“undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”

Article 3 requires that States Parties: *“undertake to ensure the equal right of men and women to the enjoyment of all economic, social and cultural rights set forth in the present Covenant.”*

In these two treaties, Article 2 contains a general clause specifying that rights should be implemented for all without discrimination. Article 3 elaborates the general principle enshrined in Article 2, specifically on the issue of sexual discrimination, underlining that equality of men and women in enjoyment of rights should be made a reality in law and practice.

Regional human rights treaties also require states to implement rights equally between men and women. These are: the European Convention for the Protection of Human Rights and Fundamental Freedoms⁴¹; the African Charter on Human and People’s Rights⁴² and its Protocol on the Rights of Women in Africa⁴³; and the American Convention on Human Rights.⁴⁴ The treaty of the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (“Convention of Belem do Para”⁴⁵) is the one regional treaty which specifically addresses violence against women in detail.

The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)⁴⁶ is therefore a

development of the existing right of women to equality of rights with men. It specifies areas of women’s rights which were not well developed or where there were common failures to implement rights – for example, women’s right to equality within the family, the equal rights and responsibilities of both parents in supporting their families, and the right of women to education, work, and political participation. It also contains (in Articles 2(e) and 2(f)) a specific obligation on governments to ensure that private citizens (for example, husbands, partners, fathers) and enterprises (for example, private businesses) do not abuse women’s rights.

Article 2 of CEDAW states:

“States Parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women and, to this end, undertake:

(a) To embody the principle of the equality of men and women in their national constitutions or other appropriate legislation if not yet incorporated therein and to ensure, through law and other appropriate means, the practical realization of this principle;

(b) To adopt appropriate legislative and other measures, including sanctions where appropriate, prohibiting all discrimination against women;

(c) To establish legal protection of the rights of women on an equal basis with men and to ensure through competent national tribunals and other public institutions the effective protection of women against any act of discrimination;

(d) To refrain from engaging in any act or practice of discrimination against women and to ensure that public authorities and institutions shall act in conformity with this obligation;

(e) To take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise;

(f) To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women;

(g) To repeal all national penal provisions which constitute discrimination against women.”

As a part of the obligation to transform social relationships between men and women to combat discrimination, Article 5 of CEDAW requires states to use means:

“to modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination

of prejudices and customary and all other practices which are based on the idea of inferiority or the superiority of either of the sexes or on stereotyped roles for men and women.”

States are monitored in their implementation of the rights to which they are committed by the treaty bodies, which are committees of independent experts in human rights.

Treaty bodies: monitoring enjoyment of human rights

The treaty bodies have two main functions. They consider initial and periodic reports by states parties on how they are implementing the provisions of the treaty, and they consider cases under the individual complaints procedure, if such a procedure exists.

The treaty bodies also elaborate international human rights law by issuing general comments and recommendations.

Currently there treaty bodies are: the Committee against Torture, the Committee on the Elimination of Discrimination against Women, the Committee on the Elimination of Racial Discrimination, the Committee on the Rights of the Child, the Committee on Economic, Social and Cultural Rights, and the Human Rights Committee.

See <http://web.amnesty.org/pages/treaty-bodies-eng>, for more information.

States report to treaty bodies on a regular basis – usually within a year of ratification and then every four or five years afterwards. These state reports describe their progress in law and practice in implementing rights. Non-governmental organizations, especially human rights organizations, often supply “shadow reports” giving their view of the extent to which rights are being implemented. The state and the treaty body will then discuss, in a spirit of constructive dialogue, obstacles to achieving improvements in the human rights situation, the potential for progress and further action which needs to be taken. This ends with the committee issuing concluding recommendations which specify particular action to be taken by the state to improve its compliance with the treaty before the next reporting session.

Most treaty bodies also consider communications from individuals who complain that their state has not respected or enforced their human rights. It is only recently that it has been possible for complaints about violations of CEDAW to be brought to the attention of the Committee on the Elimination of Discrimination against Women, with the adoption of an Optional Protocol

establishing this procedure.⁴⁷ However, many women have brought their complaints of discrimination to other bodies, such as the Human Rights Committee under articles 3 and 26 (the rights to equality before the law).⁴⁸

From time to time, based on their experience of monitoring human rights situations and hearing individuals’ complaints about violations from around the world, the treaty bodies prepare “general comments” or “general recommendations” on the content of individual rights. These often give guidance on how rights integrate with other rights. For example, the Human Rights Committee General Comment on Article 3 described how the right to equality between men and women intersects with the right to freedom from torture and ill-treatment, the right to equality before the law, the right to marry and to found a family, and the right to freedom of religion and expression.⁴⁹

The general comments of the treaty bodies, their recommendations to particular states on implementation of rights within their country, and rulings on individual cases (jurisprudence) authoritatively indicate the content of rights under those international and regional treaties, and should be implemented by states parties.

The declarations and resolutions of international bodies such as the UN General Assembly,⁵⁰ the Commission on Human Rights, and UN conferences such as the World Conference on Human Rights in Vienna, June 1993,⁵¹ and the UN Fourth World Conference on Women in Beijing, China, September 1995,⁵² elaborate on the content of rights. They draw on and clarify the definitions of rights in treaties and the jurisprudence of treaty bodies. Although these interpretations are not legally binding in themselves, they are legally authoritative comments which illustrate and provide detail on the content of rights which are binding through treaty obligations.

The work of the Special Rapporteur on violence against women, its causes and consequences, and other independent experts mandated by the UN Commission on Human Rights,⁵³ has also developed understanding of what states must do to ensure that women’s rights are respected. This body of work is based not only on legal standards, but also on visits to countries where human rights are under threat. It therefore draws on practical experience of the way that women are failed by states which do not implement women’s rights. The reports and recommendations of these independent experts on how the situation for women could be improved has been an important source of development of understanding of how states should take action to implement women’s rights.⁵⁴

Other UN Special Rapporteurs have also done important work on violence against women, in particular the Special Rapporteurs on the right of everyone to the enjoyment of

the highest attainable standard of physical and mental health; on extrajudicial, summary or arbitrary executions; on the right to adequate housing as a component of the right to an adequate standard of living; and on human rights defenders.

Particularly over the last 10 years, these various sources of law have drawn on their common links. This report reflects these developments. It sets out states' obligations to ensure women's right not to suffer gender-based violence, and to make this right a reality.

3. Violence against women as a violation of human rights

Violence against women has been identified as a particularly grave human rights violation, because of the way it violates many other rights simultaneously.

Violence against women as discrimination

The principle of non-discrimination and equality before the law is a basic provision of every human rights treaty. Many treaties explicitly underline in addition to this that women's rights should be upheld to the same extent as men's. However, these treaties do not refer directly to violence against women.

The Committee on the Elimination of All Forms of Violence against Women recognized that violence against women acts as a form of discrimination. In its General Recommendation 19⁵⁵ the Committee stated that:

“Gender-based violence, which impairs or nullifies the enjoyment by women of human rights and fundamental freedoms under general international law or under human rights conventions, is discrimination within the meaning of Article 1 of the Convention.

These rights and freedoms include:

- a) *the right to life;*
- b) *the right not to be subject to torture or to cruel, inhuman or degrading treatment or punishment;*
- c) *the right to equal protection according to humanitarian norms in the time of international or internal armed conflict;*
- d) *the right to liberty and security of the person;*
- e) *the right to equal protection under the law;*
- f) *the right to equality in the family;*
- g) *the right to the highest attainable standard of physical and mental health;*

h) *the right to just and favourable conditions of work”*

Gender-based violence

The UN Declaration on the Elimination of Violence against Women⁵⁶ states in Article 1:

“the term ‘violence against women’ means any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life.”

It states in Article 2:

“Violence against women shall be understood to encompass, but not be limited to, the following:

(a) Physical, sexual and psychological violence occurring in the family, including battering, sexual abuse of female children in the household, dowry-related violence, marital rape, female genital mutilation and other traditional practices harmful to women, non-spousal violence and violence related to exploitation;

(b) Physical, sexual and psychological violence occurring within the general community, including rape, sexual abuse, sexual harassment and intimidation at work, in educational institutions and elsewhere, trafficking in women and forced prostitution;

(c) Physical, sexual and psychological violence perpetrated or condoned by the State, wherever it occurs.”

General Recommendation 19 of the Committee on the Elimination of All Forms of Discrimination against Women⁵⁷ states that:

“Gender-based violence is a form of discrimination that seriously inhibits women's ability to enjoy rights and freedoms on a basis of equality with men.”

In Article 7, it goes on to state:

“Gender-based violence, which impairs or nullifies the enjoyment by women of human rights and fundamental freedoms under general international law or under human rights conventions, is discrimination within the meaning of article 1 of the Convention.”

The definition of discrimination includes gender-based violence. Violence against women is a form of gender-based violence. It is **violence that is directed against a woman because she is a woman or that affects women disproportionately**. It includes acts that inflict physical, mental or sexual harm or

suffering, threats of such acts, coercion and other deprivations of liberty. Gender-based violence may breach specific provisions of the Convention on the Elimination of All Forms of Discrimination against Women, regardless of whether those provisions expressly mention violence.

Violence against women is a sub-set of gender-based violence, which also includes violence against men in some circumstances, and violence against both women and men on the grounds of sexual orientation.^{58,59}

As the UN Special Rapporteur on violence against women has observed:

*“Gender-based violence is also related to the social construct of what it means to be either male or female. When a person deviates from what is considered ‘normal’ behaviour they are targeted for violence. This is particularly acute when combined with discrimination on the basis of sexual orientation or gender identity.”*⁶⁰

Acts are not necessarily identifiable as gender-based in isolation, but require an assessment of how particular acts affect women in comparison with men. There are also specific acts which are commonly gender-based.

According to the UN Declaration on the Elimination of Violence against Women, violence that is gender-based:

- results in, or is likely to result in, physical, sexual or psychological harm or suffering to women

it includes:

- threats
- coercion
- arbitrary deprivation of liberty

wherever it takes place

- it can occur in public or in private life equally⁶¹

Some of the elements that may be examined to determine whether an act of violence is gender-based include:

- **cause or motive:** for example, distinctly expressed gender insults during violence
- **circumstances or context:** for example, abuse of women of a certain group within an armed conflict
- **the act itself, the form a violation takes:** for example, overtly sexual acts, forced nudity, mutilation of sexual parts of the body
- **the consequences of a violation:** pregnancy; shame and secondary victimization by the

survivor’s community because “honour” has been transgressed

- **the availability and accessibility of remedies, and difficulties in securing a remedy,** for example, difficulties for women in accessing legal remedies because of lack of legal aid, need of male family member support, need to concentrate on care of dependents and lack of appropriate healthcare

Aspects of the right not to be discriminated against are among the group of rights known as “non-derogable” rights – rights which cannot be limited or suspended under any circumstances.⁶² Other non-derogable rights include the right to life, the right not to suffer torture or ill-treatment, the right not to be enslaved, and the right to be recognized as a person before the law.

A leading expert in international law, Professor Brownlie, states that:

*“there is considerable support for the view that there is in international law today a legal principle of non-discrimination which applies in matters of race. This principle is based in part, upon the UN Charter, especially Articles 55 and 56, the practice of organs of the UN, in particular resolutions of the General Assembly condemning apartheid, the Universal Declaration of Human Rights, the International Covenants on human rights and the European Convention on Human Rights. There is also a legal principle of non-discrimination in matters of sex, based on the same set of multilateral instruments⁶³ together with the Convention on the Elimination of All Forms of Discrimination against Women adopted by the UN General Assembly in 1979.”*⁶⁴

Violence against women has been identified by the Committee on the Elimination of All Forms of Discrimination against Women, the UN General Assembly and other authoritative bodies as a form of sex discrimination. It is clear that non-discrimination on grounds of sex is customary international law, and therefore binding on all states, even those few which have not ratified the relevant conventions.

Most recently, the Inter-American Court of Human Rights has gone even further and noted that the principle of equality, including between men and women, is a basic foundational principle of general international law, known as *jus cogens*.⁶⁵ This means that the principle is absolutely binding on all states, regardless of their treaty obligations. This new ruling assists women’s rights advocates in emphasizing the absolute prohibition of any form of discrimination, including violence against women, in making their demands on states the most compelling form of legal obligation.

In a recent case, the Inter-American Court of Human Rights has given an advisory opinion on the question of the legal condition and rights of non-documented migrants which is pertinent to the issue of non-discrimination.⁶⁶

“The principle of equality before the law and non-discrimination pervades all acts by the State, in any of its manifestations, in relation to the respect for and guarantee of human rights. The principle can effectively be considered as an imperative of general international law, in so far as it is applicable to the State as a whole, independently of the State being party or not to a certain international treaty, and generates effects in relation to third parties, including individuals. This implicates that the State, whether on the international level or in internal rules, and for acts of any of its authorities or of third parties acting under the tolerance, acquiescence or negligence of these authorities, cannot act contrary to the principle of equality and non-discrimination, in prejudice of a certain group of persons.”⁶⁷

“Accordingly, this Tribunal considers that the principle of equality before the law, equal protection by the law and non-discrimination, belongs to jus cogens, since all the juridical framework of the national and international public order relies on it and since it is a fundamental principle that permeates the whole legal system. Nowadays, no legal act that enters in conflict with the fundamental principle is allowed, discriminatory treatments of any person on the basis of gender, race, colour, language, religion or belief, political opinion or other kinds, national, ethnical or social origin, nationality, age, economic situation, patrimony, marital status, birth or any other condition are not allowed. This principle (equality and non-discrimination) is part of general international law. In the current stage of evolution of international law, the fundamental principle of equality and non-discrimination has become jus cogens.”⁶⁸

“...the contents of the preceding paragraphs are applicable to all the OAS Member States. The effects of the fundamental principle of equality and non-discrimination encompass all States, precisely because this principle, which belongs to the realm of jus cogens and is of a peremptory character, entails obligations erga omnes of protection that bind all States and give rise to effects with regard to third parties, including individuals.”⁶⁹

Rape and serious sexual violence as a form of torture

“Mainstream human rights institutions may have sometimes seen rape of women in detention as an act of personal gratification for the guard and thus ‘private’

and beyond the scope of legitimate human rights concerns. Rape of women in detention can be either the deliberate policy of a repressive government or it can result from indifference and failure to take sufficient preventive measures. The public/private distinction thus stands as a potential obstacle to effective action against even this form of violence, committed by men bearing the emblems of state and gaining the opportunity to harm women by exercising power conferred by the state.”

“Humanitarian law requires occupying powers to protect a civilian population, and soldiers who rape may be punished as war criminals. This presents an interesting contrast to the rape of women in peacetime where the failure of governments to take adequate preventive and punitive efforts to combat the practice is only beginning to be seen as a creating state complicity in a human rights violation.”

Rights of Women, Joan Fitzpatrick⁷⁰

Rape and other grave forms of sexual violence have been closely identified in many areas of law with the prohibition of torture. For example, the two quotations above from Professor Joan Fitzpatrick show one of the main reasons why the concept of due diligence – states’ responsibility to ensure that the acts of private individuals should be addressed as a human rights issue – developed. It was to account for and deal with the apparent inconsistencies in human rights law: the fact that the same acts, in this case rape, if committed by state or non-state actors, had different implications and consequences in international law.

Over recent years, the failure of states to take effective action against crimes of violence, whether the person carrying this out was a state official or employee, or a private citizen, has led to contradictions and inconsistencies. Acts which are condemned in some contexts receive little or no attention in others.

For example, it has for many years been recognized that rape of women by agents of the state, including soldiers, policemen and prison officers, is an act of torture.⁷¹

States have a clear obligation to prevent acts of torture from occurring, through methods such as proper scrutiny of prisons, police stations and other places of detention, and ensuring that detained women and girls have access to doctors and lawyers, and through making it clear to state agents that such violations will not be tolerated.⁷²

Where these acts do occur, states are obliged to investigate and bring the perpetrator to justice. This obligation has been recognized in international human rights law and humanitarian law for a long time.⁷³

Indeed, in the *ad hoc* international criminal tribunals, some acts of rape and serious sexual assault have been

charged as both rape and torture. Acts of rape and serious sexual assault have been considered by international tribunals as torture, genocide, crimes against humanity, and the war crimes of “inhuman treatment” and “wilfully causing great suffering to body or health”.⁷⁴

However, the same act of rape committed by a private citizen – for example, a husband perpetrating domestic violence or sexually motivated murders of young women in particular communities – has only recently been seen in a comparable light. However, states are held responsible by human rights bodies for bringing perpetrators of gender-based abuses to justice, no matter what the context.⁷⁵

Although rape by non-state actors has not yet been charged as the crime of torture, international human rights bodies have identified abuses by non-state actors such as rape and corporal punishment of children as a breach of international standards on torture and ill-treatment which incurs the state's responsibility where the state has not legislated to prevent or criminalize it.⁷⁶

The Special Rapporteur on violence against women has drawn close comparisons between domestic violence, including marital rape, and torture. In her report to the Commission on Human Rights in 1996, she stated:

“It is argued that, like torture, domestic violence commonly involves some form of physical and/or psychological suffering, including death in some cases. Secondly, domestic violence, like torture, is purposeful behaviour which is perpetrated intentionally. Men who beat women partners commonly exercise control over their impulses in other settings and their targets are often limited to their partners of children. Thirdly, domestic violence is generally committed for specific purposes including punishment, intimidation and the diminution of the woman's personality. Lastly, like torture, domestic violence occurs with at least the tacit involvement of the State if the state does not exercise due diligence and equal protection in preventing domestic abuse. This argument contends that, as such, domestic violence may be understood to constitute a form of torture.”⁷⁷

There is therefore a close nexus between certain types of violence against women and torture, freedom from which is a non-derogable right. This shows the priority that states should attach to preventing violence against women and addressing it appropriately and effectively when it occurs.

Violence against women: an issue of international legal concern in its own right

As well as having close links with the human rights violations of discrimination and torture, violence against women has been identified as a human rights violation of international legal concern in its own right. This was achieved through the advocacy of women's rights groups working to lobby international organizations and states to take proper account of the issue.

At the 1985 Nairobi World Conference, and especially at its parallel non-governmental forum, violence against women emerged as a serious international concern. The Forward-looking Strategies adopted by the Conference linked the promotion and maintenance of peace to the eradication of violence against women in both the public and private spheres.

In 1992, the Committee on the Elimination of All Forms of Discrimination against Women adopted General Recommendation 19, which defined gender-based violence as a form of discrimination against women.

In 1993, at the UN World Conference on Human Rights, violence against women was declared to be a human rights violation. Soon after, in December 1993, the UN Declaration on Violence against Women was adopted by the UN General Assembly, setting out a mandate for addressing violence against women as a human rights issue.

In 1994, the UN Commission on Human Rights created the gender-specific human rights mechanism of Special Rapporteur on violence against women, with a mandate to seek and receive information on violence against women and to recommend measures to eliminate violence.

The Beijing Declaration and Platform for Action was agreed at the Fourth World Conference on Women in 1995. Violence against women was identified as one of 12 critical areas of concern requiring urgent action. Like the UN Declaration on Violence against Women, it supplies a more precise identification of the steps that must be taken by governments and civil society alike, to prevent violence, protect women and girls, and provide redress to victims.

While none of these declarations of the various bodies of the UN is a legally binding treaty, each can be read as a companion piece to General Recommendation 19 of the Committee on the Elimination of All Forms of Discrimination against Women, and other statements of the treaty bodies relating to discrimination against women. Similarly, other recent developments in international law – such as the Rome Statute for the International Criminal

Court, and UN Security Council resolution 1325 on Women, Peace and Security – can be read together with these provisions as they address the same acts of violence against women in various different legal and factual contexts.

4. Due diligence – respect, protect, fulfil, promote

In 2000, Amnesty International published a document on state's obligations to make rights a reality: *Respect, Protect, Fulfil: Women's rights – state responsibility for non-state actors*.⁷⁸ This terminology – respect, protect, fulfil – was first elaborated in the 1980s,⁷⁹ and has since been cited in several human rights cases and standards.

The African Commission on Human and People's Rights stated:

*“Internationally accepted ideas of the various obligations engendered by human rights indicate that all rights – both civil and political rights and social and economic rights – generate at least four levels of duties for a State that undertakes to adhere to a human rights regime, namely the duty to respect, protect, promote and fulfil these rights. These obligations universally apply to all rights and entail a combination of negative and positive duties... Each layer of obligation is equally relevant to the rights in question.”*⁸⁰

This aspect of due diligence was elaborated in a General Comment on the Right to Health by the Committee on Economic, Social and Cultural Rights as follows:

*“[A]ll human rights [impose] three types or levels of obligations on States parties: the obligations to **respect**, **protect** and **fulfil**. In turn, the obligation to fulfil contains obligations to facilitate, provide, and promote.*

*“The obligation to **respect** requires States to refrain from interfering directly or indirectly with the right...*

*“The obligation to **protect** requires states to take measures that prevent third parties from interfering with ... guarantees.*

*“Finally, the obligation to **fulfil** requires States to adopt appropriate legislative, administrative, budgetary, judicial, promotional and other measures towards the full realization of the right..”*⁸¹ (Emphasis added.)

The duty to promote, which is also frequently mentioned, means to take measures to educate all citizens about rights through a variety of means, including through education at school, public information broadcasting, and information to service users and so on.

The four layers of obligation – respect, protect, promote, fulfil – are mutually reinforcing and together create a virtuous circle of good practice.

5. Respect: state responsibility for violence against women by state agents

The rape of a woman or girl in the power or custody of a state agent – for example, a prison official, security or military official – always constitutes torture for which the state is directly responsible. Other sexual or serious physical abuse of women by such officials always constitutes torture or ill-treatment. Such abuse includes sexual threats, virginity testing, fondling, and the deliberate use of bodily searches or sexually explicit language to degrade or humiliate.

The Special Rapporteur on torture has stated that:

*“[Since] it was clear that rape or other forms of sexual assault against women in detention were a particularly ignominious violation of the inherent dignity and the right to physical integrity of the human being, they accordingly constituted an act of torture.”*⁸²

As the Special Rapporteur on torture has stated, rape is “an especially traumatic form of torture” and it may have “insidious correlative consequences”. Women may be reluctant to seek reparation for this form of torture because of the severe social repercussions that may ensue. There may be “dire consequences for the private and public life of the woman”.⁸³

In the case of *Mejía v Peru*, the Inter-American Commission on Human Rights found that the rape of a woman by a member of the security forces constituted torture in violation of Article 5 of the American Convention on Human Rights. The Commission noted that the victim “was raped with the aim of punishing her personally and intimidating her”. In the case of *Aydın v Turkey*, the European Court of Human Rights ruled that the rape and other physical and mental violence inflicted on a 17-year-old girl detained by Turkish security forces amounted to torture.

The *ad hoc* international criminal court for Yugoslavia notes that there is “a momentum towards addressing, through legal process, the use of rape in the course of detention and interrogation as a means of torture and, therefore, as a violation of international law,”⁸⁴ but “[d]epending on the circumstances, under international criminal law, rape may acquire the status of a crime different from torture.”⁸⁵ Thus, both torture and rape are proscribed under international humanitarian law, and both are explicitly proscribed as crimes against humanity under

the Statutes of Yugoslavia and Rwanda Tribunals and as war crimes and crimes against humanity under the Rome Statute of the International Criminal Court, no matter whether the perpetrator is a state agent or a non-state actor.

6. Protect: state responsibility for violence against women by non-state actors

Protect individual women at known risk

Recent case law in the European Court of Human Rights and the Inter-American Court of Human Rights have set out some guidelines on the level of effort states must make in protecting the rights of individuals, when intervening in situations where private citizens abuse the rights of others. This is particularly important in relation to acts of violence against women and children.

Protection of rights through preventing potential acts of violence can be considered at two levels: preventing harm to individuals known to be at specific and immediate risk; and preventing harm in a more general way at an earlier stage for all potential victims.

The European Court of Human Rights and the Inter-American Commission and Court of Human Rights have both developed the threshold of states' obligations to assist individuals at immediate risk in some detail. Generic principles can be drawn from these cases.

In the case of *Osman v United Kingdom*,⁸⁶ the European Court of Human Rights considered a case in which threats against an individual were brought to the attention of the police, but they failed to intervene.

The court made the following observations about the efforts that states must take to protect rights where non-state actors are threatening to cause harm:

*“The court notes that the first sentence of Article 2(1) [of the European Convention for the Protection of Human Rights and Fundamental Freedoms] enjoins the state not only to refrain from the intentional and unlawful taking of life, but also to take appropriate steps to safeguard the lives of those within its jurisdiction... Where there is an allegation that the authorities have violated their positive obligation to protect the right to life in the context of their duty to prevent and suppress offences against the person, it must be established to its satisfaction that the authorities **knew or ought to have known at the time** of the existence of a real and immediate risk to the life of an identified individual or individuals from the criminal acts of a third party and that they failed to take measures*

*within the scope of their powers which, judged reasonably, might have been expected to avoid that risk.... It is sufficient for an applicant to show **that the authorities did not do all that could have reasonably expected of them to avoid a real and immediate risk to life of which they have or ought to have knowledge.**”⁸⁷ (Emphasis added.)*

However, the Court also said that the measures to intervene must not constitute a “disproportionate burden” on the state.⁸⁸ Another issue to consider is that in its efforts to reduce and address crimes against women, rights to privacy of individuals should not be unduly infringed. That is certainly not to say that what takes place in the home should be beyond scrutiny, rather than it is not reasonable practically to expect police officers or other personnel to be on hand to rescue anyone at any risk.

The appropriate balance between the right not to suffer ill-treatment and the perpetrators' right to privacy has been articulated as follows:

“The human right to a private and family life is of special importance, but cannot be tolerated to condone private conduct within families in which one partner enforces dominance by violence over the other. The key human rights principle is that violence deliberately directed against any other person is never a purely private matter.”⁸⁹

Instead a comprehensive set of services should be available to allow women and children at risk to access safety before serious violence has occurred. In cases where children rather than adult women are at risk from family violence, the level of attention given needs to be higher, as children are less able to make decisions about leaving a situation of violence and seeking assistance.

The case of *Z and Others v the United Kingdom*⁹⁰ relates to the level of protection to which individual children are entitled to ensure their right not to suffer torture and ill-treatment. It confirms the reasoning in the *Osman* case when finding that the children were not effectively protected by the state by abuse by their parents.

*“The Court reiterates that Article 3 enshrines one of the most fundamental values of democratic society. It prohibits in absolute terms torture or inhuman or degrading treatment or punishment. The obligation on the High Contracting Parties under Article 1 of the Convention to secure to everyone within their jurisdiction the rights and freedoms defined in the Convention, taken in conjunction with Article 3, requires states to take measures designed to ensure that individuals within their jurisdiction are not subjected to torture or inhuman or degrading treatment, including ill-treatment by private individuals. (See *A v United Kingdom*, judgment of 23 September 1998). **These measures should provide***

reasonable steps to prevent ill-treatment of which the authorities had or ought to have had knowledge (see *Osman v United Kingdom*, judgment of 28 October 1998).⁹¹ (Emphasis added.)

The case of *E and Others v the United Kingdom*⁹² brings more detail to the level of effort the state must take in order to discharge its duties under international law to protect its citizens from abuses of their rights by non-state actors.

*“The test does not require it to be shown that ‘but for’ the failing or mission of the public authority ill-treatment would not have happened. A failure to take reasonably available measures which could have had a real prospect of altering the outcome or mitigating the harm is sufficient to engage the responsibility of the state.”*⁹³ (Emphasis added.)

Also, the Inter-American Commission on Human Rights, in its report on the situation in the Mexican city of Ciudad Juárez has stated:

*“In some instances, the duty of due diligence to prevent a violation requires an urgent response, for example in the case of women in need of measures to protect against an imminent threat of violence, or in response to reports of a disappearance.”*⁹⁴

Prevention of violence against all women

Preventing harm in a more general way at an earlier stage for all potential victims can be achieved by establishing a general judicial and administrative framework, including effective education on rights, and by bringing perpetrators to justice.

International human rights law has been interpreted by courts in a way which emphasizes the importance of states providing a thorough and effective judicial and administrative framework as a key part of preventing harm. They are required to make clear to potential perpetrators and victims alike – indeed society as a whole – that abuses of human rights are not acceptable and will be dealt with effectively by criminal law.

The jurisprudence of the Inter-American Court of Human Rights has for many years emphasized the importance of states exercising due diligence to make rights a reality, even when rights are abused by non-state actors. It has stressed the need to establish an “apparatus” of state organization which enforces rights, and does not allow private citizens to abuse the rights of others with impunity.

In the case of *Velásquez Rodríguez v Honduras*, the Court made the following statement:⁹⁵

“An illegal act which violates human rights and which is initially not directly imputable to a State (for example,

*because it is the act of a private person or because the person responsible has not been identified) can lead to international responsibility of the State, not because of the act itself, but because of the lack of due diligence to prevent the violation or to respond to it as required in the Convention.”*⁹⁶

*“What is decisive is whether a violation of the rights recognized by the [Inter-American] Convention has occurred with the support or the acquiescence of the government, or whether the State has allowed the act to take place without taking measures to prevent it or to punish those responsible. Thus, the Court's task is to determine whether the violation is the result of the state's failure to fulfil its duty to respect and guarantee those rights, as required by Article 1(1) of the Convention.”*⁹⁷

*“The state is obligated to investigate every situation involving a violation of the rights protected by the Convention. If the State apparatus acts in such a way that the violation goes unpunished and the victim's full enjoyment of such rights is not restored as soon as possible, the State has failed to comply with its duty to ensure the free and full exercise of those right to the persons within its jurisdiction. The same is true when the state allows private persons or groups to act freely and with impunity to the detriment of rights recognized by the Convention.”*⁹⁸

*“The second obligation of the States Parties is to ‘ensure’ the free and full exercise of the rights recognized by the Convention to every person subject to its jurisdiction. This obligation implies the duty of the States Parties to organize the governmental apparatus, and in general, all the structures through which public power is exercised, so that they are capable of juridically ensuring the free and full enjoyment of human rights. As a consequence of this obligation, the States must prevent, investigate and punish any violation of the rights recognized by the Convention and, moreover, if possible attempt to restore the right violated and provide compensation as warranted for damages resulting from the violation.”*⁹⁹

This statement has been repeated in several cases since 1988, including in a case on domestic violence and the state’s failure to take proper steps to prosecute and punish the perpetrator and to secure the victim’s safety.¹⁰⁰

Similarly, the European Court of Human Rights stated in the case of *Akkoç v Turkey*,¹⁰¹ a case relating to the right to life, that the state must:

“take appropriate steps to safeguard the lives of those within its jurisdiction. This involves a primary duty on the State to secure the right to life by putting in place effective criminal-law provisions to deter the commission of offences against the person backed up by a law

*enforcement machinery for the prevention, suppression and punishment of breaches of such provisions.”*¹⁰²

7. Fulfil and promote rights so that they are respected by all

“The success of women’s rights will only be realized if human rights in general are preserved and protected. The struggle for women’s right to be free from violence must always take place within the framework of human rights practice and protection.” Special Rapporteur on violence against women¹⁰³

“Civil laws that appear to have little to do with violence also have an impact on women’s ability to protect themselves and assert their rights. Laws that restrict women’s right to divorce or inheritance, or that prevent them from gaining custody of their children, receiving financial compensation or owning property, all serve to make women dependent on men and limit their ability to leave a violent situation.” UNIFEM, *Not a minute more: Ending violence against women*¹⁰⁴

“In essence, the fundamental right to life includes, not only the right of every human being not to be deprived of his life arbitrarily, but also the right that he will not be prevented from having access to the conditions that guarantee a dignified existence. States have the obligation to guarantee the creation of the conditions required in order that violations of this basic right do not occur and in particular, the duty to prevent its agents from violating it.”
Inter-American Court of Human Rights¹⁰⁵

There is a high duty to establish an effective justice system, although the standard required is reasonable behaviour, not absolute protection. However, rights must be practical and effective, not theoretical and illusory.¹⁰⁶

States are obliged by their general duty under human rights law to fulfil rights – to adopt appropriate positive measures to improve respect for and enjoyment of rights – not just to respond to abuses.

The following list of activities and programs, including the reform or establishment of effective and gender-sensitive legal and judicial systems, has been developed through the comments of treaty bodies and resolutions of authoritative international political bodies, both UN and regional.

States have actively and openly committed themselves to these activities, through undertaking treaty obligations, and through their unanimous consent to resolutions at the UN General Assembly, where all states are represented.

Amnesty International therefore believes that in order to exercise their duty of due diligence, states should establish all the following activities and programs. These must be for the benefit of all women and girls in their territory and under their jurisdiction.

Change criminal and civil laws

“The sanction of criminality in cases that were once considered mere misdemeanours helps ensure that violence will not be treated as an acceptable societal norm, and can serve as a deterrent when assailants realise they will face punishment. Nevertheless, sharing a home, children and money raises considerations that cannot be covered by criminal sanctions alone. Thus many groups advocate legislation that combines civil and criminal remedies – some laws include protection orders and provisions regarding children and the sharing of property or income.” UNIFEM, *Not a minute more: Ending violence against women*¹⁰⁷

The state is responsible for failures to implement laws, and for gaps in the laws so that certain types of violence are not prohibited,¹⁰⁸ or certain categories of victim are not afforded proper protection. The state must ensure protection against the full range of violence, including marital rape in the home,¹⁰⁹ and against harassment in all places – not just the workplace or schools, but everywhere.

Criminal law and civil law must both be covered.

The basic foundation of domestic criminal and civil law should be made gender sensitive. This is the bedrock of ensuring that women can make complaints which address the abuses they have suffered, and can make complaints in a way which respects their dignity. For example, rape laws which only address rape by strangers, not partners, or which codify domestic violence as a right of reasonable chastisement available to husbands rather than as a crime, deny the seriousness of crimes of violence against women and breach women’s human rights.¹¹⁰

The Committee on the Elimination of All Forms of Violence against Women has recognized that violence against women is a form of discrimination. The Committee’s General Recommendation 19 states in paragraph 24 (b):

“States parties should ensure that laws against family violence and abuse, rape, sexual assault, and other gender-based violence give adequate protection to all women, and respect their integrity and dignity.”

It states in paragraph 24 (i):

“Effective legal measures, including penal sanctions, civil remedies and compensatory provisions to protect women

against all kinds of violence, including, inter alia, violence and abuse in the family, sexual assault and sexual harassment in the workplace.”

The Declaration on the Elimination of Violence against Women, in Article 4(d) calls on states to:

“Develop penal, civil, labour and administrative sanctions in domestic legislation to punish and redress the wrongs caused to women who are subject to violence.”

The Beijing Platform for Action, in paragraph 124 c), calls on governments to:

“Enact or reinforce penal, civil, labour and administrative sanctions in domestic legislation to punish and redress the wrongs done to women and girls who are subjected to any form of violence, whether in the home, the workplace, or the community or society;”

In Article 124 i), it calls on governments to:

“enact and enforce legislation against the perpetrators of practices and acts of violence against women, such as FGM, female infanticide, prenatal sex selection and dowry related violence, and give vigorous support to the efforts of non-governmental and community organizations to eliminate such practices.”

In Article 124 o), it calls on governments to:

“Adopt laws, where necessary, and reinforce existing laws that punish police, security forces or any other agents of the State who engage in acts of violence against women in the course of the performance of their duties; review existing legislation and take effective measures against perpetrators of such violence.”

Criminal justice law should be re-configured to put the victim's experience and the victim's need for protection at the centre of the law, transforming social ideas about blame of victims for the assaults they suffer.

The Committee of Ministers of the Council of Europe adopted Recommendation Rec(2002)5 on the protection of women against violence¹¹ in 2002.

Rec (2002) 5 recommends that member states should:

“34. ensure that criminal law provides that any act of violence against a person, in particular physical or sexual violence, constitutes a violation of that person's physical, psychological and or sexual freedom and integrity, and not solely a violation of morality, honour or decency;

“35. provide for appropriate measures and sanctions in national legislation, making it possible to take swift and effective action against perpetrators of violence and redress the wrong done to women who are victims of violence. In particular, national law should:

- *penalise sexual violence and rape between spouses, regular or occasional partners and cohabitants;*
- *penalise any sexual act committed against non-consenting persons, even if they do not show signs of resistance;*
- *penalise sexual penetration of any nature whatsoever or by any means whatsoever of a non-consenting person;*
- *penalise any abuse of the vulnerability of a pregnant, defenceless, ill, physically or mentally handicapped or dependent victim;*
- *penalise any abuse of the position of a perpetrator, and in particular of an adult vis-à-vis a child.”*

Illegal defences

The problems with securing justice for victims and survivors of violence against women lie not just in the definitions of crimes, but also in perpetrators raising discriminatory defences that lead to impunity on gender-specific grounds. These include defences based on “honour”, or relating to “unacceptable” behaviour in women such as provocation, which the law deems to “justify” male violence. Such defences allow perpetrators to act with impunity.

UN General Assembly Resolution 52/86 – Crime prevention and criminal justice measures to eliminate violence against women: Model Strategies and Practical Measures on the Elimination of Violence against Women in the Field of Crime Prevention and Criminal Justice – urges members states to:

“[7]... review, evaluate and revise their criminal procedure, as appropriate, in order to ensure that:

(d) Rules and principles of defence do not discriminate against women, and such defences as honour or provocation do not allow perpetrators of violence against women to escape all criminal responsibility;

(e) Perpetrators who commit acts of violence against women while voluntarily under the influence of alcohol or drugs are not absolved of all criminal or other responsibility;

(f) Evidence of prior acts of violence, abuse, stalking and exploitation by the perpetrator is considered during court proceedings, in accordance with the principles of national criminal law;”

International law can transform ideas about sexual offences

“The [Rome Statute for the International Criminal Court] is ... revolutionary in its thoroughgoing approach to the issues of gender in international law. The Court is not only a potentially important concrete mechanism of accountability; it also establishes basic norms of gender justice that operate as an inspiration and model for political advocacy and domestic systems... We must of course anticipate significant opposition to applying crimes against humanity to the gender crimes of everyday life, but it is important to press that point. We must continually make the connection between gender violence and persecution in war and conflict and, as Eleanor Roosevelt said of human rights, “in the small places close to home,” if we are to counter the culture of male entitlement to use women as property. In other words, if the ICC is successful, it will function not only to prevent atrocities in identified conflict situations, but also to sharpen the popular understanding of the atrociousness of sexual and gender violence and persecution and the relation between torture in intimate relationships and atrocities in the context of war.” Rhonda Copelon, *Gender Crimes as War Crimes, Integrating Crimes against Women into International Criminal Law*¹¹²

International criminal law can provide a useful model approach for definitions of sexual violence, such as rape, where the issue in question is not whether or not the alleged victim consented, but whether the perpetrator used force, threats or coercion. This addresses critically power relations and abuses of power between men and women.

The Rome Statute of the International Criminal Court states:

“Article 7(1)(g):

(1) The perpetrator invaded the body of a person by conduct resulting in penetration however slight, of any part of the body of the victim or of the perpetrator with a sexual organ, or of the anal or genital opening of the victim with any object or any other part of the body.

(2) The invasion was committed by force, or by threat of force or coercion, such as that caused by fear of violence, duress, detention, psychological oppression, or abuse of power, against such person or another person, or by taking advantage of a coercive environment, or the invasion was committed against a person incapable of giving genuine consent (It is understood that a person may be incapable of giving genuine consent if affected by natural, induced, or age-related incapacity.)”

(6) The perpetrators committed an act of a sexual nature against one or more persons or caused such person or persons to engage in an act of a sexual nature by force, or by threat of force or coercion, such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power, against such person or persons or another person, or by taking advantage of a coercive environment or such person's or persons' incapacity to give consent.”

Such an approach, incorporating positive developments in international criminal law, has been approved by the European Court of Human Rights, in the case of *M.C. v Bulgaria*.¹¹³ In this case, the investigation and prosecution of two adult men who allegedly raped a 14-year-old girl was terminated by the authorities on the grounds that there had been insufficient proof that she had been compelled to have sex. The respondent state Bulgaria was held to have failed to respect its positive obligations under Article 3 of the European Convention on Human Rights (the right not to suffer torture or ill-treatment) and Article 8 (the right to privacy and to a family life) because it required physical evidence of resistance on the part of the victim.¹¹⁴

The court stated:

“In international criminal law, it has recently been recognized that force is not an element of rape and that taking advantage of coercive circumstances to proceed with sexual acts is also punishable. The ICTY [International Criminal Tribunal for the former Yugoslavia] has found that in international criminal law any sexual penetration without the victim's consent constitute rape, and that consent must be given voluntarily, as a result of person's free will, assessed in the context of the surrounding circumstances. While the above definition was formulated in the particular context of rapes committed against the population in the conditions of an armed conflict, it also reflects a universal trend towards regarding a lack of consent as the essential element of rape and sexual abuse... the evolving understanding of the manner in which rape is experienced by the victim has shown that victims of sexual abuse - in particular girls below the age of majority - often provide no physical resistance because of a variety of psychological factors or because they fear violence on the part of the perpetrator.

*“Moreover, the development of law and practice in that area reflects the evolution of societies towards effective equality and respect for each individual's sexual autonomy.”*¹¹⁵

Ensure access to justice for women

“Ensuring women’s access to justice means that governments must commit to establishing a rule of law that factors in all the issues that affect implementation and exercise due diligence to prevent, investigate and punish violence against women.

“Closing the gap between the laws on the books and their implementation is one of the most pressing concerns of anti-violence advocates. There are many reasons that legislation is not implemented: laws are not taken seriously or are selectively applied; the appropriate enabling legislation is not passed; inadequate provisions are made for enforcement; or the resources allocated for implementation are insufficient.” UNIFEM, Not a minute more: Ending violence against women¹¹⁶

For women survivors of violence, particularly violence against women in the home, accessing justice requires great personal courage. Often the woman is still at risk from an abusive partner. Frequently, violence against women is viewed as the woman’s “own fault” because she is seen as choosing to remain with the violent partner.

Commentators account for the phenomenon of women withdrawing complaints by pointing to their lack of confidence in the justice system, and women’s inability to make a life away from the violent situation for themselves and their children. Those working in the justice system need to be aware of the difficulties that women face and support them appropriately, so that women are aware that they have an effective alternative to life in a violent home and can act to create a new life in safety and dignity. The question should be, not “why does she stay with him?” but “what are her alternatives?” Not “why does he continue to hit her?” but “why is he not brought to justice?”¹¹⁷

The Declaration on the Elimination of All Forms of Discrimination against Women states in Article 4 (d) that:

“women who are subject to violence should be provided with access to the mechanisms of justice”.

The Beijing Platform for Action, adopted by the Fourth UN World Conference on Women in 1995¹¹⁸ states in paragraph 124 (d) that governments should:

“take measures to ensure the protection of women subjected to violence, access to just and effective remedies, including compensation and indemnification and healing of victims.”

UN General Assembly Resolution 52/86 – Crime prevention and criminal justice measures to eliminate violence against women: Model Strategies and Practical Measures on the Elimination of Violence against Women in the Field of Crime Prevention and Criminal Justice –

was adopted without a vote in 1997, showing the unanimous consent of the UN General Assembly.¹¹⁹

In this Resolution, which provides legal authority for many progressive measures to assist survivors of violence against women, the UN General Assembly:

“3. Further urges Member States to promote an active and visible policy of integrating a gender perspective into the development and implementation of all policies and programmes in the field of crime prevention and criminal justice, which may assist in the elimination of violence against women so that, before decisions are taken, an analysis may be made to ensure that they entail no unfair gender bias;”

“9. Adopts the Model Strategies and Practical Measures on the Elimination of Violence against Women in the Field of Crime Prevention and Criminal Justice, annexed to the present resolution, as a model of guidelines to be used by Governments in their efforts to address, within the criminal justice system, the various manifestations of violence against women;

“10. Urges Member States to be guided by the Model Strategies and Practical Measures in developing and undertaking strategies and practical measures to eliminate violence against women and in promoting women’s equality within the criminal justice system;”

Investigations

Victims and witnesses who assist in the investigation and prosecution of acts of violence against women are entitled to protection.

According to Article 6 of The UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power¹²⁰:

“The responsiveness of judicial and administrative processes to the needs of victims should be facilitated by:

(a) Informing victims of their role and the scope, timing and progress of the proceedings and of the disposition of their cases, especially where serious crimes are involved and where they have requested such information;

(b) Allowing the views and concerns of victims to be presented and considered at appropriate stages of the proceedings where their personal interests are affected, without prejudice to the accused and consistent with the relevant national criminal justice system;

(c) Providing proper assistance to victims throughout the legal process;

(d) Taking measures to minimize inconvenience to victims, protect their privacy, when necessary, and ensure their

safety, as well as that of their families and witnesses on their behalf, from intimidation and retaliation;

(e) Avoiding unnecessary delay in the disposition of cases and the execution of orders or decrees granting awards to victims.”

The International Criminal Court provides a model of good practice in this area. Victim and witness safety is a specific obligation of the senior administrator of the court. Article 43(6) of the Rome Statute of the International Criminal Court¹²¹ stipulates that the Registrar should set up a Victims and Witnesses Unit within the Registry. This Unit is to provide, in consultation with the Office of the Prosecutor, counselling and other appropriate assistance for witnesses, victims who appear before the Court and others who are at risk on account of testimony given by such witnesses. The Unit must also plan protective measures and security arrangements for them. The Unit is to include staff with expertise in trauma, including trauma related to crimes of sexual violence.

Article 68(4) of the Rome Statute specifies that this Unit may advise the Prosecutor and the Court on appropriate protective measures, security arrangements, counselling and assistance as referred to in article 43(6).

The Rules of Procedure and Evidence of the International Criminal Court¹²² detail the responsibilities of the Registrar relating to victims and witnesses, which include “Taking gender-sensitive measures to facilitate the participation of victims of sexual violence at all stages of the proceedings.”¹²³

The Rules of Procedure and Evidence also detail the functions of the Victims and Witnesses Unit.¹²⁴ They stipulate that the Unit must ensure the protection and security of all witnesses and victims that appear before the Court through appropriate measures and establish short and long-term plans for their protection. Moreover, the Unit is to help victims who appear before the Court, as well as witnesses, to receive medical and psychological care, and, in consultation with the Office of the Prosecutor, draw up a code of conduct emphasizing the vital importance of security and professional secrecy for investigators of the Court, the defence and for all inter-governmental and non-governmental organisations acting on behalf of the Court. The Victims and Witnesses Unit is also in charge of negotiation of agreements with states concerning the resettlement of witnesses or victims who are traumatized or threatened.

Witness and victim protection in the International Criminal Court extends beyond their physical safety before and after giving evidence. It also extends to protection of their dignity and psychological well-being during the court process, particularly cross-examination:

in many jurisdictions, women are unwilling to bring complaints, because they are afraid of being humiliated or accused of lying in the witness box.

The Rules of Procedure and Evidence of the International Criminal Court address the needs of victims and witnesses of sexual violence specifically. They provide that in cases concerning such violence, the Court:

“shall be guided by and, where appropriate, apply the following principles:

(a) Consent cannot be inferred by reason of any words or conduct of a victim where force, threat of force, coercion or taking advantage of a coercive environment undermined the victim’s ability to give voluntary and genuine consent;

(b) Consent cannot be inferred by reason of any words or conduct of a victim where the victim is incapable of giving genuine consent;

(c) Consent cannot be inferred by reason of the silence of, or lack of resistance by, a victim to the alleged sexual violence;

(d) Credibility, character or predisposition to sexual availability of a victim or witness cannot be inferred by reason of the sexual nature of the prior or subsequent conduct of a victim or witness.”¹²⁵

Evidence of “the prior or subsequent sexual conduct of a victim or witness” in such cases is explicitly deemed inadmissible.¹²⁶ This constraint that a victim’s sexual history should not become a matter of evidence is particularly important, as is the requirement that the testimony of victims of sexual violence should not be subject to corroboration.¹²⁷

Victim safety must be paramount

Many victims are too afraid to give evidence, for fear of provoking further violence. To address this issue, the UN General Assembly Resolution 52/86 – Crime prevention and criminal justice measures to eliminate violence against women: Model Strategies and Practical Measures on the Elimination of Violence against Women in the Field of Crime Prevention and Criminal Justice recommended:

“7 (h) Measures can be taken when necessary to ensure the safety of victims and their families and to protect them from intimidation and retaliation;

(i) Safety risks are taken into account in decisions concerning non-custodial or quasi-custodial sentences, the granting of bail, conditional release, parole or probation.”

...But not protective custody

“Protective custody as a means of dealing with victims of VAW should be abolished. Any protection provided should be voluntary. Shelters should be opened and offer security, legal and psychological counselling and an effort to help women in the future. NGO’s cooperation in this field should be sought.”
Radhika Coomaraswamy, first Special Rapporteur on violence against women¹²⁸

Although the risk of further violence against women complainants should be addressed, the measures used to protect them should be proportionate and respectful of women's autonomy. In some countries, including Afghanistan, India, Jordan and Pakistan, women are detained for their own protection. Abuses of protective custody have to be guarded against.

The 2003 report of the Working Group on Arbitrary Detention to the Commission on Human Rights stated:

“IV. USE OF DETENTION AS A MEANS OF PROTECTING VICTIMS

*65. In its annual report for 2001 (E/CN.4/2002/77 and Add.1 and 2), the Working Group had recommended, with regard to the detention of women who have been the victims of violence or trafficking, that recourse to deprivation of liberty in order to protect victims should be reconsidered and, in any event, must be supervised by a judicial authority, and that such a measure must be used only as a last resort and when the victims themselves desire it.”*¹²⁹

Police investigations and prosecution practices

Women victims of violence are often deterred from making complaints because they fear that they will not be believed by police, who will therefore do nothing to help them. They also fear that they will face aggression or even further violence.

UN General Assembly Resolution 52/86 – Crime prevention and criminal justice measures to eliminate violence against women: Model Strategies and Practical Measures on the Elimination of Violence against Women in the Field of Crime Prevention and Criminal Justice – urges members states to:

“[7.]... review, evaluate and revise their criminal procedure, as appropriate, in order to ensure that:

(a) The police have, with judicial authorization where required by national law, adequate powers to enter premises and conduct arrests in cases of violence against women, including confiscation of weapons;”

UN General Assembly Resolution 52/86 – Crime prevention and criminal justice measures to eliminate violence against women: Model Strategies and Practical Measures on the Elimination of Violence against Women in the Field of Crime Prevention and Criminal Justice – urges members states to:

“[8.] within the framework of their national legal systems:

(a) To ensure that the applicable provisions of laws, codes and procedures related to violence against women are consistently enforced in such a way that all criminal acts of violence against women are recognized and responded to accordingly by the criminal justice system;

(b) To develop investigative techniques that do not degrade women subjected to violence and minimize intrusion, while maintaining standards for the collection of the best evidence;

(c) To ensure that police procedures, including decisions on the arrest, detention and terms of any form of release of the perpetrator, take into account the need for the safety of the victim and others related through family, socially or otherwise and that these procedures also prevent further acts of violence;

(d) To empower the police to respond promptly to incidents of violence against women;

(e) To ensure that the exercise of police powers is undertaken according to the rule of law and codes of conduct and that the police may be held accountable for any infringement thereof;

(f) To encourage women to join police forces, including at the operational level.”

Prosecution strategy

In devising prosecution strategies, legal authorities need to guard against two countervailing tendencies. In some criminal justice systems, the woman complainant is considered as the entity bringing the prosecution, rather than the state prosecution authorities. This often puts the woman under pressure to drop the case. However, in some instances where states have begun to take domestic violence seriously, laws have been passed which are unnecessarily draconian and fail to take the woman's views into account. Such laws may potentially violate the victim's rights and could in practice have an adverse impact on marginalized groups.

UN General Assembly Resolution 52/86 – Crime prevention and criminal justice measures to eliminate violence against women: Model Strategies and Practical Measures on the Elimination of Violence against Women in the Field of Crime Prevention and Criminal Justice:

“7 b) The primary responsibility for initiating prosecutions lies with prosecution authorities and does not rest with women subjected to violence;”

The Council of Europe Committee of Ministers Recommendation Rec(2002)5 on the protection of women against violence recommends that member states should:

“38: ensure that all victims of violence are able to institute proceedings as well as, where appropriate, public or private organizations with legal personality acting in their defence, either together with the victims or on their behalf;

39: make provisions to ensure that criminal proceedings can be initiated by the public prosecutor;

40 encourage prosecutors to regard violence against women and children as an aggravating or decisive factor in deciding whether or not to prosecute in the public interest;

41 take all necessary steps to ensure that at all stages in the proceedings, the victim's physical and psychological state is taken into account and that they may receive medical and psychological care;

42: envisage the institution of special conditions for hearing victims or witnesses of violence in order to avoid the repetition of testimony and to lessen the traumatising effect of proceedings;

43: ensure that rules of procedure prevent unwarranted and/or humiliating questioning for the victims or witnesses of violence, taking into due consideration the trauma that they have suffered in order to avoid further trauma;

44: where necessary, ensure that measures are taken to protect victims effectively against threats and possible acts of revenge;

45: take specific measures to ensure that children's rights are protected during proceedings;

46: ensure that children are accompanied, at all hearings, by their legal representative or an adult of their choice, as appropriate, unless the court gives a reasoned decision to the contrary in respect of that person;

47: ensure that children are able to institute proceedings through the intermediary of their legal representative, a public or private organization or any adult of their choice approved by the legal authorities and, if necessary, to have access to legal aid free of charge

48: provide that, for sexual offences and crimes, any limitation period does not commence until the day on which the victim reaches the age of majority;

49: provide for the requirement of professional confidentiality to be waived on an exceptional basis in the case of persons who may learn of cases of children subject to sexual violence in the course of their work, as a result of examinations carried out or of information given in confidence.”

Appropriate punishments

Appropriate punishments are an important part of public education, making sure that everyone appreciates the serious nature of crimes of violence against women. Unduly light sentences give the impression that violence against women is acceptable, and undermines the confidence of women survivors in coming forward and making complaints.¹³⁰

UN General Assembly Resolution 52/86 – Crime prevention and criminal justice measures to eliminate violence against women: Model Strategies and Practical Measures on the Elimination of Violence against Women in the Field of Crime Prevention and Criminal Justice mandates a critical appraisal of whether sentences are serious and suggests the following issues to consider when assessing appropriateness of sentences:

“9. Member States are urged, as appropriate:

(a) To review, evaluate and revise sentencing policies and procedures in order to ensure that they meet the goals of:

(i) Holding offenders accountable for their acts related to violence against women;

(ii) Stopping violent behaviour;

(iii) Taking into account the impact on victims and their family members of sentences imposed on perpetrators who are members of their families;

(iv) Promoting sanctions that are comparable to those for other violent crimes;

(b) To ensure that a woman subjected to violence is notified of any release of the offender from detention or imprisonment where the safety of the victim in such disclosure outweighs invasion of the offender's privacy;

(c) To take into account in the sentencing process the severity of the physical and psychological harm and the impact of victimization, including through victim impact statements where such practices are permitted by law;

(d) To make available to the courts through legislation a full range of sentencing dispositions to protect the victim, other affected persons and society from further violence;

(e) To ensure that the sentencing judge is encouraged to recommend treatment of the offender at the time of sentencing;

(f) *To ensure that there are appropriate measures in place to eliminate violence against women who are detained for any reason;*

(g) *To develop and evaluate offender treatment programmes for different types of offenders and offender profiles;*

(h) *To protect the safety of victims and witnesses before, during and after criminal proceedings.”*

Civil remedies

Gender-sensitive national or domestic criminal law is not enough on its own to protect women. Criminal penalties can only lead to prison, fines or community sentences. Frequently women and their children need civil remedies, such as orders barring violent men from the home or orders requiring men not to undertake any form of contact with the women. These may be necessary to create a safe space for women to recover, and for them to be sure that violence will not continue.

However, to be truly effective, these orders must be enforced vigorously, so that men who breach them or attempt to breach them are dealt with firmly. This requires awareness of the issues and training for effectiveness on the part of the courts and the police who enforce the orders.

UN General Assembly Resolution 52/86 – Crime prevention and criminal justice measures to eliminate violence against women: Model Strategies and Practical Measures on the Elimination of Violence against Women in the Field of Crime Prevention and Criminal Justice¹³¹ states that:

“7(g) Courts, subject to the national constitution of their State, have the authority to issue protection and restraining orders in cases of violence against women, including removal of the perpetrator from the domicile, prohibiting further contact with the victim and other affected parties, inside and outside the domicile, and to impose penalties for breaches of these orders;”

The UN Special Rapporteur on violence against women has similarly observed that:

“The ideal legislation with regard to domestic violence would be one that combines both criminal and civil remedies. [...] Civil remedies are essential; the protection order which forbids the offender from having contact with the victim and protects her home and family from the perpetrator is an important weapon in the arsenal used to fight domestic violence. In legislation dealing with domestic violence, the family is often defined broadly to include the plethora of relationships that can occur within the domestic arena, including cohabiting couples, the

elderly, children and domestic workers. Violence is also increasingly defined to include psychological abuse and the withholding of economic necessities from the victim.”¹³²

Training: professionals dealing with violence against women

It is important for women complainants and witnesses to receive appropriate professional support and understanding from all those dealing with them. These include doctors and nurses who examine them to gather evidence once a complaint has been made, medical staff treating them for injuries, counsellors assisting their emotional and psychological recovery, social workers, and social support organizations who assist with practical arrangements. Sensitive approaches assist women to maintain their confidence and to continue to seek appropriate remedies.

UN General Assembly Resolution 52/86 – Crime prevention and criminal justice measures to eliminate violence against women: Model Strategies and Practical Measures on the Elimination of Violence against Women in the Field of Crime Prevention and Criminal Justice:

“14. Member States and the private sector, relevant professional associations, foundations, non-governmental and community organizations, including organizations seeking women's equality, and research institutes are urged, as appropriate:

(b) To develop multidisciplinary and gender-sensitive approaches within public and private entities that participate in the elimination of violence against women, especially through partnerships between law enforcement officials and the services that are specialized in the protection of women victims of violence;”

Training: judicial and law enforcement personnel

“Perhaps the greatest hindrance to women's full use of legal remedies is the failure of governments to fully implement the laws that are on the books. In the UNIFEM scans nearly every area reported failure to implement anti-violence legislation as an egregious problem. Too often the judiciary or the police who investigate cases either do not understand new laws or do not want to use them... Often women are so humiliated by the way the authorities treat them, they refuse to testify in court. Even when convictions are reached, gender bias persists, as in the case of a judge in the United States who claimed that “an 11-year-old girl was partly to blame for a 23-year-old man sexually molesting her because the girl invited him into her bedroom and ‘it takes two to tango.’”

UNIFEM, *Not a minute more: Ending violence against women*¹³³

Criminal justice mechanisms are important to deal appropriately with the perpetrators, if necessary imprisoning them to punish them and protect the woman. They are also important for a survivor's recovery in showing that society as a whole condemns what has happened to her and will act to ensure that this will not happen in future. However, all too often, women are let down by the criminal justice system, owing to insensitive, aggressive or doubting attitudes from those working in the criminal justice system. In some cases, women see their experience within the criminal justice system as an extension of the initial abuse. This deters other women from seeking a remedy.

States should take immediate action, through training, professional protocols and promotion of best practices to ensure that women are treated respectfully and professionally by all those dealing with their complaints in the criminal justice system.

General Recommendation 19 of the Committee on the Elimination of All Forms of Discrimination against Women states in paragraph (24b):

“Gender sensitive training of judicial and law enforcement officers and other public officials is essential for the effective implementation of the Convention.”

The Declaration on the Elimination of Violence against Women calls on states in Article 4i) to:

“Take measures to ensure that law enforcement officers and public officials responsible for implementing political to prevent, investigate and punish violence against women receive training to sensitize them to the needs of women.”

The Beijing Platform for Action, in paragraph 124 n), calls on governments to:

“Create, improve, or develop as appropriate, and fund the training programmes for judicial, legal, medical, social, educational and police and immigrant personnel, in order to avoid the abuse of power leading to violence against women and sensitise such personnel to the nature of gender-based acts and threats of violence so that fair treatment of female victims can be assured;”

UN General Assembly Resolution 52/86 – Crime prevention and criminal justice measures to eliminate violence against women: Model Strategies and Practical Measures on the Elimination of Violence against Women in the Field of Crime Prevention and Criminal Justice:

“12. Member States, in cooperation with non-governmental organizations, including organizations

seeking women's equality, and in collaboration with relevant professional associations, are urged, as appropriate:

(a) To provide for or encourage mandatory cross-cultural and gender-sensitivity training modules for police, criminal justice officials, practitioners and professionals involved in the criminal justice system that deal with the unacceptability of violence against women, its impact and consequences and that promote an adequate response to the issue of violence against women;

(b) To ensure adequate training, sensitivity and education of police, criminal justice officials, practitioners and professionals involved in the criminal justice system regarding all relevant human rights instruments;

(c) To encourage professional associations to develop enforceable standards of practice and behaviour for practitioners involved in the criminal justice system, which promote justice and equality for women.”

The Council of Europe Committee of Ministers Recommendation Rec(2002)5 recommends that member states should:

“8. include in the basic training programmes of members of the police force, judicial personnel and the medical and social fields, elements concerning the treatment of domestic violence as well as all other forms of violence affecting women;

9. include in the vocational training programmes of these personnel, information and training so as to give the means to detect and manage crisis situations and improve the manner in which victims are received, listened to and counselled;

10. encourage the participation of these personnel in specialised training programmes, by integrating the latter in a merit-awarding scheme;

11. encourage the inclusion of questions concerning violence against women in the training of judges;

12. encourage self-regulating professions, such as therapists, to develop strategies against sexual abuse which could be committed by persons in positions of authority.”

The Inter-American Court of Human Rights has stated:

“Training, especially for those charged with responding to crimes of violence against women, is an important means of developing technical capacity and an understanding of the gender dimensions of the problem.... Training, in turn, must be accompanied by measures to monitor and evaluate results, and to apply sanctions where agents do not comply with their

responsibilities under the law. Training is one side of the coin and accountability is the other."¹³⁴

8. Reparation

A developing area of international human rights law concerns the right to a remedy and reparation for those who have suffered human rights violations "as a result of acts or omissions that constitute a gross violation of international human rights or serious violations of international humanitarian law."¹³⁵ Commentators have noted, particularly in the context of violence against women in armed conflict, that the failure to provide adequate reparation, particularly compensation, is an important flaw in the current legal regime and should be addressed.¹³⁶

Generally, the right to a remedy should include:

- prompt, effective, independent and impartial investigation and access to justice;
- reparation for harm suffered;
- access to factual information concerning the violation.

The right to a remedy has several elements:

- It should be **secured by the State**, particularly where the perpetrator has absconded or is unknown.
- It should **restore the victim as far as possible to the original situation before the violation occurred** (restitution) including, restoration of liberty, legal rights, social status, identity, family life and citizenship, return to residence, restoration of employment and property.
- It should include proportional **compensation** for economically assessable damage, including:
 - physical and mental harm, pain, suffering and emotional distress;
 - lost opportunities, including employment, education and social benefits;
 - material damage and loss of earnings, including loss of earning potential;
 - harm to reputation or dignity;
 - costs required for legal or expert assistance, medical services, psychological or social services.

Rehabilitation should include medical and social care as well as legal and social services.

Satisfaction should include:

- cessation of continuing violations;
- verification of the facts and public disclosure of the truth to the extent that such disclosure does not cause further unnecessary harm or threaten the safety of the victim, witnesses or others;
- search for the whereabouts of disappeared victims;
- assistance with culturally appropriate reburial;
- official declarations restoring the dignity and reputation of the victim;
- apology and public acknowledgements of the facts and acceptance of responsibility;
- judicial and administrative sanctions against those responsible for the violation;
- commemoration and tributes to the victims;
- inclusion of accurate accounts of the violations in public education materials.

Guarantees of non-repetition and prevention should include educating the population and providing services to assist future potential victims. It should include the many examples listed below.

Access to remedies

Particular care should be taken to assess whether or not women have difficulties accessing remedies – for example, because of limited access to legal aid (particularly when a woman is left without financial support due to her escape from abuse) or legal provisions which require women litigants to access the courts through a male relative.

The European Court of Human Rights said in the case of *Airey v Ireland*, a case relating to a woman's difficulty accessing family law mechanisms because of lack of legal aid, that rights must be "practical and effective".¹³⁷

General Recommendation 19 of the Committee on the Elimination of All Forms of Discrimination against Women, paragraph 24(i), states that:

"Effective complaints procedures and remedies, including compensation, should be provided."

The Declaration on the Elimination of Violence against Women states in Article 4(d) that:

"women who are subject to violence should be provided with access to just and effective remedies for the harm suffered;"

The Council of Europe Committee of Ministers Recommendation Rec(2002)5 on the protection of women against violence recommends that member states should:

“36. Ensure that, in cases where the facts of violence have been established, victims receive appropriate compensation of any pecuniary, physical, psychological, moral and social damage suffered, corresponding to the degree of gravity, including legal costs incurred;

37. envisage the establishment of financing systems in order to compensate victims.”

Services to victims and witnesses – general principles

The right to a remedy includes services to assist victims in their recovery from violations of their human rights, including women survivors of gender-based violence.

In its General Comment on the Right to Health, the Committee on Economic, Social and Cultural Rights outlined some general requirements for services to assist the recovery of victims of human rights violations.¹³⁸ Amnesty International believes that these principles are applicable to all services, if they are to be truly effective.

These services should be:

- Available: of sufficient quantity within the state party;
- Accessible: without discrimination within the jurisdiction of the state party. This means, without discrimination, especially most vulnerable and marginalized sections of the population: physically accessible; economically accessible and genuinely affordable: Equity demands that poorer households should not be disproportionately burdened with expenses as compared to richer households.
- Acceptable: respectful of professional ethics, particularly confidentiality, and culturally appropriate, as well as gender-sensitive.
- Of appropriate quality: staff providing services should be trained and professional, providing a service which responds to needs.

The Special Rapporteur on adequate housing as a component of the right to an adequate standard of living has identified domestic violence as a key cause of women’s homelessness, and the threat of homelessness as a reason why women continue to live in violent situations.¹³⁹

“In most countries, whether developed or developing, domestic violence is a key cause of women’s

homelessness and presents a real threat to women’s security of person and security of tenure. Many women continue to live in violent situations because they face homelessness if they resist domestic violence.”

Protection and support services for survivors and witnesses

As well as the general principles of availability, accessibility, acceptability and appropriate quality, there are specific requirements for services to victims and witnesses of criminal offences.

General Recommendation 19 of the Committee on the Elimination of All Forms of Discrimination against Women states in Article 24(b):

“Appropriate protective and support services should be provided for victims.”

In Article 24(t)(iii) it spells out the need for:

“Protective measures, including refuges, counselling, rehabilitation and support services for women who are the victims of violence or who are at risk of violence;”

The Declaration on the Elimination of Violence against Women (paragraph 4g) calls on states to:

“Work to ensure, to the maximum extent feasible in the light of their available resources and where needed, within the framework of international cooperation, that women subjected to violence and, where appropriate, their children, have specialized assistance, such as rehabilitation, assistance in child care and maintenance, treatment, counselling, and health and social services, facilities and programmes, as well as support structure, and should take all other appropriate measures to promote their safety and physical and psychological rehabilitation;”

The Beijing Platform for Action, paragraph 124 l), calls on states to:

“Create or strengthen institutional mechanisms to that women and girls can report acts of violence against them in a safe and confidential environment, free from the fear of penalties or retaliation, and file charges.”

UN General Assembly Resolution 52/86 – Crime prevention and criminal justice measures to eliminate violence against women: Model Strategies and Practical Measures on the Elimination of Violence against Women in the Field of Crime Prevention and Criminal Justice:

“7 (c) Women subjected to violence have an opportunity to testify in court proceedings equal to that of other witnesses and that measures are available to facilitate such testimony and to protect their privacy;”

This UN General Assembly Resolution goes on to set down how states should support survivors of violence against women and help them gain redress:

“10. Member States are urged, as appropriate:

(a) To make available to women who have been subjected to violence information on rights and remedies and on how to obtain them, in addition to information about participating in criminal proceedings and the scheduling, progress and ultimate disposition of the proceedings;

(b) To encourage and assist women subjected to violence in lodging and following through on formal complaints;

(c) To ensure that women subjected to violence receive, through formal and informal procedures, prompt and fair redress for the harm that they have suffered, including the right to seek restitution or compensation from the offenders or the State;

(d) To provide for court mechanisms and procedures that are accessible and sensitive to the needs of women subjected to violence and that ensure the fair processing of cases;

(e) To establish a registration system for judicial protection and restraining orders, where such orders are permitted by national law, so that police or criminal justice officials can quickly determine whether such an order is in force.

This UN General Assembly Resolution also spells out programs that states should implement to address violence against women:

11. Member States, in cooperation with the private sector, relevant professional associations, foundations, non-governmental and community organizations, including organizations seeking women's equality, and research institutes are urged, as appropriate:

(a) To establish, fund and coordinate a sustainable network of accessible facilities and services for emergency and temporary residential accommodation for women and their children who are at risk of becoming or who have been victims of violence;

(b) To establish, fund and coordinate services such as toll-free information lines, professional multi-disciplinary counselling and crisis intervention services and support groups in order to benefit women who are victims of violence and their children;

(c) To design and sponsor programmes to caution against and prevent alcohol and substance abuse, given the frequent presence of alcohol and substance abuse in incidents of violence against women;

(d) To establish better linkages between medical services, both private and emergency, and criminal justice agencies for purposes of reporting, recording and responding to acts of violence against women;

(e) To develop model procedures to help participants in the criminal justice system to deal with women subjected to violence;

(f) To establish, where possible, specialized units with persons from relevant disciplines especially trained to deal with the complexities and victim sensitivities involved in cases of violence against women.”

The Council of Europe Committee of Ministers Recommendation Rec(2002)5 on the protection of women against violence recommends:

“Member states should:

23 ensure that victims, without any discrimination, receive immediate and comprehensive assistance provided by a coordinated, multi-disciplinary and professional effort, whether or not they lodge a complaint, including medical and forensic medical examination and treatment, together with post-traumatic psychological and social support as well as legal assistance; this should be provided on a confidential basis, free of charge and be available around the clock;

24 in particular, ensure that all services and legal remedies available for victims of domestic violence are provided to immigrant women upon their request

25 take all the necessary measures in order to ensure that collection of forensic evidence and information is carried out according to standardised protocol and forms

26 provide documentation particularly geared to victims, informing them in a clear and comprehensible manner of their rights, the service they have received and the actions they could envisage to take, regardless of whether they are lodging a complaint or not, as well as of their possibilities to continue to receive psychological, medical and social support and legal assistance;

27 promote cooperation between the police, health and social services and the judiciary system in order to ensure such coordinated actions and encourage and support the establishment of a collaborative network of NGOs;

28 encourage the establishment of emergency services such as anonymous, free of charge telephone help lines for victims of violence and/or persons confronted or threatened by situations of violence; regularly monitor calls and evaluate the data obtained from the assistance provided with due respect for data protection standards;

29 ensure that the police and other law-enforcement bodies receive, treat and counsel victims in an

appropriate manner, based on respect for human beings and dignity, and handle complaints confidentially; victims should be heard without delay by specially trained staff in premises that are designed to establish a relationship of confidence between the victim and the police officer and ensure, as far as possible, that the victims of violence have the possibility to be heard by a female officer should they so wish;

30 to this end, take steps to increase the number of female police officers at all levels of responsibility

31 ensure that children are suitably cared for in a comprehensive manner by specialised staff at all the relevant stages (initial reception, police, public prosecutor's department and courts) and that the assistance provided is adapted to the needs of the child;

32 take steps to ensure the necessary psychological and moral support for children who are victims of violence by setting up appropriate facilities and providing trained staff to treat the child from initial contact to recovery; these services should be provided free of charge;

33. take all necessary measures to ensure that none of the victims suffer secondary (re) victimisation or any gender-insensitive treatment by the police, health and social personnel responsible for assistance, as well as by judiciary personnel.”

Access to reproductive health services

General Recommendation 19 of the Committee on the Elimination of All Forms of Discrimination against Women (paragraph 24m) recommends that:

“States parties should ensure that measures are taken to prevent coercion in regard to fertility and reproduction, and to ensure that women are not forced to seek unsafe medical procedures such as illegal abortion because of lack of appropriate services in regard to fertility control;”

The Human Rights Committee, in General Comment No. 28 on the equality of rights between men and women (Article 3 of the International Covenant on Civil and Political Rights), states:

“11. To assess compliance with article 7 of the Covenant [freedom from torture and ill-treatment], as well as with article 24, which mandates special protection for children, the Committee needs to be provided information on national laws and practice with regard to domestic and other types of violence against women, including rape. It also needs to know whether the State party gives access to safe abortion to women who have become pregnant as a result of rape...”

9. Fulfil: make women’s right to freedom from violence a reality

A number of specific programs and measures are mandated in international law to make women’s right to freedom from violence a reality. These include preventing violence against women through a variety of educational and social measures, such as studies, the spreading of best practice and seeking guidance from other countries’ experiences, UN human rights bodies and women’s movements. Such educational and social measures need to be backed by adequate resources and steadfast political will.

Guiding values for all programs

UN General Assembly Resolution 52/86 – Crime prevention and criminal justice measures to eliminate violence against women: Model Strategies and Practical Measures on the Elimination of Violence against Women in the Field of Crime Prevention and Criminal Justice:

“5. The Model Strategies and Practical Measures are aimed at providing de jure and de facto equality between women and men. The Model Strategies and Practical Measures do not give preferential treatment to women but are aimed at ensuring that any inequalities or forms of discrimination that women face in achieving access to justice, particularly in respect of acts of violence, are redressed.”

The Council of Europe Committee of Ministers Recommendation Rec(2002)5 on the protection of women against violence recommends that:

“3 - Member states should introduce, develop and/or improve where necessary, national policies against violence based on a) maximum safety and protection of victims b) empowerment of victimised women by optimal support and assistance structure which avoid secondary victimization c) adjustment of the criminal and civil law including the judicial procedure d) raising of public awareness and education of children and young persons e) ensuring special training for professionals confronted with violence against women; f) prevention in all respective fields.”

National plans of action

“The best plans include components relating to education, legislative revision, government agencies and awareness-building. They provide the mechanisms and resources for government and civil society to work together. They are, in essence, blueprints for addressing structures of gender inequality and making visible the social, economic, political and cultural aspects of society that must be involved in change is to happen.”

UNIFEM, *Not a minute more: Ending violence against women*¹⁴⁰

The Declaration on the Elimination of Violence against Women (Article 4e) specifies that states should:

“Consider the possibility of developing national plans of action to promote the protection of women against any form of violence, or to include provisions for that purpose in plans already existing, taking into account, as appropriate, such cooperation as can be provided by non-governmental organizations, particularly those concerned with the issue of violence against women.”

The Council of Europe Committee of Ministers Recommendation Rec(2002)5 on the protection of women against violence recommends that:

“4. In this framework, it will be necessary to set up, wherever possible, at national level, and in cooperation, where necessary, regional and/or local authorities, a governmental coordination institution or body in charge of the implementation of measures to combat violence against women as well as of regular monitoring and evaluation of any legal reform or new form of intervention in the field of action against violence, in consultation with NGOs and academic and other institutions.”

The Beijing Platform for Action, paragraph 124 j), calls on governments to:

“Formulate and implement, at all appropriate levels, plans of action to eliminate violence against women;”

UN General Assembly Resolution 52/86 – Crime prevention and criminal justice measures to eliminate violence against women: Model Strategies and Practical Measures on the Elimination of Violence against Women in the Field of Crime Prevention and Criminal Justice:

“2. Also urges Member States to undertake strategies, develop policies and disseminate materials to promote women’s safety in the home and in society at large, including specific crime prevention strategies that reflect the realities of women’s lives and address their distinct needs in such areas as social development, environmental design and educational prevention programmes;”

Study and prepare statistics

“Those who think violence against women is not a problem cannot ignore documented evidence. Research on the way in which agents of the state respond to incidents of violence has been a critical tool in gaining government commitments to end impunity. It is not just a matter of numbers but also establishing patterns of abuse – whether in the home, on the streets, in the workplace or at the hands of the state – and patterns of discrimination

that obstruct access to justice. Armed with this knowledge, activists have won support from the highest levels of judiciaries and police forces, worked with legislatures to craft legal and policy responses, and improved methods of intervention and prevention.”

UNIFEM, *Not a minute more: Ending violence against women*¹⁴¹

General Recommendation 19 of the Committee on the Elimination of All Forms of Discrimination against Women, paragraph 24 c), specifies:

“States should encourage the compilation of statistics and research on the extent, causes and effects of violence, and on the effectiveness of measures to prevent and deal with violence;”

The Declaration on the Elimination of Violence against Women, Article 4k), calls on states to:

“Promote research, collect data and compile statistics, especially concerning domestic violence, relating to the prevalence of different forms of violence against women and encourage research on the causes, nature, seriousness and consequences of violence against women and on the effectiveness of measures implemented to prevent and redress violence against women; those statistics and findings of the research will be made public.”

UN General Assembly Resolution 52/86 – Crime prevention and criminal justice measures to eliminate violence against women: Model Strategies and Practical Measures on the Elimination of Violence against Women in the Field of Crime Prevention and Criminal Justice:

“13. Member States and the institutes comprising the UN Crime Prevention and Criminal Justice Programme network, relevant entities of the UN system, other relevant international organizations, research institutes, non-governmental organizations, including organizations seeking women’s equality, are urged, as appropriate:

(a) To develop crime surveys on the nature and extent of violence against women;

(b) To gather data and information on a gender-disaggregated basis for analysis and use, together with existing data, in needs assessment, decision-making and policy-making in the field of crime prevention and criminal justice, in particular concerning:

(i) The different forms of violence against women, its causes and consequences;

(ii) The extent to which economic deprivation and exploitation are linked to violence against women;

(iii) The relationship between the victim and the offender;

(iv) *The rehabilitative or anti-recidivistic effect of various types of intervention on the individual offender and on the reduction of violence against women;*

(v) *The use of firearms, drugs and alcohol, particularly in cases of violence against women in situations of domestic violence;*

(vi) *The relationship between victimization or exposure to violence and subsequent violent activity;*

(c) *To monitor and issue annual reports on the incidence of violence against women, arrest and clearance rates, prosecution and case disposition of the offenders;*

(d) *To evaluate the efficiency and effectiveness of the criminal justice system in fulfilling the needs of women subjected to violence.”*

The Council of Europe Committee of Ministers Recommendation Rec(2002)5 on the protection of women against violence, Appendix Article 5(a), calls for:

“preparation of statistics sorted by gender, integrated statistics and common indicators in order to better evaluate the scale of violence against women; b) the medium and long-term consequences of assaults on victims c) the consequences on those who are witness to it, inter alia, within the family d) the health, social and economic costs of violence against women; e) the assessment of the efficiency of the judiciary and legal systems in combating violence against women f) the causes of violence against women, i.e. the reasons which cause men to be violent and the reasons why society condones such violence; g) elaboration of criteria for benchmarking in the field of violence.”

Develop guidelines

States should ensure that learning about best practice in countering violence against women and support for victims is integrated into standards and protocols for all professionals dealing with women survivors of gender-based violence.

The Declaration on the Elimination of Violence against Women, Article 4n), calls on states to:

“Encourage the development of appropriate guidelines to assist in the implementation of the principles set forth in the present Declaration:”

The Beijing Platform for Action, paragraph 124 g), states that governments should:

“promote an active and visible policy of mainstreaming a gender perspective in all policies and programmes related to violence against women; actively encourage, support and implement measures and programmes aimed at increasing the knowledge and understanding of the

causes, consequences and mechanisms of violence against women among those responsible for implementing these policies, such as law enforcement officers, police personnel and judicial, medical and social workers, as well as those who deal with minority, migration and refugee issues, and develop strategies to ensure that the revictimization of women victims of violence does not occur because of gender-insensitive laws or judicial or enforcement practices;”

Budgets

Appropriate funding, responding to need, for the infrastructure of the criminal justice system, services and support to survivors, is an important measure of governments' commitment to making rights a reality. It is a sign of their good faith in implementing their obligations under international human rights law. Without adequate funding, plans to address violence against women will not flourish and will not prove effective.

The Declaration on the Elimination of Violence against Women, Article 4 h), calls on states to:

“Include in government budgets adequate resources for their activities related to the elimination of violence against women.”

The Beijing Platform for Action, paragraph 124 p), calls on states to:

“allocate adequate resources within the government budget and mobilise community resources for activities related to the elimination of violence against women, including resources for the implementation of plans of action at all levels;”

Local, regional and urban planning

Effective street lighting, well-designed public spaces and safe public transport and other facilities help prevent acts of violence against women and increase the confidence of women to participate in public life. This can reduce the number of women who suffer isolation in their own homes, which in itself can contribute to domestic violence.

The Council of Europe Committee of Ministers Recommendation Rec(2002)5 on the protection of women against violence recommends that:

“Member states should:

21. Encourage decision makers in the field of local, regional and urban planning to take into account the need to reinforce women's safety and to prevent the occurrence of violent acts in public places;

22. As far as possible, take all necessary measures in this respect, concerning in particular public lighting,

organization of public transport and taxi services, design and planning of car parks and residential buildings.”

The Inter-American Commission on Human Rights, in its report on the situation in the Mexican city of Ciudad Juárez, stated in paragraph 156:

“The public security aspect of these killings has begun to be taken more seriously by Municipal and State authorities. Measures to install more lights, pave more road, increase security in high-risk areas and improve the screening and oversight over bus drivers who transport workers at all hours of the day and night, combined with efforts to place stricter controls on alcohol and drug consumption and the crimes related to both have an important place in improving the security of women in Ciudad Juarez. While much remains to be done, it is encouraging that new measures are being adopted to incorporate broader collaboration and participation in planning such initiative, including civil society. It is also of great importance that such efforts incorporate the perspective of gender from their inception.”

Public awareness

In every culture, in all regions, many men and women are unaware of the extent of and seriousness of gender-based violence. Particularly, they are not aware that such violence is a criminal matter and an abuse of human rights – they accept it as a normal and natural part of life. International law and standards require that states take active steps to change this through public education of various kinds, targeted at all sectors of society.

General Recommendation 19 of the Committee on the Elimination of All Forms of Discrimination against Women, paragraph 24 (t)(ii), calls for:

“Preventive measures, including public information and education programmes to change attitudes concerning the roles and status of men and women;”

The Declaration on the Elimination of Violence against Women, Article 4f), calls on states to:

“Develop in a comprehensive way, preventive approaches and all those measures of a legal political, administrative and cultural nature that promote the protection of women against any form of violence,”

UN General Assembly Resolution 52/86 – Crime prevention and criminal justice measures to eliminate violence against women: Model Strategies and Practical Measures on the Elimination of Violence against Women in the Field of Crime Prevention and Criminal Justice:

“14. Member States and the private sector, relevant professional associations, foundations, non-governmental and community organizations, including organizations

seeking women's equality, and research institutes are urged, as appropriate:

(a) To develop and implement relevant and effective public awareness, public education and school programmes that prevent violence against women by promoting equality, cooperation, mutual respect and shared responsibilities between women and men;”

Legal literacy

“Recognizing that women and girl children often do not report the violence that is perpetrated against them because they do not understand that they are victims of, rather than participants in, the violence, states should undertake legal literacy campaigns to inform women of their legal rights and educate them specifically about domestic violence.”

Radhika Coomaraswamy, the first Special Rapporteur on violence against women¹⁴²

Legal literacy for women and girls is vital: it enables women to assert their rights. Without legal literacy, many women continue to suffer in silence.

The Declaration on the Elimination of Violence against Women, Article 4 d), calls on states not only to:

“Develop penal, civil, labour and administrative sanctions in domestic legislation to punish and redress the wrongs caused to women who are subjected to violence; women who are subjected to violence should be provided with access to the mechanisms of justice and, as provided for by national legislation, to just and effective remedies for the harm that they have suffered;”

It also says that:

“States should also inform women of their rights in seeking redress through such mechanism.”

UN General Assembly Resolution 52/86 – Crime prevention and criminal justice measures to eliminate violence against women: Model Strategies and Practical Measures on the Elimination of Violence against Women in the Field of Crime Prevention and Criminal Justice:

“14. Member States and the private sector, relevant professional associations, foundations, non-governmental and community organizations, including organizations seeking women's equality, and research institutes are urged, as appropriate:

(d) To set up outreach programmes and offer information to women, including victims of violence, about gender roles, the human rights of women and the social, health, legal and economic aspects of violence against women, in order to empower women to protect themselves against all forms of violence;”

Public education

The Convention on the Elimination of All Forms of Discrimination against Women, Article 5, sets out the following binding treaty obligation:

“States Parties shall take all appropriate measures:

(a) To modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women;

(b) To ensure that family education includes a proper understanding of maternity as a social function and the recognition of the common responsibility of men and women in the upbringing and development of their children, it being understood that the interest of the children is the primordial consideration in all cases.”

General Recommendation 19 of the Committee on the Elimination of All Forms of Discrimination against Women states in paragraph 24 f):

“Effective measures should be taken to overcome these attitudes and practices. States should introduce education and public information programmes to help eliminate prejudices which hinder women's equality;”

The Declaration on the Elimination of Violence against Women, Article 4 j), calls on states to:

“Adopt all appropriate measures, especially in the field of education, to modify the social and cultural patterns of conduct of men and women and to eliminate prejudices, customary practices and all other practices based on the idea of the inferiority or superiority of either of the sexes and on stereotyped roles for men and women”.

The Beijing Platform for Action, paragraph 124 k), calls on governments to:

“Adopt all appropriate measures, especially in the field of education, to modify the social and cultural patterns of conduct for men and women, and to eliminate prejudices, customary practices and all other practices based on the idea of inferiority or superiority of either of the sexes and on stereotyped roles for men and women;”

UN General Assembly Resolution 52/86 – Crime prevention and criminal justice measures to eliminate violence against women: Model Strategies and Practical Measures on the Elimination of Violence against Women in the Field of Crime Prevention and Criminal Justice:

“14. Member States and the private sector, relevant professional associations, foundations, non-governmental and community organizations, including organizations

seeking women's equality, and research institutes are urged, as appropriate:

(e) To develop and disseminate information on the different forms of violence against women and the availability of programmes to deal with that problem, including programmes concerning the peaceful resolution of conflicts, in a manner appropriate to the audience concerned, including in educational institutions at all levels;”

The Council of Europe Committee of Ministers Recommendation Rec(2002)5 on the protection of women against violence recommends that member states should:

“6. compile and make available to the general public appropriate information concerning the different types of violence and their consequences for victims, including integrated statistical data, using all the available media (press, radio and television etc)

7. mobilize public opinion by organizing or supporting conferences and information campaigns so that society is aware of the problem and its devastating effects on victims and society in general and can therefore discuss the subject of violence towards women openly, without prejudice or pre-conceived ideas;.”

Education – media

The representation of women, and of violence against women, in the media can have far-reaching effects.

General Recommendation 19 of the Committee on the Elimination of All Forms of Discrimination against Women, Article 24 d), says:

“Effective measures should be taken to ensure that the media respect and promote respect for women;”

UN General Assembly Resolution 52/86 – Crime prevention and criminal justice measures to eliminate violence against women: Model Strategies and Practical Measures on the Elimination of Violence against Women in the Field of Crime urges:

“15. Member States and the media, media associations, media self-regulatory bodies, schools and other relevant partners, while respecting the freedom of the media, are urged, as appropriate, to develop public awareness campaigns and appropriate measures and mechanisms, such as codes of ethics and self-regulatory measures on media violence, aimed at enhancing respect for the rights of women and discouraging both discrimination against women and stereotyping of women.”

The Council of Europe Committee of Ministers Recommendation Rec(2002)5 on the protection of women against violence recommends that member states should:

“17. Encourage the media to promote a non-stereotyped image of women and men based on respect for the human person and human dignity and to avoid programmes associating violence and sex; as far as possible, these criteria should also be taken into account in the field of the new information technologies;

18. Encourage the media to participate in information campaigns to alert the general public to violence against women;

19. Encourage the organization of training to inform media professionals and alert them to the possible consequences of programmes that associate violence and sex;

20. Encourage the elaboration of codes of conduct for media professionals, which would take into account the issue of violence against women and, in the terms of reference of media watch organizations, existing or to be established, encourage the inclusion of tasks dealing with issues concerning violence against women and sexism.

Education – schools

To be most effective, education about equality and mutual respect between the sexes, including the prevention of violence against women, must begin early, with the education of children.

The Council of Europe Committee of Ministers Recommendation Rec(2002)5 on the protection of women against violence recommends that members states should:

“15. Ensure that both boys and girls receive a basic education that avoids social and cultural patterns, prejudices and stereotyped roles for the sexes and includes training in assertiveness skills, with special attention to young people in difficulty at school; train all members of the teaching profession to integrate the concept of gender equality in their teaching;

“16. Include specific information in school curricula on the rights of children, helplines, institutions where they can seek help and persons they can turn to in confidence.”

Public education – focus on men

“[Violence against women] is embedded in a patriarchal legacy, at the core of which lies the interest of a social group in sustaining and controlling socially acceptable lines of reproduction of the species. Within this context, as an institutionalized social mechanism, male power is used to control women's reproductive capacity and sexuality. The strong connection between power and hegemonic masculinity gives patriarchy its pervasiveness, while what is masculine continuously adjusts itself to

changing requirements of power, creating both the opportunity to eliminate some forms of violence while at the same time creating the possibility of renewed or new forms of violence. The transformation from modernization to globalization has ended some of the long-lasting conflicts in the world, particularly as experienced through the cold war era. However, new areas of conflict, based on ethnic, racial and religious differences, have emerged involving not only States but also diverse non-state actors. The need to assert new boundaries, based on what may have been initially a search for local identity, has necessarily rested on the manufacture of the ‘other’ as the external enemy.” Yakin Erturk, second Special Rapporteur on violence against women, its causes and consequences¹⁴³

The Special Rapporteur on violence against women seeks to work with men to change attitudes. This is not just an issue for women – when women are hurt their family friends and colleagues are all affected.

The need to focus educational efforts towards changing the behaviour of men is reflected in many international documents, such as the UN General Assembly Resolution 52/86 – Crime prevention and criminal justice measures to eliminate violence against women: Model Strategies and Practical Measures on the Elimination of Violence against Women in the Field of Crime Prevention and Criminal Justice:

“14. Member States and the private sector, relevant professional associations, foundations, non-governmental and community organizations, including organizations seeking women's equality, and research institutes are urged, as appropriate:

(c) To set up outreach programmes for offenders or persons identified as potential offenders in order to promote the peaceful resolution of conflicts, the management and control of anger and attitude modification about gender roles and relations;”

The Council of Europe Committee of Ministers Recommendation Rec(2002)5 on the protection of women against violence recommends that:

“13. Organize awareness-raising campaigns on male violence towards women, stressing that men should be responsible for their acts and encouraging them to analyse and dismantle mechanisms of violence and to adopt different behaviour.”

Cooperation with women’s organizations

Women's rights organizations, particularly those providing immediate practical services such as shelter and counselling, are an important source of information, guidance and experience about the needs of women

survivors. International law and standards acknowledge this expertise and mandate governments to turn to them for guidance.

The Declaration on the Elimination of Violence against Women, Article 4, calls on states to:

“o) Recognize the important role of the women's movement and non-governmental organizations world wide in raising awareness and alleviating the problem of violence against women;

“p) Facilitate and enhance the work of the women's movement and non-governmental organizations and cooperate with them at local, national and regional levels.”

UN General Assembly Resolution 52/86 – Crime prevention and criminal justice measures to eliminate violence against women: Model Strategies and Practical Measures on the Elimination of Violence against Women in the Field of Crime Prevention and Criminal Justice:

“14. Member States and the private sector, relevant professional associations, foundations, non-governmental and community organizations, including organizations seeking women's equality, and research institutes are urged, as appropriate:

(f) To support initiatives of organizations seeking women's equality and non-governmental organizations to raise public awareness of the issue of violence against women and to contribute to its elimination.”

Report to international bodies

States should report regularly to international human rights bodies, which provide valuable guidance on improvements in the treatment of women survivors of violence.

The Declaration on the Elimination of Violence against Women states in Article 4 m) that states should:

“Include, in submitting reports as required under relevant human rights instruments of the United Nations, information pertaining to violence against women and measures taken to implement the present Declaration;”

The Beijing Platform for Action, paragraph 124 q), similarly calls on governments to:

“Include in reports submitted in accordance with the provisions of relevant United Nations human rights instruments, information pertaining to violence against women and measures taken to implement the Declaration on the Elimination of Violence against Women.”

10. Identity-based discrimination and violence

Recent developments in thinking on human rights have stressed the need for an approach which focuses on intersectionality. This recognizes the interconnections between various forms of discrimination, such as racism, sexism and homophobia, and that different aspects of a person's identity may compound their vulnerability to human rights violations or their lack of access to redress.¹⁴⁴

The idea of respect and ensuring rights for all, regardless of background, is inherent in the basic principle of human rights – non-discrimination. All human rights treaties commit states to implement rights “without distinction of any kind such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”(Article 2.2 of the International Covenant on Economic, Social and Cultural Rights, Article 2.1 of the International Covenant on Civil and Political Rights.)¹⁴⁵

Measures for the protection and promotion of the rights of specific groups are highlighted in a number of international standards for particular assistance. However, access to fundamental human rights must be available to all, regardless of citizenship or other legal status.

Girls

The absolute prohibition on all forms of violence against women applies, of course, to girls as well. Girls enjoy a similar - and equally absolute - protection from any kind of violence as children. The Universal Declaration on Human Rights provides that:

“Motherhood and childhood are entitled to special care and assistance.”¹⁴⁶

The Convention on the Rights of the Child clearly imposes on states parties an obligation to protect children from violence whether by state officials or by non-state actors. Article 19(1) provides that:

“States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.”¹⁴⁷

Article 34 provides that:

“States Parties undertake to protect the child from all forms of sexual exploitation and sexual abuse. For these purposes, States Parties shall in particular take all

appropriate national, bilateral and multilateral measures to prevent:

- (a) The inducement or coercion of a child to engage in any unlawful sexual activity;*
- (b) The exploitative use of children in prostitution or other unlawful sexual practices;*
- (c) The exploitative use of children in pornographic performances and materials.”*

Article 37(a) provides that:

“No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment.”

Lesbian, transgender and bisexual women

Discrimination on grounds of sexual orientation and gender identity can also result in violence against women. In analysing how violence against women is rooted in the control of female sexuality, the UN Special Rapporteur on violence against women has highlighted the risks faced by women who transgress social norms governing sexual behaviour, in particular non-heterosexual women.¹⁴⁸

The UN Special Rapporteur on violence against women has noted that:

*“A woman who is perceived to be acting in a manner deemed to be sexually inappropriate by communal standards is liable to be punished. In most communities, the option available to women for sexual activity is confined to marriage with a man from the same community. Women who choose options which are disapproved of by the community, whether to have a sexual relationship with a man in a non-marital relationship, to have such a relationship outside of ethnic, religious or class communities, or to live out their sexuality in ways other than heterosexuality, are often subjected to violence and degrading treatment.”*¹⁴⁹

The UN Special Rapporteur on extrajudicial, summary or arbitrary executions, when addressing “the right to life and sexual orientation,” emphasized the correlation between the stigmatization and punishment of lesbian and gay people by the state and violence against such people in the community:

“The Special Rapporteur finds it unacceptable that in some States homosexual relationships are still punishable by death. It must be recalled that under article 6 of the International Covenant on Civil and Political Rights death sentences may only be imposed for the most serious crimes, a stipulation which clearly excludes matters of sexual orientation. In this context, the Special Rapporteur wishes to reiterate her belief that the continuing prejudice

*against members of sexual minorities and especially the criminalization of matters of sexual orientation increase the social stigmatization of these persons. This in turn makes them more vulnerable to violence and human rights abuses, including death threats and violations of the right to life, which are often committed in a climate of impunity. The Special Rapporteur further notes that the often tendentious media coverage of this subject further contributes to creating an atmosphere of impunity and indifference about crimes committed against members of sexual minorities.”*¹⁵⁰

Rural women

Women in isolated rural communities often have difficulties in turning to others for help and in accessing services.

General Recommendation 19 of the Committee on the Elimination of All Forms of Discrimination against Women, recommends in paragraph 24:

“(o) States parties should ensure that services for victims of violence are accessible to rural women and that where necessary special services are provided to isolated communities.

“(p) Measures to protect them from violence should include training and employment opportunities and the monitoring of the employment conditions of domestic workers;

“(q) States parties should report on the risks to rural women, the extent and nature of violence and abuse to which they are subject, their need for and access to support and other services and the effectiveness of measures to overcome violence;”

Disabled women

The Beijing Platform for Action, paragraph 124 m), calls on governments to:

“Ensure that women with disabilities have access to information and services in the field of violence against women”.

11. Failure to respect, protect and ensure rights

“Despite successes in awareness raising and standard setting,... very little has changed in the lives of most women. A few women have benefited from these changes, but for the vast majority, violence against women remains a taboo issue, invisible in society and a shameful fact of life. Statistics continue to show high rates of violence and abuse. Most cases of violence against women result in

impunity for the perpetrators, which fuels the perpetuation of this grave violation. More must be done to provide equal access to effective judicial protection and guarantees. If the first decade [of the rapporteurship on violence against women] emphasized standard-setting and awareness raising, the second decade must focus on effective implementation and the development of innovative strategies to ensure that the prohibition against violence is a tangible reality for the world's women."

Radhika Coomaraswamy, the first Special Rapporteur on violence against women, in her final report to the Commission on Human Rights¹⁵¹

Despite the clear obligations on states under international human rights law to take effective action to respect, protect and ensure rights, and detailed guidance on the practical measures required, violence against women continues to be widespread and systematic.

There are many possibilities for states to bridge the gap between their obligations and results which fall short of requirements. They can study the problem effectively and consult women about what would help them to escape situations of violence; they can exercise political will through an open commitment to change and by allocating resources; they can undertake research on the causes and consequences of violence against women; and they can maintain a constructive dialogue with international human rights institutions, UN agencies and non-governmental organizations.

When is the duty of due diligence breached?

*"Unlike for direct State action, the standard for establishing state complicity in violations committed by private actors is more relative. Complicity must be demonstrated by establishing that the State condones a pattern of abuse through pervasive non-action. Where States do not actively engage in act of domestic violence or routinely disregard evidence of murder, rape or assault of women by their intimate partners, States generally fail to take the minimum steps necessary to protect their female citizen's rights to physical integrity and in extreme cases, to life. This sends a message that such attacks are justified and will not be punished. To avoid such complicity, states must demonstrate due diligence by taking active measures to protect, prosecute and punish private actors who commit abuses."*¹⁵²

Jurisprudence from the international human rights bodies has not yet provided a detailed explanation of when the duty of due diligence to implement rights has been met. In some examples of case law, there are clear breaches. For example, in *A v UK*, there was a gap in the law which

failed to give protection to certain victims. However, in cases of practical failures of state agents to intervene in specific situations before or after violations (*Osman v UK, E v UK*) the boundary between satisfying the state's obligation and failing to do so is less clear.

However, the general standard under treaty law is that obligations must be implemented in good faith. It has not yet been ruled whether states must implement all the positive measures outlined above (Sections 5 to 11) in order to satisfy the duty of due diligence. If so, there are few countries who could claim to have done so, and fewer still who monitor the results and make adjustments according to their effectiveness in preventing violence and responding to the needs of victims.

As elaborated in cases such as *Velásquez Rodríguez*,¹⁵³ states must establish a general apparatus of criminal justice measures and services, implement the recommendations above in full, monitor effectiveness and make changes according to the experiences and needs of victims.

12. There are no excuses for failing to implement all recommendations

There are no excuses: culture

*"Human rights such as the equal dignity of human beings resonate in all the cultural traditions of the world. In that sense, there is sufficient basis in every cultural tradition to foster and promote the value of human rights."*¹⁵⁴

*"The greatest challenge [to human rights] comes from the doctrine of cultural relativism where women's issues play a vital part. It is important to confront this challenge with open-mindedness, without arrogance, involving men and women from the local communities in the struggle to vindicate human rights and human dignity."*¹⁵⁵ Radhika Coomaraswamy, the first Special Rapporteur on violence against women, its causes and consequences

"The popularized phrase 'clash of civilizations' is fast becoming a self-fulfilling prophecy, an imaginary line deeply dividing the world. The events of 11 September and its aftermath have further reinforced this trend. The increased politicization of culture, especially its articulation in the form of religious fundamentalism(s) in the competition over global power poses a major challenge to international and national governance around the normative order governing international human rights regimes, particularly as it affects women. The new sites of 'normativity', drawing their legitimacy from culture and religion, have been identified by the

former Special Rapporteur as the greatest challenge to women's human rights. The Convention on the Elimination of All Forms of Discrimination against Women also draws attention to the contradictions that may arise in the intersectionality of collective rights and the human rights of women. This paradox begs the question: 'Does the right to cultural difference and specificity, as embedded in the freedom of religion and belief, contradict the universality of the human rights of women?' Alternatively, the question can be turned around as follows: 'Is control over and regulation of women the only means by which cultural specificity and tradition be sustained?' 'Is it cultural, or authoritarian patriarchal coercion and the interests of hegemonic masculinity that violates the human rights of women everywhere?' 'When a man beats his wife, is he exercising his right in the name of culture? If so, are culture, tradition and religion the property of men alone?'

"Universal human rights norms are clear on these questions. The Declaration [on the Elimination of Violence against Women] stresses that States 'should not invoke any custom, tradition or religious consideration to avoid their obligations with respect to [the elimination of violence against women.]' (Article 4) The Dialogue among Civilisations, based on the convergence in values embedded in the common heritage of human rights, is critical for resisting religious extremism and its transgression on women's human rights. It is through such constructive dialogue that consensus on values and norms can lead to a convergence of action in achieving unity within diversity."

Yakin Erturk, second Special Rapporteur on violence against women, its causes and consequences¹⁵⁶

There is no justification for failing to exercise due diligence in relation to violence against women. States are obliged to take effective action to ensure rights. However, some states hold that there is a more important obligation, in terms of maintaining certain religious, cultural or traditional laws and practices within their country.

Violence against women, particularly in the home, is often hard for women to escape from because of traditional or cultural practices sanctioned by the state. These include forced or early marriage; limitations on women accessing divorce or maintenance; and restrictions on women's ability to work to support themselves, or to secure custody of their children, when they are without husbands or some other male family member to support them.

The Convention on the Elimination of All Forms of Discrimination against Women states explicitly that any kind of excuse based on culture, tradition or religion

which leads to discrimination against women (and, by extension, to violence against women) is not acceptable.

Article 2(f) states that:

"States parties condemn discrimination against women in all its forms, agree to pursue, by all appropriate means and without delay, a policy of eliminating discrimination against women, and to this end, undertake:

(f) to take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women."

Further to this, the Committee on the Elimination of All Forms of Discrimination against Women said in its General Recommendation 19:

"Traditional attitudes by which women are regarded as subordinate to men or as having stereotyped roles perpetuate widespread practices involving violence or coercion, such as family violence and abuse, forced marriage, dowry deaths, acid attacks and female circumcision. Such prejudices and practices may justify gender-based violence as a form of protection or control of women. The effect of such violence on the physical and mental integrity of women is to deprive them of the equal enjoyment, exercise and knowledge of human rights and fundamental freedoms."

The Declaration on the Elimination of Violence against Women also states in Article 4:

"States should condemn violence against women and should not invoke any custom, tradition or religious consideration to avoid their obligations with respect to its elimination."

The Human Rights Committee has said that:

"States parties should ensure that traditional, historical, religious or cultural attitudes are not used to justify violations of women's right to equality before the law and to equal enjoyment of all Covenant [on Civil and Political Rights] rights."¹⁵⁷

The Beijing Platform for Action states in paragraph 124 a) that governments should:

"Condemn violence against women and refrain from invoking any custom, tradition or religious consideration to avoid their obligations with respect to its elimination as set out in the Declaration on the Elimination of Violence against Women."

General Recommendation 19 of the Committee on the Elimination of All Forms of Discrimination against Women says in paragraph 24 e):

“States parties in their report should identify the nature and extent of attitudes, customs and practices that perpetuate violence against women, and the kinds of violence that result. They should report the measures that they have undertaken to overcome violence, and the effect of those measures;”

There are no excuses: gender-based state violence

Some laws are, in themselves a direct cause of gender-based violence. For instance laws that criminalize adultery lead to the imprisonment of women and girls, to the imposition of sentences which amount to torture or cruel, inhuman and degrading treatments such as flogging, and violations of the right to life such as the death penalty. Amnesty International believes that the state should not criminalize consensual sexual relations and that all such laws should be removed from the statute books. By enforcing such laws the state itself is committing gender-based violence and is violating human rights standards such as the prohibition of torture and ill-treatment and Article 6 of the International Covenant on Civil and Political Rights which states that “sentence of death may be imposed only for the most serious crimes”.

There are no excuses: inertia

States frequently fail to implement rights because of inertia, an unwillingness to look critically at their laws and practices and make the necessary changes. Article 27 of the Vienna Convention on the Law of Treaties states that “a state party may not invoke the provisions of its internal law as justification for its failure to perform a treaty.”

The UN Human Rights Committee’s General Comment 31 on Article 2 of the International Covenant on Civil and Political Rights says:

“States parties are required on ratification to make such changes to domestic laws and practices as are necessary to ensure their conformity with the Covenant [on Civil and Political Rights]. The requirement under Article 2, paragraph 2, to take steps to give effect to the Covenant is unqualified and of immediate effect.”¹⁵⁸

This principle is supported by the basic rule of the Vienna Convention on the Law of Treaties, that treaty obligations should be fulfilled in good faith. States undertake their treaty obligations freely, and give their consent to be legally bound to fulfil their obligations. Treaties are agreements which must direct the behaviour of states: they must be fulfilled in practice, they are not just pieces of paper. Treaties must be fulfilled even when they are contrary to domestic law: states which ratify or accede to

a new treaty are obliged to change their laws so that the treaty can be honoured and fulfilled in practice.

There are no excuses: poverty

General Comment on Article 2 of the International Covenant on Civil and Political Rights states:

“A failure to comply with this obligation cannot be justified by reference to social, cultural or economic considerations within a state.”

The Committee on the Rights of the Child, when considering the same issue, the availability of resources to address rights, said:

“States need to be able to demonstrate that they have implemented ‘to the maximum extent of available resources’.”

Commitment and political will can be shown concretely through providing a reasonable proportion of available resources, even if the resources available are small.

There are no excuses: lack of progress

“Despite important gains in the formulation of human rights norms and standards to address violence against women, there remains a significant gap in their application. Bridging the gap requires that standards be grounded at the local level. Communities must be engaged in the effort to translate international mandates into laws, plans and actions so that these mechanisms have a meaning in daily life. This process is best served when the foundation of a clear legal framework and commitment to rule of law exists.” UNIFEM, *Not a minute more; Ending violence against women*¹⁵⁹

UN General Assembly Resolution 52/86 – Crime prevention and criminal justice measures to eliminate violence against women: Model Strategies and Practical Measures on the Elimination of Violence against Women in the Field of Crime Prevention and Criminal Justice:

“16. Member States and United Nations bodies and institutes are urged, as appropriate:

(a) To exchange information concerning successful intervention models and preventive programmes in eliminating violence against women and to compile a directory of those models;

(b) To cooperate and collaborate at the regional and international levels with relevant entities to prevent violence against women and to promote measures to effectively bring perpetrators to justice, through mechanisms of international cooperation and assistance in accordance with national law;

(c) To contribute to and support the United Nations Development Fund for Women in its activities to eliminate violence against women.”

It is essential that states continue to reassess critically the extent of human rights violations such as violence against women, as they occur. They should also continue to review their laws, policies and administration, in terms of effectiveness. Initiatives to eradicate violence against women have met with varying degrees of success – but invariably they have been partial, or not consistently followed up. Clearer and more effective monitoring of the extent of violence against women and the effectiveness of remedies has been identified as the way forward in ensuring proper implementation of international human rights law protecting women from violence.¹⁶⁰

The Beijing Platform for Action, paragraph 124 d), urges governments to:

“Adopt and/or implement and periodically review and analyse legislation to ensure its effectiveness in eliminating violence against women, emphasizing the prevention of violence and the prosecution of offenders; take measures to ensure the protection of women subjected to violence, access to just and effective remedies, including compensation and indemnification and healing of victims, and rehabilitation of perpetrators.”

Eradicating violence against women in the long term will require courage, creativity, thoroughness and coordinated action between activists in countries, governments, and international human rights bodies. All will need to engage thoughtfully with survivors about their experiences and what their needs are, in order to discuss potential solutions and share best practice.

The scandal of violence against women continues at least in part because of the world’s apathy about an appalling human rights abuse. Violence against women, like slavery and torture in earlier centuries, is seen as natural, normal, inescapable and acceptable. Like slavery and torture, violence against women is none of these. Acts of violence against women are crimes. These acts must be prevented, and where prevention fails, the perpetrators must be brought to justice and punished. As with slavery and torture, progress in eradicating violence against women can be made by understanding the human rights abuse for what it is and condemning it publicly, as well as taking action against the perpetrators.

Amnesty International has been asked whether its campaign to stop violence against women can possibly be successful. Torture still persists, despite the best efforts of human rights activists over the past 40 years. Perhaps violence against women will continue, despite the work of

Amnesty International and the efforts of countless other brave women and men trying to eradicate it. But a world where everyone knows that violence against women is an unacceptable abuse of human rights would be an achievement in itself, and a significant step towards eradication.

Endnotes

¹ The Situation of the Rights of Women in Ciudad Juárez, Mexico: The Right to Be Free from Violence and Discrimination, Chapter VI, Annual Report of the Inter-American Commission on Human Rights, 2002, paragraph 158.

² UNIFEM, *Not a minute more: Ending violence against women* Page 75.

³ *The First CEDAW Impact Study*, June 2000, available on http://www.iwrp.org/CEDAW_Impact_Study.htm.

⁴ *The First CEDAW Impact Study*, page 15.

⁵ *The First CEDAW Impact Study*, page 17.

⁶ Page 18.

⁷ Article 38, the Statute of the International Court of Justice.

⁸ Article 38, the Statute of the International Court of Justice.

⁹ Article 53, the Statute of the International Court of Justice.

¹⁰ Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, Article 50; Convention (II) for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea, Article 51; Convention (III) relative to the Treatment of Prisoners of War, Article 130; Convention (IV) relative to the Protection of Civilian Persons in Time of War, Article 147.

¹¹ See “Human Rights and the New UN Protocols on Trafficking and Migrant Smuggling: A Preliminary Analysis”, in 23 *Human Rights Quarterly* 4 (2001) for more information.

¹² UN Doc. E/2002/68/Add.1 (2002).

¹³ Article 12, International Law Commission’s Articles on State Responsibility; Article 1 European Convention on Human Rights; *Loizidou v Turkey*, European Court of Human Rights, 23 March 1995, paragraph 62; *Cyprus v Turkey* (Application 25781/94) European Court of Human Rights, 10 May 2001, para. 78. General Comment on Article 2 of the International Covenant on Civil and Political Rights, adopted by the UN Human Rights Committee on 29 March 2004. UN Doc.: CCPR/C/74/CRP.4/Rev.6.

¹⁴ Adopted by the UN Human Rights Committee on 29 March 2004. UN Doc.: CCPR/C/74/CRP.4/Rev.6, para. 8.

¹⁵ Committee on the Rights of the Child, General Comment No. 5: General measures of implementation of the Convention on the Rights of the Child (arts. 4, 42 and 44, para. 6), UN. Doc. CRC/GC/2003/5, 27 November 2003, para. 1.

¹⁶ Committee on Economic, Social and Cultural Rights, General Comment 14, The right to the highest attainable standard of health, U.N. Doc. E/C.12/2000/4 (2000): para. 33.

¹⁷ Declaration on the Elimination of Violence against Women G.A. res. 48/104, 48 U.N. GAOR Supp. (No. 49) at 217, U.N. Doc. A/48/49 (1993).

¹⁸ General Assembly Resolution 52/86.

¹⁹ UN Security Council resolution 1325 on Women, Peace and Security, UN Doc. S/RES/1325 (2000), 31 October 2000.

²⁰ Committee on the Elimination of Discrimination against Women, General Recommendation 19, Violence against women, (Eleventh session, 1992), Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, U.N. Doc. HRI/GEN/1/Rev.1 at 84 (1994).

²¹ Human Rights Committee, General comment no. 28: Equality of rights between men and women (Article 3), UN Doc. CCPR/C/21/Rev.1/Add.10, 29 March 2000.

²² Radhika Coomaraswamy, Special Rapporteur on violence against women, Report to the Commission on Human Rights, UN Doc. E/CN.4/2003/75, 6 January 2003, para. 85.

²³ Amnesty International holds such groups directly responsible for the abuses they commit, whether they are fighting the state or other groups, and regardless of whether they control territory, under principles derived from the laws of armed conflict. (For more on violence against women by armed groups see: *Making rights a reality: Violence against women in armed conflict*, AI Index: ACT 77/0502004).

²⁴ UN Declaration on the Elimination of Violence against Women, UN Doc. A/RES/48/104, adopted by the UN General Assembly on 20 December 1993.

²⁵ For example *Ireland v UK*, European Court of Human Rights, 18 January 1978. Such cases are rare as this involves litigating “for the common good” rather than for the state’s own interest.

²⁶ The International Law Commission was established by the General Assembly in 1947 to promote the progressive development of international law and its codification. The Commission, which meets annually, is composed of 34 members who are elected by the General Assembly for five year terms and who serve in their individual capacity, not as representatives of their governments. Most of the Commission’s work involves the preparation of drafts on topics of international law. Some topics are chosen by the Commission and others referred to it by the General Assembly or the Economic and Social Council. When the Commission completes draft articles on a particular topic, the General Assembly usually convenes an international conference of plenipotentiaries to incorporate the draft articles into a convention which is then open to States to become parties.

²⁷ Draft articles on Responsibility of States for internationally wrongful acts, adopted by the International Law Commission at its fifty-third session (2001).

²⁸ Draft articles on Responsibility of States for internationally wrongful acts, adopted by the International Law Commission at its fifty-third session (2001). See *The International Law Commission draft articles on state responsibility, Introduction, text and commentaries*, ed. James Crawford, Cambridge University Press 2002.

²⁹ Corfu Channel, Merits, ICJ reports, 1949, page 18.

³⁰ Diplomatic and Consular Staff, ICJ Reports 1980, p 3 at pp 31-32, paras 63, 67.

³¹ Inter-Am Ct. H.R. Series C, No 4, (1989) para 170.

³² Velásquez Rodríguez Case, Judgment of July 29, 1988, Inter-Am.Ct.H.R. (Ser. C) No. 4 (1988)). Para. 172.

³³ *A v UK*, 23 September 1998; *X and Y v the Netherlands* Application number 8978/80, 26 March 1985.

³⁴ The preamble to the Vienna Convention on the Law of Treaties confirms that “the principles of free consent and of good faith and the *pacta sunt servanda* rule are universally recognized”.

³⁵ Article 26 Vienna Convention on the Law of Treaties.

³⁶ Article 27 Vienna Convention on the Law of Treaties.

³⁷ According to the UN High Commissioner for Human Rights official website, as of 23 April 2004, there were 152 states parties to the ICCPR, and 177 states parties to CEDAW. By that date, only Brunei Darussalam, the Cook Islands, the Holy See, the Marshall Islands, the Federated States of Micronesia, Niue, Palau, Qatar, Tonga and the United Arab Emirates had failed to ratify both CEDAW and ICCPR. Although these states have not ratified the relevant treaties, they are still bound by the principle of customary international law.

³⁸ 1948

³⁹ 1966

⁴⁰ 1966

⁴¹ Adopted at Rome on 4 November 1950, entered into force 3 September 1953.

⁴² African [Banjul] Charter on Human and Peoples' Rights, adopted 27 June 1981, OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), entered into force 21 October 1986.

⁴³ Adopted 11 July 2003, Maputo, Mozambique.

⁴⁴ American Convention on Human Rights, O.A.S. Treaty Series No. 36, 1144 U.N.T.S. 123 entered into force 18 July 1978.

⁴⁵ Adopted at Belem do Para, Brazil, 6 September 1994.

⁴⁶ 1979.

⁴⁷ See *Claiming Women's Rights: the Optional Protocol to the UN Women's Convention*, AI Index: IOR 51/001/2001, 1 March 2001, for information on opportunities to raise breaches of CEDAW at the international level.

⁴⁸ For example, Case 172/84, *Broeks v. Netherlands* (views of 9 April 1987); Case 182/84, *Zwaan de Vries v. The Netherlands*, (views of 9 April 1987); Case 218/1986, *Vos v. The Netherlands* (views of 29 March 1989); Case 035/1978, *Aumeeruddy-Cziffra et al v. Mauritius* (views adopted 9 April 1981); Case 24/1977, *Lovelace v. Canada*, (views adopted July 1981).

⁴⁹ Human Rights Committee, General Comment 28, Equality of rights between men and women (article 3), U.N. Doc. CCPR/C/21/Rev.1/Add.10 (2000).

⁵⁰ Declaration on the Elimination of Violence against Women G.A. res. 48/104, 48 U.N. GAOR Supp. (No. 49) at 217, U.N. Doc. A/48/49 (1993), also GA Resolution 52/86 "Crime prevention and criminal justice measures to eliminate violence against women" 2 February 1998 containing "Model Strategies and Practical Measures on the Elimination of Violence against Women in the Field of Crime Prevention and Criminal Justice".

⁵¹ For further details, see <http://www.unhchr.ch/html/menu5/wchr.html>.

⁵² For further details, see <http://www.un.org/womenwatch/daw/beijing>.

⁵³ *The UN Human Rights Thematic Mechanisms 2002*, AI Index: IOR 40/009/2002, 1 May 2002: see particularly the report of the Special Rapporteur on violence against women, its causes and consequences, E/CN.4/2003/75 and Corr.1, 6 February 2003, for a summary of developments in law and practice relating to violence against women from 1994-2003 E/CN.4/2003/75/Add.1, 27 February 2003, for detailed country studies: and E/CN.4/2004/66 for the most recent report of the Special Rapporteur on the need for concrete measures for implementation of standards.

⁵⁴ *The UN Human Rights Thematic Mechanisms 2002*, AI Index: IOR 40/009/2002, 1 May 2002 contains full details of the various independent experts, their role and their remit: and how to contact them and use them to promote human rights.

⁵⁵ UN Doc. A/47/38, of 29 January 1992.

⁵⁶ UN Doc. A/48/49 (1993).

⁵⁷ General Recommendation 19, Violence against women, (Eleventh session, 1992), Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, U.N. Doc. HRI/GEN/1/Rev.1 at 84 (1994).

⁵⁸ See Amnesty International, *Crimes of hate, conspiracy of silence: Torture and ill-treatment based on sexual identity*. AI Index: ACT 40/016/2001, page 4.

⁵⁹ The International Criminal Tribunal for the former Yugoslavia has recently sentenced a man for, *inter alia*, forcing two Muslim brothers to perform sexual acts on each other. *Prosecutor v. Ranko Cestic*, Sentencing Judgement, Case No. IT-95-10/1-S, 11 March 2004.

⁶⁰ UN Special Rapporteur on violence against women, Statement to the 58th session of the Commission on Human Rights, 10 April 2002.

⁶¹ Article 1, UN Declaration on the Elimination of Violence Against Women.

⁶² "According to article 4, paragraph 1, of the International Covenant of Civil and Political Rights, one of the conditions for the justifiability of any derogation from the Covenant [ICCPR] is that the measures taken do not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin. Even though article 26 or the other Covenant provisions related to non-discrimination (articles 2, 3, 14, paragraph 1, 23, paragraph 4, 24, paragraph 1, and 25) have not been listed among the non-derogable provisions in article 4, paragraph 2, there are elements or dimensions of the right to non-discrimination that cannot be derogated from in any circumstances. In particular, this provision of article 4, paragraph 1, must be complied with if any distinctions between persons are made when resorting to measures that derogate from the Covenant." Human Rights Committee, General Comment 29, States of Emergency (article 4), UN Doc. CCPR/C/21/Rev.1/Add.11 (2001).

⁶³ Another word for treaties, declarations and similar documents.

⁶⁴ *Principles of Public International Law*, Professor Ian Brownlie QC, Oxford University Press, 2003, p.546.

⁶⁵ Treaty provisions cannot be inconsistent with *jus cogens* prohibitions.

⁶⁶ Inter-American Court of Human Rights, *Juridical Condition and Rights of the Undocumented Migrants*. [Advisory Opinion OC-18](#) of September 17, 2003.

⁶⁷ Paragraph 100.

⁶⁸ Paragraph 101.

⁶⁹ Paragraph 110.

⁷⁰ Page 544, page 548.

⁷¹ European Court of Human Rights, case of *Aydin v. Turkey* (57/1996/676/866), Judgment of 25 September 1997, para 86; *Mejía v. Peru*, 1 March 1996, Annual Report of the Inter-American Commission on Human Rights 1995, page 187. International Criminal Tribunal for Rwanda, *Prosecutor v. Jean-Paul Akayesu*, Case No. ICTR-96-4-T, ICTR Chamber I,

judgment of 2 September 1998, para. 597; International Criminal Tribunal for the former Yugoslavia, *Prosecutor v. Zejnil Delalic*, Case No. IT-96-21, ICTY Trial Chamber II, Judgment of 16 November 1998, discussion, paras. 475-496, and findings, paras. 943, 965; *Prosecutor v. Anto Furundzija*, Case No. IT-95-17/1-T, ICTY Trial Chamber, Judgment of 10 December 1998, paras. 264-9.

⁷² For more details on legal aspects of torture, and practical measures that states are obliged to take in order to prevent and address torture, see Amnesty International, *Combating Torture – a manual for action*, AI Index: ACT 40/01/2003.

⁷³ See generally, *Women, Armed Conflict and International Law*, Judith G. Gardam and Michelle J. Jarvis, Kluwer Law International, 2001.

⁷⁴ Gardam and Jarvis, above, Chapter 6, International Redress.

⁷⁵ *The Situation Of The Rights Of Women In Ciudad Juárez, Mexico: The Right To Be Free From Violence And Discrimination*, Chapter VI, Annual Report of the Inter-American Commission on Human Rights, 2002; Report N° 54/01, Case 12.051, *Maria Da Penha Maia Fernandes v. Brazil*, April 16, 2001, Annual Report of the Inter-American Commission on Human Rights 2001.

⁷⁶ *Case of X and Y v. The Netherlands*, Application number 8978/80, 26 March 1985; *Case of A .v. The United Kingdom*, Application number 25599/94, 23 September 1998.

⁷⁷ Report of the Special Rapporteur on violence against women, its causes and consequences, E/CN.4/1996/53, 6 February 1996.

⁷⁸ AI Index: IOR 50/001/2000.

⁷⁹ See E/CN.4/Sub.2/1987/23 (7 July 1987) at paras. 66 – 69.

⁸⁰ Communication 155/96, *The Social and Economic Rights Action Centre and the Centre for Economic and Social Rights v Nigeria*, para 44.

⁸¹ Committee on Economic, Social and Cultural Rights [General Comment 14: The right to the highest attainable standard of health \(article 12\)](#) UN Doc. E/CN.12/2000/4.

⁸² Oral introduction to the report of the Special Rapporteur on torture to the 1992 session of the Commission on Human Rights, quoted in E/CN.4/1995/34/, para. 16.

⁸³ UN Doc. E/CN.4/1995/34, para. 19.

⁸⁴ *Prosecutor v Furundzija*, 29 April 1998, para 275.

⁸⁵ *Prosecutor v Furundzija*, 29 April 1998, para. 163.

⁸⁶ Application number 0023452/94, 28 October 1998.

⁸⁷ Paras 115 – 117.

⁸⁸ Paragraph 116.

⁸⁹ Cook, Dickens, Fathalla, *Reproductive health and human rights: integrating medicine, ethics and law*, Oxford, 2003, p 390.

⁹⁰ Case number 29392/95, 10 May 2001.

⁹¹ *Z and Others v United Kingdom*, Case number 29392/95, 10 May 2001, para. 73.

⁹² Application number 33218/96, 26 November 2002.

⁹³ Para. 99.

⁹⁴ *The Situation of the Rights of Women in Ciudad Juárez, Mexico: The Right To Be Free From Violence And Discrimination*, Chapter VI, Annual Report of the Inter-American Commission on Human Rights, 2002, para.155.

⁹⁵ *Velásquez Rodríguez*, judgment of July 29 1988.

⁹⁶ Para.172.

⁹⁷ Para.173.

⁹⁸ Para.176.

⁹⁹ Para. 166.

¹⁰⁰ *Maria da Penha Maia Fernandez v Brazil*, Report number 54/01, April 16, 2001.

¹⁰¹ Application number 22947/93 and 22948/93, judgment 10 October 2000.

¹⁰² Para.77.

¹⁰³ Report to the Commission on Human Rights, E/CN.4/2003/75, para. 83.

¹⁰⁴ Page 43.

¹⁰⁵ *Villagran Morales v Guatemala*, Series C no 63, 19 November 1999, para. 144.

¹⁰⁶ *Case of Airey v. Ireland*, Application number 00006289/73, 09/10/1979, para. 24: “*The Convention is intended to guarantee not rights that are theoretical or illusory but rights that are practical and effective.*”

¹⁰⁷ Pages 39-40.

¹⁰⁸ *X and Y v the Netherlands* Application number 8978/80, 26 March 1985.

¹⁰⁹ *Case of C.R. v. The United Kingdom*, Application number 00020190/92, 22 November 1995.

¹¹⁰ *M.C. v Bulgaria*, application no. 39272/98, judgment, 4 December 2003.

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http://cm.coe.int/stat/E/Public/2002/adopted_texts/recommendations/2002r5.htm.

¹¹² (2000) 46 McGill L.J. 217-240.

¹¹³ *M.C. v Bulgaria*, application no. 39272/98, judgment, 4 December 2003.

¹¹⁴ Para 166.

¹¹⁵ Paras 163-166.

¹¹⁶ Page 42.

¹¹⁷ Women’s difficulties and deliberations in seeking help are covered thoroughly in Sally Engel Merry, *Rights Talk and the Experience of Law: Implementing Women’s Human Rights to Protection from Violence*, Human Rights Quarterly Volume 25, Number 2, May 2003.

¹¹⁸ 15 September 1995, A/CONF.177/20 (1995) and A/CONF.177/20/Add.1 (1995).

¹¹⁹ UN Doc. A/52/635, adopted without a vote on 12 December 1997.

¹²⁰ Adopted by General Assembly resolution 40/34 of 29 November 1985, UN Doc. A/RES/40/34.

¹²¹ Rome Statue of the International Criminal Court, adopted on 17 July 1998 (A/CONF.183/9). Note that under Article 54(1)(b), the Court’s Prosecutor is required to “*respect the interests and personal circumstances of victims and witnesses, including age, gender... and health, and take into account the nature of the crime, in particular where it involves sexual violence, gender violence or violence against children.*”

¹²² Adopted by Assembly of States Parties, 3-10 Sept. 2002.

¹²³ Rule 16, para. 1(d).

¹²⁴ Rules 16-18.

¹²⁵ Rule 70 of the ICC Rules of Procedure and Evidence.

¹²⁶ Rule 71.

¹²⁷ Rule 96, Rules of Evidence and Procedure ICTY; See case of *Delalic Mucic et al.* IT-96-21 “*Celebici Camp*”.

¹²⁸ Report to the Commission on Human Rights, 6 January 2003, E/CN.4/2003/75, para. 91.

¹²⁹ E/CN.4/2003/8

¹³⁰ In Sally Engel Merry, *Rights Talk and the Experience of Law: Implementing Women's Human Rights to Protection from Violence*, Human Rights Quarterly Volume 25, Number 2, May 2003.

¹³¹ UN Doc. A/52/635, adopted without a vote on 12 December 1997.

¹³² Radhika Coomaraswamy, Special Rapporteur on violence against women, Report to the Commission on Human Rights, UN Doc. E/CN.4/2003/75, 6 January 2003, paras 29-30.

¹³³ Pages 45 -46.

¹³⁴ *The Situation of the Rights of Women in Ciudad Juárez, Mexico: The Right To Be Free From Violence And Discrimination*, Chapter VI, Annual Report of the Inter-American Commission on Human Rights, 2002, para. 156.

¹³⁵ *The right to a remedy and reparation for victims of violations of international human rights and humanitarian law*, report to the Commission on Human Rights E/CN.4/2004.57, 10 November 2003.

¹³⁶ Rosalind Dixon, "Rape as a Crime in International Law: Where to from here?", EJIL (2002) Vol 13 No 3, 697-719.

¹³⁷ *Case of Airey v. Ireland*, Application number 00006289/73, 09/10/1979, para. 24.

¹³⁸ Committee on Economic Social and Cultural Rights – General Comment 14, the right to the highest attainable standard of health, UN Doc E/C.12/2000.4 (2000).

¹³⁹ UN Doc.: E/CN.4/2003/55, para 20 -34, especially para. 27.

¹⁴⁰ Pages 52-53.

¹⁴¹ Pages 60 – 61.

¹⁴² Radhika Coomaraswamy, Special Rapporteur on violence against women, Report to the Commission on Human Rights, UN Doc. E/CN.4/1996/53, 6 February 1996, para. 142(g).

¹⁴³ Report to the Commission on Human Rights, 26 December 2003, E/CN.4/2004/66, paras 35-37.

¹⁴⁴ "Human Rights at the Intersection of Race and Gender", Charlotte Bunch, in *Women At the Intersection: Indivisible Rights, Identities, and Oppressions*, edited by Rita Raj with Charlotte Bunch and Elmira Nazombe, NJ: Center for Women's Global Leadership, 2002. See also the Report of the Special Rapporteur on violence against women, its causes and consequences to the World Conference against Racism, UN Doc. A/CONF.189/PC.3/5, 27 July 2001.

¹⁴⁵ The treaty bodies have interpreted these provisions as including other prohibited grounds of discrimination, such as sexual orientation and HIV status. See for example the Human Rights Committee decision in *Toonen v Australia* which confirmed that discrimination on grounds of "sex" is to be interpreted as including sexual orientation. *Toonen v. Australia*, Communication No. 488/1992, U.N. Doc CCPR/C/50/D/488/1992 (1994).

¹⁴⁶ Universal Declaration of Human Rights, UNGA res. 217 A(III), adopted 10 December 1948, Article 25(2). See similarly ICCPR, Article 24.

¹⁴⁷ UN Convention on the Rights of the Child, adopted by General Assembly resolution 44/25 of 20 November 1989, entered into force 2 September 1990, Article 19(1).

¹⁴⁸ Report of the UN Special Rapporteur on violence against women, *Cultural practices in the family that are violent towards women*, UN Doc. E/CN.4/2002/83, 31 January 2002

¹⁴⁹ Report of the Special Rapporteur on violence against women, its causes and consequences, Commission on Human Rights, UN Doc. E/CN.4/1997/47, 12 February 1997.

¹⁵⁰ Extrajudicial, summary or arbitrary executions: Report of the Special Rapporteur, Ms. Asma Jahangir, submitted pursuant to Commission on Human Rights resolution 1998/68, UN Doc. E/CN.4/2001/9 11 January 2001, para 50.

¹⁵¹ E/CN.4/2003/75, para 78-79.

¹⁵² Report of the Special Rapporteur on violence against women, its causes and consequences, E/CN.4/1996/53, 6 February 1996, para. 33.

¹⁵³ Velásquez Rodríguez Case, Judgement of 29 July 1988, Inter-Am Ct. H.R. (Ser. C) No 4 1988.

¹⁵⁴ Report to the Commission on Human Rights, E/CN.4/2003/75, para. 62.

¹⁵⁵ Ibid, para 83.

¹⁵⁶ Report to the Commission on Human Rights, 26 December 2003, E/CN.4/2004/66, para 38-3.

¹⁵⁷ Human Rights Committee, General comment no. 28: Equality of rights between men and women (Article 3), UN Doc. CCPR/C/21/Rev.1/Add.10, 29 March 2000, para 5.

¹⁵⁸ Adopted by the UN Human Rights Committee on 29 March 2004. UN Doc.: CCPR/C/74/CRP.4/Rev.6.

¹⁵⁹ Page 75.

¹⁶⁰ See Yakin Erturk, second Special Rapporteur on violence against women, its causes and consequences, Report to the Commission on Human Rights, 26 December 2003, E/CN.4/2004/66, paragraph 64-66.