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**INTEGRATION OF THE HUMAN RIGHTS OF WOMEN AND THE  
GENDER PERSPECTIVE: VIOLENCE AGAINST WOMEN**

**THE DUE DILIGENCE STANDARD AS A TOOL FOR THE  
ELIMINATION OF VIOLENCE AGAINST WOMEN**

**Report of the Special Rapporteur on violence against women,  
its causes and consequences, Yakin Ertürk**

## Summary

This is my third report to the Commission in my capacity as the Special Rapporteur on the violence against women, its causes and consequences, submitted pursuant to Commission resolution 2005/41. Chapter I of the report summarizes my activities in 2005 and chapter II examines the due diligence standard as a tool for the effective implementation of women's human rights, including the right to live a life free from violence.

The failure of international human rights law to adequately reflect and respond to the experiences and needs of women has stimulated much debate on the mainstream application of human rights standards. This has resulted in the transformation of the conventional understanding of human rights and the doctrine of State responsibility.

The 1993 Declaration on the Elimination of Violence against Women as well as other international instruments adopted the concept of due diligence, in relation to violence against women, as a yardstick to assess whether the State has met its obligation. Under the due diligence obligation, States have a duty to take positive action to prevent and protect women from violence, punish perpetrators of violent acts and compensate victims of violence. However, the application of due diligence standard, to date, has tended to be State-centric and limited to responding to violence when it occurs, largely neglecting the obligation to prevent and compensate and the responsibility of non-State actors.

The current challenge in combating violence against women is the implementation of existing human rights standards to ensure that the root causes and consequences of violence against women are tackled at all levels from the home to the transnational arena. The multiplicity of forms of violence against women as well as the fact that this violence frequently occurs at the intersection of different types of discrimination makes the adoption of multifaceted strategies to effectively prevent and combat this violence a necessity.

In this regard, the potential of the due diligence standard is explored at different levels of intervention: individual women, the community, the State and the transnational level. At each level, recommendations for relevant actors are highlighted. The report concludes that if we continue to push the boundaries of due diligence in demanding the full compliance of States with international law, including to address the root causes of violence, against women and to hold non-State actors accountable for their acts of violence, then we will move towards a conception of human rights that meets our aspirations for a just world free of violence.

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## **Introduction**

1. In accordance with Commission resolution 2005/41, the Special Rapporteur on violence against women, its causes and consequences, hereby submits her third report to the Commission. Chapter I of the report summarizes her activities in 2005 and chapter II examines the due diligence standard as a tool for the elimination of violence against women. The Special Rapporteur draws the attention of the Commission to the addenda to the present report. Addendum 1 contains summaries of general and individual allegations, as well as urgent appeals transmitted to Governments and their replies thereto. Addendum 2 reports on her visit to the Russian Federation; addendum 3 on her visit to the Islamic Republic of Iran; addendum 4 on her visit to Mexico, and addendum 5 on her visit to Afghanistan.

## **I. ACTIVITIES**

### **Missions**

2. The Special Rapporteur visited the Russian Federation (17-24 December 2004), the Islamic Republic of Iran (29 January-6 February 2005), Mexico (20-26 February 2005) and Afghanistan (9-18 July 2005) at the invitation of the Governments concerned. In 2006 she intends to visit Algeria, the Netherlands and Sweden.
3. The Special Rapporteur sent letters to the Governments of El Salvador, Guatemala, the Sudan and Israel as well as to the Palestinian Authority requesting information on measures taken to implement the recommendations contained in her reports submitted to the Commission in 2005 (E/CN.4/2005/72 and Corr.1, Add.1 and Corr.1, and Add.2-5).
4. With regard to the reply from the Palestinian Authority, the Ministry of Women's Affairs reported the following measures taken: the approval of a quota law providing that women must make up 20 per cent of local councils; legislative steps undertaken towards addressing "honour crimes"; training of the police and the judiciary on issues related to violence against women and the creation of gender units in police departments; the creation of a Ministerial Committee to amend the Penal Code to provide better protection to women and provide shelters to the victims of violence; and the formulation with the assistance of grassroots women's groups of a National Women's Bill of Rights to be passed by the Legislative Council, among others.
5. The Special Rapporteur expresses her appreciation for this response and for the steps undertaken by the Palestinian Authority to address the issues identified in her report. She also reiterates her commitment to continue working with the Governments concerned to ensure that effective measures were implemented to eliminate violence against women in their territories.

### **Participation in meetings**

6. From 28 February to 4 March 2005, the Special Rapporteur participated in numerous meetings connected to the Commission on the Status of Women's 10-year review of the Beijing Platform for Action and the Beijing +5 outcome document. She was pleased that this session of the Commission issued a declaration reaffirming commitment to both the Beijing Platform for Action and the outcome document.

7. At the end of March and the beginning of April the Special Rapporteur was in Geneva for United Nations Research Institute for Social Development board meeting and to present her reports to the Commission on Human Rights. She participated in a number of parallel events in connection with the Commission. On 28 and 29 April, she participated in a conference organized by the Government of France on violence against women. On 12 and 13 May, she participated in a conference concerning fundamentalisms and human rights organized by Rights and Democracy in Montreal. In June she attended the annual special procedures meeting at OHCHR, an Inter-Parliamentary Union panel on “democratizing parliaments” in Geneva and a meeting in Vienna organized by Organization for Security and Cooperation in Europe and the Government of Sweden on Security Council resolution 1325 (2005).

8. From 5 to 7 October 2005, the Special Rapporteur participated in the Asia-Pacific Regional Consultation on violence against women organized by the Asia Pacific Forum on Women, Law and Development (APWLD), in Bangkok. Participants came from 16 countries (Australia, Cambodia, India, Indonesia, Japan, Kyrgyzstan, Malaysia, Mongolia, Myanmar, Nepal, Pakistan, the Philippines, Republic of Korea, Sri Lanka, Thailand, and Tonga). The theme of the consultation was “access to justice: holding the State accountable for violence against women”. The topics discussed included the definition of non-State actors; measures that States should take in tackling violence against women under the due diligence principle; limitations of applying the due diligence principle, in particular with regard to conflict situations, migrant and trafficked women, non-State actors, natural disasters, minority groups and the existence of dual justice systems.

9. From 21 to 23 September, the Special Rapporteur participated in an international conference on “Due diligence: the responsibility of the State for the human rights of women” in Berne, organized by Amnesty International (Swiss section), the Centre for Interdisciplinary Gender and Women’s Studies at the University of Berne, Human Rights Switzerland, and the World Organization against Torture. On 24 October she gave a keynote address on violence against women as a development concern at the World Bank, particularly focusing on the role of the bank. On October 25, she gave a keynote address at a conference at the University of Connecticut on human rights and human security. On October 26, she presented her activities to the General Assembly and engaged in an interactive dialogue with Member States. On 9 November, she attended the advisory board meeting of the Centre for Human Rights and Justice at London Metropolitan University. On 23 November, she gave a keynote address at a conference on elimination of child and forced marriages in Kabul.

10. From 14 to 16 December 2005, the Special Rapporteur participated in the first Central Asia regional consultation, held in Almaty, Kazakhstan. Participants came from Kazakhstan, Kyrgyzstan, Uzbekistan and Tajikistan. The consultation, organized by the Canadian NGO Equitas, aimed at identifying the specificities of violence against women in the region, familiarizing the participants with the international human rights instruments, including the violence against women mandate and initiating a regional network among NGOs working towards women’s advancement. The consultation confirmed the need for a fact-finding mission to the region on violence against women.

11. Throughout the year, the Special Rapporteur participated in various national and international events in Turkey.

## **Communications with Governments and press releases**

12. In the period from 1 January 2005 through 1 December 2005, 85 communications were sent to Governments, 35 of which were joint urgent appeals, 40 were joint letters of allegations and 10 were letters of allegations sent by my mandate alone. As at 1 December 2005, 23 replies to these communications were received from Governments. A comprehensive analysis of these communications can be found in addendum 1.

13. The Special Rapporteur also issued several press releases during the period under review to voice concern at country situations and also to commemorate significant days, including the International Day for the Elimination of Violence against Women on 25 November 2005. On this day, which also marks the beginning of the “16 days” international campaign against gender violence, she issued two statements - one jointly with UNAIDS and Amnesty International, and the other with the United Nations High Commissioner for Human Rights. On 10 December a joint press release was issued to commemorate International Human Rights Day.

## **II. THE DUE DILIGENCE STANDARD AS A TOOL FOR THE ELIMINATION OF VIOLENCE AGAINST WOMEN**

### **A. Introduction**

14. The Declaration on the Elimination of Violence against Women adopted by the General Assembly in 1993 urges States, in its article 4(c), to “exercise 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”. As such, the concept of due diligence provides a yardstick to determine whether a State has met or failed to meet its obligations in combating violence against women. However, there remains a lack of clarity concerning its scope and content.

15. The application of the due diligence standard, to date, has tended to be limited to responding to violence against women when it occurs and in this context it has concentrated on legislative reform, access to justice and the provision of services. There has been relatively little work done on the more general obligation of prevention, including the duty to transform patriarchal gender structures and values that perpetuate and entrench violence against women. On the other hand, the exclusively State-centric nature of the due diligence obligation has failed to take into account the changing power dynamics and the challenges these pose for State authority as well as the new questions they raise about accountability.

16. The current challenge in combating violence against women is the implementation of existing human rights standards to ensure that the root causes and consequences of violence against women are tackled at all levels from the home to the transnational arena. The multiplicity of forms of violence against women as well as the fact that this violence frequently occurs at the intersection of different types of discrimination makes the adoption of multifaceted strategies to effectively prevent and combat this violence a necessity.

17. This report aims to reconsider the due diligence standard in order to (a) focus on State obligation to transform the societal values and institutions that sustain gender inequality while at

the same time effectively respond to violence against women when it occurs, and (b) examine the shared responsibilities of State and non-State actors with respect to preventing and responding to violence and other violations of women's human rights.

18. Information for the present report was obtained from United Nations bodies, regional human rights institutions, governments,<sup>1</sup> civil society organisations, and research institutes. I would like to express my thanks to all those who contributed to the preparation of this report.

## **B. The due diligence standard**

### **1. Historical background**

19. The due diligence standard has a long history in international law and references to the standard can be found in the works of Grotius and other seventeenth century writers.<sup>2</sup> In the nineteenth century, the standard was used in the context of several international arbitration claims, including the *Alabama Claims* (1871) as well as other arbitral awards concerning the responsibility of the State for protection failures in relation to injuries to aliens and their property from private violence.<sup>3</sup> These awards established that under international law, the State is obliged to act with due diligence to prevent, investigate, punish and provide remedies for acts of violence regardless of whether these are committed by private or State actors.

20. The standard of due diligence was taken up in the Inter-American human rights system in 1988 with the landmark decision of the Inter-American Court of Human Rights in *Velásquez Rodríguez v. Honduras*,<sup>4</sup> which concerned the disappearance of Manfredo Velásquez. The Court held that Honduras had failed to fulfil its duties under article 1(1) of the American Convention on Human Rights and concluded that, "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".

21. In 2001, the Inter-American Commission on Human Rights concluded that Brazil had failed to exercise due diligence to prevent and respond to a domestic violence case despite the clear evidence against the accused and the seriousness of the charges. The Commission found that the case could be viewed as "part of a general pattern of negligence and lack of effective action by the State in prosecuting and convicting aggressors" and that it involved "not only failure to fulfil the obligation with respect to prosecute and convict, but also the obligation to prevent these degrading practices".<sup>5</sup>

22. The European Court of Human Rights used a variant of the due diligence standard in the *Osman v. United Kingdom* (1998) case and has since developed its case law in relation to the obligations of States to provide protection against human rights violations by non-State actors.<sup>6</sup>

23. The Committee monitoring the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) has recently made a decision under the Optional Protocol in the case of *Ms. A.T. v. Hungary* (2005), concerning domestic violence and found that the State party had failed to fulfil its obligations under articles 2, 5 and 16 of the Convention. Although the Committee's finding does not explicitly mention an absence of

diligence by Hungary, the standard clearly informed the way in which the Committee determined that the State had failed to fulfil the obligations specified in the Convention to prevent the violence against A.T and to protect her against its consequences.<sup>7</sup>

24. The above examples have occurred within the context of judicial or quasi-judicial proceedings which enable the application of the standard of due diligence to the particular factual circumstances and allow, by way of abstraction, to develop general guidelines on the requirements of due diligence.

25. It should be noted that the positive obligations contained in human rights treaty law to protect, promote and fulfil also include obligations to act with due diligence.<sup>8</sup> CEDAW, in its general recommendation No. 19 (1992) called on States to act with due diligence to prevent and respond to violence against women. As noted above, the 1993 Declaration - adopted the following year - requires States to act with due diligence to prevent, investigate and punish acts of violence against women whether these are perpetrated by State or private actors. This provision was reiterated in paragraph 125 (b) of the 1995 Beijing Platform for Action.

26. At the regional level, article 7(b) of the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (1994) (Convention of Belém do Para), requires that States “apply due diligence to prevent, investigate and impose penalties for violence against women”.

27. A further important development in the application of the due diligence standard was the creation of the mandate of the Special Rapporteur on violence against women, its causes and consequences, by the Commission on Human Rights in 1994. Resolution 1994/45 established the mandate and emphasized “the duty of Governments to refrain from engaging in violence against women and to exercise due diligence to prevent, investigate and, in accordance with national legislation, to punish acts of violence against women and to take appropriate and effective action concerning acts of violence against women, whether those acts are perpetrated by the State or by private persons, and to provide access to just and effective remedies and specialized assistance to victims” (para. 2).

28. Human rights bodies such as CEDAW the Committee on the Elimination of Racial Discrimination, the Human Rights Committee, the different special procedures of the Commission and regional human rights institutions have also elaborated on the requirements of the due diligence standard in relation to specific country situations as well as on a more general level. In recent years, the standard of due diligence has been increasingly applied to a number of different human rights issues ranging from trafficking in persons to the obligations of transnational corporations and other businesses.<sup>9</sup>

29. On the basis of the practice and *opinio juris* outlined above, it can be concluded that there is a rule of customary international law that obliges States to prevent and respond to acts of violence against women with due diligence.



## 2. Underlying principles

30. Both customary and conventional international law establish that States have due diligence obligations for preventing, responding to, protecting against and providing remedies for acts of violence against women whether such acts are committed by State or non-State actors. What is less clear is the content of generalized obligations of due diligence, that is, those that go beyond specific individuals or groups of women at known risk of violence, and the manner in which compliance with these obligations may be assessed and monitored.

31. In the *Velásquez Rodríguez* case, the Inter American Commission on Human Rights noted that the duty of States to prevent “includes all those means of a legal, political, administrative and cultural nature that promote the protection of human rights and ensure that any violations are considered and treated as illegal acts, which, as such, may lead to the punishment of those responsible and the obligation to indemnify the victims for damages”.

32. In her 1999 report on domestic violence, the former Special Rapporteur, Radhika Coomaraswamy, developed the following list of considerations for determining State compliance with obligations of due diligence: ratification of international human rights instruments; constitutional guarantees of equality for women; the existence of national legislation and/or administrative sanctions providing adequate redress for women victims of violence; policies or plans of action that deal with the issue of violence against women; the gender-sensitivity of the criminal justice system and police; accessibility and availability of support services; the existence of measures to raise awareness and modify discriminatory policies in the field of education and the media, and the collection of data and statistics concerning violence against women.<sup>10</sup>

33. The Inter-American Commission on Human Rights in the domestic violence case recommended, inter alia, that Brazil train and raise awareness of judicial and law enforcement personnel, so that they do not condone domestic violence; simplify criminal justice proceedings to reduce delays without compromising due process guarantees; establish alternatives to judicial mechanisms which resolve domestic conflict in a prompt and effective manner and create awareness regarding its serious nature and associated criminal consequences; increase police and prosecutorial capacities and resources to ensure that complaints are investigated and processed effectively; include within teaching curricula the importance of respecting women and their rights as well as the appropriate handling of domestic conflict.

34. The above sources reveal that there are certain basic principles that underlie the concept of due diligence. The State can not delegate its obligation to exercise due diligence, even in situations where certain functions are being performed by another State or by a non-State actor. It is the territorial State as well as any other States exercising jurisdiction or effective control in the territory that remain, in the end, ultimately responsible for ensuring that obligations of due diligence are met. Related to this point is the notion that due diligence may imply extraterritorial obligations for States that are exercising jurisdiction and effective control abroad.

35. Another fundamental principle connected to the application of the due diligence standard is that of non-discrimination, which implies that States are required to use the same level of commitment in relation to prevention, investigation, punishment and provision of remedies for violence against women as they do with regards to the other forms of violence.

36. Due diligence obligation must be implemented in good faith<sup>11</sup> with a view to preventing and responding to violence against women. This will necessarily entail taking positive steps and measures by States in order to ensure that women's human rights are protected, respected, promoted and fulfilled. In her 2000 report to the Commission, the former Special Rapporteur emphasized that due diligence is more than "the mere enactment of formal legal provisions" and that the State must act in good faith to "effectively prevent" violence against women.<sup>12</sup>

37. A further general principle is the duty to ensure that interventions designed to prevent and respond to violence against women are based on accurate empirical data. To date, there has been very little effort put into monitoring and assessing the impact of initiatives taken to end violence against women. The report of the expert group meeting on good practices, organized in conjunction with the Secretary-General's study on violence against women, notes that while collections of good practices have been established in some areas, the criteria for defining what constitutes a good or promising practice as well as for assessing the effectiveness of these interventions have so far been lacking. There is a glaring need to establish reliable statistics and indicators concerning violence against women and the evaluation of interventions designed to eliminate it.<sup>13</sup>

### 3. Current applications

#### Prevention

38. As a general rule, States have sought to discharge their due diligence obligations of prevention of violence against women through the adoption of specific legislation, the development of awareness-raising campaigns and the provision of training for specified professional groups. The forms of violence covered by these interventions include; domestic violence, sexual assault, trafficking, "honour crimes" and sexual harassment. These programmes tend to view violence against women as a stand-alone issue and there are relatively few examples of linkages being made between violence and other systems of oppression.

39. Some States have adopted or are in the process of drafting specific legislative provisions on domestic violence. The majority of this legislation makes provision not only for criminal sanctions but also for civil remedies such as restraining or expulsion orders. Importantly, Switzerland has moved away from an emphasis on mediation in cases of domestic violence towards a preventive paradigm that emphasizes investigation and the laying of criminal charges. In some jurisdictions, detailed legislation has also been adopted in relation to trafficking in women, on sexual harassment and on honour crimes.

40. There is little information or follow-up in relation to law enforcement or the impact of legislation in curbing violence against women. In some jurisdictions, legislation ostensibly adopted for the purposes of preventing and punishing violence against women has been drafted or applied in ways that further violate the rights of women. For example, Ukrainian legislation on domestic violence contains provisions that allow a woman to be arrested if she provokes violence through "victim behaviour".<sup>14</sup>

41. Many States have adopted national action plans on violence against women in an effort to coordinate activities between and within government agencies and to take a multi-sectoral approach to prevent violence.<sup>15</sup> In a number of countries, specialized committees on violence

against women have been established and commissioners or ombudsmen have been appointed to act as focal points. There are some examples of mixed commissions or committees that also contain representatives from civil society organizations, but these tend to be the exception rather than the rule. The Turkish parliament, which recently established a commission to examine honour crimes, called on experts as part of its inquiry to provide it with information. It has also interviewed perpetrators of honour crimes currently in prison, as well as members of the local community. The commission will report to the parliament on its findings and recommendations.

42. Most States are conducting broad-based public education campaigns on violence against women, using posters, magazine advertisements, websites and television and radio commercials. Many States have established national days of action on gender violence and a number of States mentioned that they organize awareness-building activities during the 16 days of activism against gender violence or that they have run “zero tolerance” campaigns and called upon high-profile personalities to condemn violence against women.

43. In a number of States, efforts have been made to involve men and boys in prevention activities. For example, in Austria, Denmark, and the Republic of South Korea, counselling and anger-management programmes are made available to men and boys. The correctional services in the Swedish municipality of Malmö have, since 1995 run the “Fredman” (Peaceful Man) programme, which is aimed at influencing the attitudes and behaviour of violent in intimate relationships.

44. Training and awareness-raising programmes directed at different professional groups have been developed by many States, including the development of training materials for police, prosecutors and members of the judiciary. States have also developed specific training materials on the prevention of violence against women for health care professionals including; doctors, nurses and social workers. A number of States, such as El Salvador, have created educational curricula on gender equality and non-violent communication strategies for use in schools.

45. The National Commission on the Role of Filipino Women has organized “gender justice awards” in partnership with several government bodies, a number of intergovernmental organizations, local non-governmental organizations and businesses. The awards were given out to judges who rendered gender-sensitive decisions in cases of violence against women.

46. While States have initiated various preventive programmes, there is little evidence of active State engagement in overall societal transformation to demystify prevailing gender biases or to provide support to civil society initiatives in this regard.

## **Protection**

47. There are many measures undertaken by States in terms of their due diligence obligation to protect, which consist mainly of provision of services to women, such as telephone hotlines, health care, counselling centres, legal assistance, shelters, restraining orders and financial aid to victims of violence. According to government reports, shelters are generally run by NGOs with State or external donor funding. In certain States, protective services are given a legislative basis either within formally adopted action plans or strategies on violence against women or within legislation on domestic violence. This does not appear to be the norm, however, and most countries include protective mechanisms in their programmes on violence against women

without stipulating the legal bases for these services. Both Norway and Denmark indicated that they have begun issuing personal security alarms to women who have been identified as being at risk of assault.

48. Despite the adoption of protective measures by many States, there are disturbing inconsistencies in implementation and failure to exercise due diligence. For example, in September 2005, a district court judge in the United States of America agreed to lift a protective order that had been placed against a woman's estranged husband following an application by the husband for the order to be rescinded so that the couple could get counselling. At the hearing in which the order was lifted, the woman involved indicated that her husband had been intimidating and threatening her, and that she was not interested in counselling but wanted to file for divorce. Despite her request that the protective order be maintained, the judge chastised her and stated that, if she wanted a divorce then she should go to the divorce court and not to him; he then dismissed the order. A few weeks later, the husband went to his wife's place of work, doused her with gasoline and set her on fire, causing grievous injuries to much of her upper body and face.<sup>16</sup>

49. The major gaps in the enforcement of protective obligations include a lack of adequate enforcement by police and the judiciary of civil remedies and criminal sanctions for violence against women, and an absence or inadequate provision of services such as shelters which mean that women often have no choice but to continue living with their abusers.<sup>17</sup> In addition, the focus of protection has too frequently been on the provision of short-term emergency assistance rather than on providing women who have been the victims of violence with the means to avoid re-victimization.

### **Punishment**

50. The obligation to investigate and appropriately punish acts of violence against women with due diligence has, in the main, been seen by States as an obligation to adopt or modify legislation while reinforcing the capacities and powers of police, prosecutors and magistrates. A number of States noted recent amendments to their criminal codes in order to modify or repeal discriminatory provisions and to ensure that violent acts are met with appropriate punishments. As mentioned previously, some States have adopted specific legislation on domestic violence and trafficking which establish new criminal offences and often provide for the creation of specialized investigatory or prosecutorial units.

51. The development of specific policing practices and procedures in relation to the investigation and prosecution of cases of violence against women can be seen in many jurisdictions. In Poland, the police have adopted an intervention protocol known as the "blue card" procedure, which obliges the police to provide legal information to victims of domestic violence and to actively encourage them to enforce their right to be free of violence. The South African Domestic Violence Act provides that police must gather data and report to victims on progress of their cases as well as explaining the legal process to the victim.

52. A further good practice in relation to investigation and punishment of trafficking offences are the “points of inquiry” being used by law enforcement authorities in Hamburg, Germany, which involves an investigative protocol that goes far beyond the usual statement made by the victim and focuses on the collection of detailed subjective and objective evidence that may be used to prove the crime of trafficking.<sup>18</sup>

53. There are, nevertheless, numerous examples of States failing in their duty to appropriately investigate and punish acts of violence against women. Many women I spoke to during my missions reported that they are often discouraged and intimidated by the authorities to file a complaint. When a complaint is filed, in many instances, the law enforcement authorities and social services privilege mediation or “social solutions” over the application of sanctions under criminal or civil law. In States such as Uzbekistan, Samoa and Vanuatu, women reporting violence to the police are often referred to community-based structures that promote reconciliation and conflict-resolution rather than punishing the perpetrators of violence.<sup>19</sup>

54. Failures by law enforcement authorities to seriously investigate crimes of violence against women appear to be common. Even when cases of violence against women do reach the judicial system, there are still alarming numbers of instances of judges handing down reduced or inappropriate sentences for these crimes. For example, the criminal code in many countries provides for a suspended sentence in cases of rape if the victim agrees to marry the perpetrator. Accordingly, if the marriage lasts and the couple have children, the sentence is dropped. Many jurisdictions fail to provide women with equal protection, particularly in cases involving sexual assault and domestic violence. As a result women either remain silent or if they do report the crime they may become re-victimized.

### **Reparation**

55. Very little information is available regarding State obligations to provide adequate reparations for acts of violence against women. A few States mentioned that compensation was available to women through funds for victims of crime or through civil proceedings, but otherwise this aspect of due diligence remains grossly underdeveloped.

### **C. Obstacles and challenges for broadening the vision of rights**

56. The failure of international human rights law to adequately reflect and respond to the experiences and needs of women has been widely discussed by feminists.<sup>20</sup> The critiques levelled at rights-based discourse at the national and at the international level have drawn attention to the fragmented and individualistic language of the mainstream understanding of rights which are based upon a male model of what it means to be “human”.<sup>21</sup> This discourse have remained blind to structural inequalities and the complex and intersecting relations of power in the public and private spheres of life that lie at the heart of sex discrimination.<sup>22</sup> Others emphasized that the process of translating social realities into claims based on rights may make “contingent social structures seem permanent”, thereby undermining “the possibility of their radical transformation.”<sup>23</sup>

57. Most women’s rights activists agree that it is the narrow interpretation of rights within an international legal order rather than the human rights discourse itself. The formulation of rights-based claims by women remains an important strategic and political tool as this language

offers a recognized vocabulary for framing social wrongs. Since the 1980s, women's rights activists have been working within the existing framework to expand the vision of rights to respond to the violations inherent in women's experiences, thereby transforming the understanding of international human rights law and the doctrine of State responsibility. This paved the way for the recognition of violence against women as a human rights violation for which States could be held responsible, regardless of whether the perpetrator is a public or private actor.

58. The quest for such a vision continues to confront diverse challenges.<sup>24</sup> While a comprehensive analysis of these is not intended here, three main areas are highlighted: (a) the public/ private dichotomy; (b) the resurgence of identity politics based on cultural specificity, challenging State authority from below; (c) the emergence of translational power blocks with the right to command global governance, challenging State authority from above. Thus, international law, which has traditionally centred on the State as its primary subject is now confronted with other powerful actors.<sup>25</sup>

### **1. The public/private dichotomy**

59. One of the main obstacles to the protection of women's rights has been attributed to the role of public/private dichotomy in international human rights law, which was conventionally premised on the liberal, minimalist conception of the State. This reflected the hierarchical relations experienced by men in the "public" sphere, leaving the hierarchical associations in the "private" sphere off limits to State intervention. This normalized the use of violence in the privacy of the home. "Such a division of spheres, by ignoring the political character of power unequally distributed in family life, does not recognize the political nature of the so-called private life. Such a division of spheres clouds the fact that the domestic arena is itself created by the political realm where the state reserves the right to choose intervention".<sup>26</sup>

60. The focus on domestic or intimate partner violence has exposed the inconsistencies in the constitution and practice of human rights law. Even in societies where there is seemingly a high level of gender equality, violence occurring in the private sphere continues to be regarded as a matter undeserving of public policy attention.<sup>27</sup> The public/private codification in international law has not only served as an ideological barrier to the development of the human rights discourse in many societies but it has also served as a guard against it. In many parts of the world the struggle for human rights seems to end at one's doorsteps. It is not uncommon even for women themselves to perceive violence in the private sphere as normal.

61. The due diligence standard has helped to challenge the liberal doctrine of State responsibility with regard to violation in the "private sphere". This meant that the State, by failing to respond to intimate/domestic violence, can be held responsible for not fulfilling its obligation to protect and punish in a non-discriminatory way and can be charged as an accomplice to private violations.<sup>28</sup> On the other hand, using due diligence to filter private acts through State responsibility has left the individual perpetrator of an act of private violence not directly responsible under international law, thus maintaining a separate regime of responsibility for private as opposed to public acts.

62. Articles 4 to 11 of the International Law Commission's (ILC) draft articles on State responsibility, by specifying the conditions under which wrongful acts or omissions may be

attributed to the State for the purposes of determining whether or not it will be held responsible under international law, provide elements that confront the public/private divide.<sup>29</sup> The increasing use of international criminal law, as evidenced by the adoption of the Rome Statute establishing the International Criminal Court (ICC), has had a similar effect in that individuals may now be held directly accountable under international law for serious acts of violence against women committed in the context of armed conflict. In addition to laying out the framework for individual criminal responsibility, the Rome Statute also makes provision for compensation to be paid to victims of violence.<sup>30</sup>

63. Today, despite the many achievements that have been recorded, issues of public violence still tend to be met with a more immediate and effective response at both the international and national levels than violence against women in the private sphere. With regard to the latter, a cultural relativist discourse continues to be upheld over a human rights discourse.

## 2. Identity politics

64. At the local level, identity politics based on the claims made by collective entities have been contesting public State discourse for the legitimate right of representation of individuals. While such claims have been perceived as manifestations of pluralism and multiculturalism and, therefore, as consistent with social and cultural rights, in practice, they pose a major obstacle to universal human rights guarantees, particularly as women are perceived as bearers of culture.<sup>31</sup> In some instances, such claims have been asserted through recourse to the use of force, as in the case of the Taliban in Afghanistan, where public space became cleansed of women in the name of reverting to cultural and religious “authenticity”.<sup>32</sup>

65. In other instances, reaffirmations of local identities have been reflected in the decentralization or devolution of federal power. While decentralization of governance may expand liberties and democratization, it has also resulted in a lack of protection for women as each tier of government may dismiss the problem as being outside of its jurisdiction.<sup>33</sup> Even where there is a unitary State structure, informal community mechanisms may, often with the acquiescence or support of the State, assume roles in mediation and dispute resolution, frequently to the detriment of women’s rights. These parallel systems of justice, for example, such as the *jirga* and *panchiat* in Pakistan may sanction acts of violence against women by deeming these to be acceptable forms of “traditional” practice or by handing down severe punishments (such as honour killings) for women who allegedly transgress societal norms.<sup>34</sup> The politicization of purportedly representative local cultural values has reinforced and further legitimized informal community mechanisms of justice. When such authorities act with the blessing of State legislation or acknowledgement then they carry an element of public authority. Consequently, any act of violence ordered within such a context is in fact an act of violence by the State.

66. Today, cultural relativism serves as a major barrier to the implementation of international human rights standards and as a justification for violations of women’s human rights. In many countries, claims based on custom and tradition and minority or indigenous cultural values have been used by the dominant judicial system to excuse acts of violence against women and girls. For example, in August 2005, a senior Australian judge sentenced a 55-year-old indigenous man to a one-month prison sentence after he beat and anally-raped his 14-year-old promised bride. In

handing down the sentence, the judge reportedly expressed sympathy for the perpetrator and stated that he was a traditional man who did not know that what he was doing was illegal.<sup>35</sup> Similarly, in some countries, perpetrators of degrading acts or murder of women in the name of “honour” may go free or face a light sentence.

67. The growth of fundamentalist movements around the world as well as conservative political trends poses serious threats to the efforts to eradicate violence against women. These forces operate at all levels, ranging from the local to the transnational and may have access to State power. For example, the refusal in recent years by certain bilateral donors to accord grants to organizations advocating for women’s reproductive rights or working with women engaged in the sex sector illustrate the convergence of private and State interests targeting women’s rights.<sup>36</sup>

68. Control over women’s sexuality is often at the heart of cultural and political justifications that sustain and perpetuate violence against women. Paradoxically, while honour of men, in many instances, is intrinsically associated with their ability to guard the sexuality of women with whom they are associated; violation of the sexuality of other women such as in rape is also a manifestation of the way in which masculine power establishes domination over women. Violence or the threat of violence is a basic tenet of patriarchal gender order where cultures converge in enforcing and sustaining control over women.<sup>37</sup>

### **3. Global restructuring**

69. The world economy is being radically restructured in economic activity and governance. The cross-border activities of transnational corporations and the new legal regimes that frame these activities have reconfigured the territoriality and sovereignty associated with the nation State. Therefore, the State is no longer the only site of normativity - or the unique subject of international law.<sup>38</sup> Other actors, such as multinational corporations, financial institutions, intergovernmental organizations and international NGOs, as well as illegal networks, are emerging as spheres of influence whose responsibilities vis-à-vis human rights standards have not been subject to scrutiny.

70. The transnational arena constitutes a new “geography”, with contradictory implications for the implementation of women’s human rights. Women in massive numbers have become suppliers of low-wage and flexible labour for the globalized labour markets through immigration and off-shore production, where they find themselves in work environments with little or no monitoring of labour as well as other standards.<sup>39</sup> While women’s increased involvement in de-territorialized space as migrant workers or as members of transnational households has the potential to empower women and give them direct access to international human rights law, opposing trends have also been observed. Some local and “traditional” forms of violence against women have become globalized and others such as trafficking have become increasingly prevalent.

71. The impact of transnationalism, on women including restrictive immigration and asylum policies, needs to be further examined in terms of types of violence encountered and the multiplicity of normative systems and actors involved within the continuum of space between



countries of origin and destination. The International Convention on the Protection of All Migrant Workers and Members of Their Families (1990) has only been ratified by a handful of “sending” States with the result being that the majority of women migrant workers or those accompanying a migrant worker are not covered by its provisions.

72. The response of the international community to transnational issues is still essentially bounded by sovereign State boundaries. For example, the approach to human trafficking and the protection of the rights of migrant workers is illustrative of the failure to develop transnational solutions. The Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (Palermo Protocol) takes a law-and-order approach to the issue of trafficking rather than being based in human rights.

73. It is particularly important to reflect on the compatibility of the new transnational legal regimes and regulatory institutions with human rights standards as well as the implications for the accountability of the various actors, including the State, within this context. There is growing pressure for responsibility for the protection of human rights to be extended beyond States, to include multinational corporations and, indeed, other actors within the emerging system of global governance as well, such as international economic institutions, conclude some writers.<sup>40</sup>

#### **D. The potential of the due diligence standard**

74. The current understanding and application of the due diligence standard as well as the gaps and challenges identified above highlight the need to re-imagine the standard so that it responds more effectively to violence against women. The major potential that I see for expanding the due diligence framework lies (a) in the full implementation of generalized obligations of prevention and compensation, and in the effective realisation of existing obligations to protect and punish, and (b) in the inclusion of relevant non-State actors as the bearers of duties in relation to responding to violence against women.

75. While international human rights law provides the guiding principles for State action, alternative discourses and innovative strategies need to be employed at different levels of intervention in order to challenge the foundations upon which gender hierarchies are constructed and violence and other forms of discrimination against women are justified and sustained. Moreover, while the State retains the primary responsibility for guaranteeing that human rights are respected, protected, promoted and fulfilled, non-State actors must be held responsible for actions that may give rise to human rights violations.

76. Therefore, in exercising due diligence to effectively implement human rights law - in order to prevent, protect, prosecute and provide compensation with regard to violence against women - States and other relevant actors must use multiple approaches in intervening at different levels: the individual, community, State and the transnational arena.

77. The below discussion, by way of exploring the potential of the due diligence standard, also highlights the recommendations of this report, which may need to be modified by different actors according to their sphere of activity.

## **1. The level of individual women**

### **Empowerment**

78. The basic principle inspiring the Beijing Platform for Action is that the realization of human rights and fundamental freedoms of all women requires their empowerment (para. 9) and these are prerequisites for achieving political, social, economic, cultural and environmental security among all peoples (para. 41). With this in view, the Platform calls on States and other actors to take strategic action in 12 critical areas of concern.

79. States in their efforts to combat violence against women must promote and support women's empowerment as highlighted in the Beijing Platform for Action and engrained in the International Covenant on Civil and Political Rights and International Covenant on Economic, Social and Cultural Rights. This approach must embrace the progressive realization of the full range of rights - economic, social, cultural, civil and political. Fulfilment of these rights requires political will and an equitable allocation of limited resources, ensuring that women's access to critical resources are not sacrificed by other priorities. The Convention on the Elimination of All Forms of Discrimination against Women represents a comprehensive normative framework, obliging States parties to take action to overcome sex-based discrimination, in all spheres of life, including through the adoption of positive measures designed to redress discrimination.

80. Empowerment discourse - through interventions ranging from education, skills training, legal literacy, access to productive resources, among others - aims to enhance women's self-awareness, self-esteem, self-confidence and self-reliance. This enables women to understand that subordination and violence are not a fate; to resist internalizing oppression; to develop their capabilities as autonomous beings; and constantly negotiate the terms of their existence in public and private spheres.

81. The involvement and provision of legal and financial support to relevant, rights-based civil society organizations in creating the necessary environment to enable individual women to realize their full range of human rights is a crucial element in the empowerment approach. In this context, development interventions, whether supported by the State, multilateral or bilateral donors, must avoid modalities and conditionalities that would disempower women.

### **Article I. Protection**

82. The due diligence obligation of protection requires States to ensure that women and girls who are victims or at risk of violence have access to justice as well as to health care and support services that respond to their immediate needs, protect against further harm and continue to address the ongoing consequences of violence for individual woman. To this end, States are required to develop appropriate legislative frameworks, policing systems and judicial procedures to provide adequate protection for all women, including a safe and conducive environment for women to report acts of violence against them and measures such as restraining or expulsion orders and victim protection procedures. In situations where particular women and girls are at known risk of violence, law enforcement agencies have an obligation to set up effective and appropriate protective mechanisms to prevent further harm from occurring.

83. States must ensure that quality physical and psychological health services and legal assistance are provided to victims of violence. Measures aimed at providing immediate material assistance (shelter, clothing, child maintenance, employment, education) to women who are survivors of violence must be established.<sup>41</sup> Bearing in mind that stigmatization may be associated with a woman who ends up in a shelter, the State should consider alternative protective measures, while at the same time ensuring a safe future for women who have no option but take refuge in a shelter. Shelters are better operated by NGOs that take a women's rights approach, but their creation, maintenance and safety (for the victims as well as personnel) are part of the State's obligation to provide protection.

## **Article II. Compensation**

84. The obligation to provide adequate reparations involves ensuring the rights of women to access both criminal and civil remedies as well as the establishment of effective protection and support services for women survivors of violence. Compensation for acts of violence against women may involve the award of financial damages for any physical and psychological injuries suffered, for loss of employment and educational opportunities, for loss of social benefits, for harm to reputation and dignity as well as any legal, medical or social costs incurred as a consequence of the violence. States are also required to ensure that women victims of violence have access to appropriate rehabilitation and support services. The notion of reparation may also include an element of restorative justice.

### **2. At the community/family level**

85. At the community and family level, the human rights discourse needs to be complemented by an approach based on "cultural negotiation". Such an approach complements the empowerment approach discussed above, in that it allows the root causes of violence to be confronted and raises awareness of the oppressive nature of certain practices pursued in the name of culture. This requires, (a) drawing on positive elements within culture to demystify the oppressive elements of culture-based discourses; (b) demonstrating that culture is not an immutable and homogenous entity; and (c) identifying and contesting the legitimacy of those who monopolize the right to speak on behalf of culture and religion. In this context, hegemonic interpretations of culture must be challenged by uncovering the power dynamics that underlie these. The process of cultural negotiation through campaigns, information and media can become an important counter-discourse for the transformation of discriminatory values, institutions and power structures.

86. In fulfilling its due diligence obligation, the State must engage with and "support social movements engaged in contesting the ideologies that help to perpetuate discrimination by making it seem part of the national, rational or divinely ordained order of things."<sup>42</sup> According to the report of the Inter-American Commission on Human Rights on Mexico: "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."<sup>43</sup>

87. The 1993 Declaration calls on States to take measures to modify the social and cultural patterns of conduct of men and women to eliminate all practices based on the idea of inferiority or superiority of either of the sexes (art. 4 (j)). In this regard, it is particularly important to support awareness-raising campaigns and curricula that challenge sex stereo-types and uncouple

masculinity from oppressive uses of power.<sup>44</sup> Gender-sensitive language and a rights-based discourse in public statements, media reporting, and educational material, among others can demystify the taken for granted “truths” about gender constructs, break taboos and the silence around violence. Research and data on violence against women and their dissemination in ways that reach all segments of society can empower the State in its cultural negotiation efforts.

88. Failure of a State to exercise due diligence to confront all claims for custom, tradition or religion in justifications for violations of the human rights of women is itself a human rights violation even in the absence of harm. In article 4, the 1993 Declaration urges that “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”. It should be borne in mind that it is not culture per se that dictates a women to be beaten, mutilated or killed, rather it is those who monopolize the right to speak on behalf of culture.

### 3. At the State level

89. International human rights standards and the rule of law must inform all State policy and practice. The ratification, without reservation, of all relevant human rights instruments, including CEDAW and its Optional Protocol, is an essential first step. The incorporation of this law into the domestic legal, judicial and administrative order at every level and the adoption of measures for its implementation are important prerequisites for the State’s capacity to meet its obligations of due diligence. The different layers of the State need to be addressed separately to ensure that the rights of women are protected, respected and fulfilled by all apparatuses and agents of the State at all levels of government.

90. Each of the different powers of the State has a role to play in changing patriarchal values. For example, the judiciary and prosecutors working on cases of domestic violence have the potential and the obligation, to change the prevailing balance of power by taking a strong stance to disempower patriarchal notions. Interventions at this level may have both *consequential* effects in that condemnations of patriarchy can lead to changes in socio-cultural norms, as well as *intrinsic* effects in that prosecutors or judges can be considered to be the “mouthpieces” of society, and strong statements condemning violence against women made on behalf of society through the judiciary or prosecutorial services will make that society less patriarchal.<sup>45</sup> While cases such as the Washington Post case cited above clearly have the effect of empowering patriarchy, two courts in Turkey that gave the highest sentence in ‘honour crimes’ cases in 2004, even before the new penal code went into effect, demonstrate that judicial authorities can have a disempowering effect by challenging patriarchal practices.

91. Public statements made by government leaders have a similar impact. Since 2004, the Government of Australia has conducted a campaign entitled “Violence against women: Australia says no” and members of the Government, including the Prime Minister, have stated publicly that violence against women is unacceptable and “tarnishes any community that tolerates it”.<sup>46</sup> Conversely, a comment recently made by a government leader that rape is a “money-making concern” and an easy way to get asylum is illustrative of a failure by the highest echelon of State power to meet its obligations in relation to challenging patriarchy.

92. The State is required to send an unequivocal message that violence against women is a serious criminal act that will be investigated, prosecuted and punished. The police and judiciary should be given appropriate training in dealing with cases of violence against women in a gender-sensitive manner. Systems for counselling and rehabilitating perpetrators of violence against women, preferably at their own expense, should be put into place. The re-victimization of women who have reported that violence must be avoided and procedural rules regarding the giving of evidence as well as protection for victims and witnesses must ensure that women are not subjected to further harm as a result of reporting violence.

93. Violence against women provides States and other actors with a critical entry point for an effective implementation of human rights law. Gender analysis, gender-sensitive research, sex-disaggregated data and gender-budgeting are useful tools in ensuring that efforts don't go astray.

#### **4. At the transnational level**

94. At the transnational level there is a need to think beyond the State in terms of responsibilities and duties in relation to the promotion, protection and fulfilment of human rights standards and, where needed, to develop transnational solutions to transnational problems such as; the regulation of migration, the role of transnational corporations and the duties and responsibilities of international organizations. Those entities with power need to be made accountable for failures to adhere to international standards and in some cases new regimes for monitoring these responsibilities will have to be established.

95. In relation to migration, both forced and voluntary, States and international organizations will need to cooperate in order to develop sustainable solutions that are firmly grounded in international human rights law. The full implementation of human rights guarantees in the area of human trafficking along the lines suggested in the OHCHR Recommended Principles and Guidelines on Human Rights and Human Trafficking is an essential process for ensuring that women's human rights remain at the centre of anti-trafficking policies and programmes.<sup>47</sup> Other strategies will involve rethinking the existing restrictions on legal migration opportunities for women workers as well as ensuring that all workers receive adequate legal protection under national and international labour legislation regardless of their legal status. The current gender biases in national migration laws, whereby the immigration status of a woman is contingent on her being a "dependent" spouse, will also need to be addressed.

96. Global restructuring has increased the power of transnational corporations. The fact that this power comes with certain responsibilities particularly in observing human rights standards is still not central to discussions on due diligence obligations. While the gender aspect is not emphasized, there are a number of limited initiatives in addressing corporate responsibility. These include the Global Compact launched by the Secretary-General in 2000; OECD Guidelines for Multinational Enterprises and the draft norms on the responsibilities of transnational corporations and other business enterprises with regard to human rights approved by the Sub-Commission on the Promotion and Protection of Human Rights at its fifty-fifth session, in 2003. In addition to these, large corporations are adopting codes of conduct to respect

human rights standards. While more needs to be done to hold corporations accountable for acts of violations of human rights, States must apply the rule of law diligently to corporations operating within their territory, particularly in the poorly monitored sectors employing predominantly women.

97. International financial organizations also have obligations of due diligence in relation to preventing and responding to violence and other forms of discrimination against women. The adverse impact of macro-economic policies promoted by such organizations is well documented.<sup>48</sup> In recent years the World Bank responded to such concerns by identifying violence against women as an “inequality trap” to consider in its development framework. In this regard, while the World Bank undertakes country gender assessment at the request of the host Government. In countries where women’s rights are not a priority there is little likelihood that such a request will be made. When a gender assessment is undertaken, it is essential that the results of the assessment be integrated into all phases of the programme design.

98. Similarly, the United Nations system is obligated to respect and uphold the principles of the Organization. While international organizations clearly have direct obligations not to commit or contribute to acts of violence against women through their programming or funding decisions, they also have additional duties to cooperate and to establish coherent inter-agency strategies to work towards the elimination of violence against women in close collaboration with local communities and relevant civil society groups. The responsibilities of these organizations are in addition to the individual responsibilities of the States that are members of such organizations.<sup>49</sup>

99. Last but not least, where States and/or intergovernmental bodies are deploying military, peacekeeping or civilian policing operations abroad, they must also act with due diligence to ensure that these personnel do not commit acts of violence against women. For this purpose, the sending authority must adopt the necessary legislation and procedures to prevent and respond to such acts as receiving States may lack the capacity to do so.

### III. CONCLUSIONS

100. **The universal phenomenon of violence against women is the result of “historically unequal power relations between men and women, which have led to domination over and discrimination against women by men and to the prevention of women’s full advancement”.**<sup>50</sup> However, in practice, the response to the issue of violence against women has been fragmented and treated in isolation from the wider concern for women’s rights and equality.

101. **This report has argued that this is caused by a narrow interpretation and application of human rights law. In this regard, the potentials of the due diligence standard have been explored to overcome the shortcomings in this regard.**

102. **If we confine ourselves to the current conception of due diligence as an element of State responsibility, then obstacles relative to the capacity of the State will be determinative. If, on the other hand, we continue dare to push the boundaries of due diligence in demanding the full compliance of States with international law, including the**

**obligation to address the root causes of violence against women and to hold non-State actors accountable for their acts, then we will move towards a conception of human rights compatible with our aspirations for a just world free of violence.**

**103. The potential of the due diligence standard lies in a renewed interpretation of the obligations to prevent, protect, prosecute and provide compensation and map out the parameters of responsibility for State and non-State actors alike in responding to violence. What is required to meet the standard of due diligence will necessarily vary according to the domestic context, internal dynamics, nature of the actors concerned and the international conjuncture.**

**104. Eradicating violence against women and ensuring that human rights are universally enjoyed is a common goal and a shared obligation. The progress achieved thus far towards this goal, although uneven, has verified our conviction that oppressive values, institutions and relationships can be transformed.**

**105. Transformative change is not an easy task, particularly in view of how deeply embedded patriarchy is. Furthermore, such change is inherently disruptive of the comfort offered by the status quo, as oppressive as it may be. While such change may hold risks, it also promises a step forward in greater emancipation for all.**

#### Notes

<sup>1</sup> The following Governments responded to a request for information about challenges faced in the implementation of the due diligence standard; Armenia, Austria, Azerbaijan, Belarus, Bolivia, Brunei Darussalam, Canada, Chile, Colombia, Costa Rica, Cyprus, Czech Republic, Denmark, Dominican Republic, El Salvador, Estonia, Germany, Greece, Haiti, India, Japan, Jordan, Republic of Korea, Lebanon, Malta, Mauritius, Mexico, Nepal, Norway, Panama, Philippines, Poland, Portugal, Russian Federation, Singapore, Slovenia, Spain, Sweden, Switzerland, Syrian Arab Republic, Turkey, Ukraine, Venezuela, Yemen. Information was also received from the Inter-American Commission on Human Rights and the Special Rapporteur on violence against women of the African Union.

<sup>2</sup> See J. Hessbruegge. 2004. "The Historical development of the doctrines of attribution and due diligence in international law", *New York University Journal of Int'l Law*, vol. 36, 265-306.

<sup>3</sup> Kummerow Case (Germany/Venezuela Mixed Claims Commission 1903); Spanish Zone of Morocco Claims (1923), Youmans Claim (*US v. Mexico*, 1926).

<sup>4</sup> Inter-American Commission on Human Rights, *Velásquez Rodríguez v. Honduras*, 29 July 1988, Series C: Decisions and Judgments, No. 04.

<sup>5</sup> Inter-American Commission on Human Rights, Report no. 54/01, Case 12.051, Maria da Penha Maia Fernandes (Brazil), 16 April 2001, para. 56.

<sup>6</sup> *Z and Others v. the United Kingdom* 29392/95, [2001] European Commission on Human Rights 333, 10 May 2001; *E and Others v. the United Kingdom*, 33218/96, [2002] ECHR 590, 26 November 2002.

<sup>7</sup> Communication No. 2/2003, *Ms. A.T. v. Hungary*, Views adopted on 26 January 2005.

<sup>8</sup> Human Rights Committee, general comment No. 31, CCPR/C/74/CRP.4/Rev.6, para. 8; Committee on the Rights of the Child, general comment No. 5, CRC/GC/2003/5, 27 November 2003, para. 1; Committee on Economic, Social and Cultural Rights, general comment No. 14, E/C.12/2000/4 (2000), para. 33.

<sup>9</sup> Economic and Social Council, Recommended Principles and Guidelines on Human Rights and Human Trafficking, (E/2002/68/Add.1); Sub-Commission on the Promotion and Protection of Human Rights, Commentary on the “Norms on the responsibilities of transnational corporations and other business enterprises with regard to human rights” (E/CN.4/Sub.2/2003/38/Rev.2).

<sup>10</sup> E/CN.4/1999/68, para. 25.

<sup>11</sup> The good faith principle is explicit in instruments, including the Charter of the United Nations and the Vienna Convention on the Law of Treaties. See also Robert Kolb, *La bonne foi en droit international public*, PUF, Paris, 2000.

<sup>12</sup> E/CN.4/2000/68; paras 51-53.

<sup>13</sup> Division for the Advancement of Women, Expert Group Meeting:  
[www.un.org/womenwatch/daw/egm/vaw-gp-2005/](http://www.un.org/womenwatch/daw/egm/vaw-gp-2005/).

<sup>14</sup> UNIFEM, “Not a minute more: Ending violence against women”, New York, 2003, p. 43.

<sup>15</sup> Joint comments by the Finnish section of Amnesty International (AI) and the Finnish League for Human Rights sent to the Finnish Ministry of Foreign Affairs on the issue of due diligence, expressing concern at the Government’s decision not to implement a proposed inter-ministry plan on violence against women (Helsinki, September 2005).

<sup>16</sup> *Washington Post*, “Deadly Justice”, 15 October 2005.

<sup>17</sup> Many of these protection failures were evident in the testimonies I received during my recent mission to the Russian Federation (E/CN.4/2006/61/Add.2).

<sup>18</sup> OSCE, Office for Democratic Institutions and Human Rights, *National Referral Mechanisms, Joining Efforts to Protect the Rights of Trafficked Persons: A practical handbook*, 13 May 2004, p. 61.

<sup>19</sup> UNIFEM, p. 46.



<sup>20</sup> R. Cook (ed.), *Human Rights of Women: National and International Perspectives*, v University of Pennsylvania Press 1994; J. Peters and A. Wolper (eds), *Women's Rights, Human Rights: International Feminist Perspectives*. New York, Routledge, 1995; K. Askin and D. Koenig (eds), *Women and International Human Rights Law*. New York, Transnational Publishers, 1999; H. Charlesworth and C. Chinkin, "The boundaries of international law: A feminist analysis," M. Schill (ed.). *Studies in International Law*. Manchester University Press 2000.

<sup>21</sup> C. Bunch. 1995. "Transforming Human Rights from a Feminist Perspective." Peters and Wolper, pp. 11-17.

<sup>22</sup> Asian Pacific Forum on Women, Law and Development, Draft report of the Asia-Pacific Regional Consultation, "Access to Justice: Holding the State accountable for violence against women," 5-6 October 2005, Bangkok, Thailand, p. 14.

<sup>23</sup> H. Charlesworth and C. Chinkin, p. 209.

<sup>24</sup> The growing tension, since 11 September 2001, between human rights concerns and security responses to global terror is a major challenge to such a vision. However, this issue will not be addressed here.

<sup>25</sup> For a comprehensive discussion of the issue of non-State actors see A. Clapham, *Human Rights Obligations of Non-State Actors*, Oxford University Press 2006, ch. 9;

<sup>26</sup> C. Romany. 1994. "State responsibility goes private: a feminist critique of the public/private distinction in international human rights law." in R. Cook, p. 94. The principle of non-intervention applied primarily with regard to the hegemony of male prerogative over family members, while interventions such as promotion of hetero-normality and male supremacy, which determined the foundation of the family institution have been common.

<sup>27</sup> AI. 2004. *Men's Violence against women in intimate relationships: an account of the situation in Sweden (19 April)*. [www2.amnesty.se/svaw.nsf/mvaw/\\$File/mvaw.pdf](http://www2.amnesty.se/svaw.nsf/mvaw/$File/mvaw.pdf); AI. 2005. 'Not a Priority Issue': A review of the work of Swedish Municipalities to combat men's violence against women' (7 March) [www2.amnesty.se/svaw.nsf/mvaw/\\$File/Not\\_a\\_priority\\_issue.pdf](http://www2.amnesty.se/svaw.nsf/mvaw/$File/Not_a_priority_issue.pdf).

<sup>28</sup> C. Romany, *op. cit.*, C. Chinkin. 1999. "A critique of the public/private dimension." *European Journal of Int'l Law*, vol, 10 No. 2, pp. 387-395.

<sup>29</sup> Report of its fifty-third Session (A/56/10, 2001).

<sup>30</sup> Rome Statute of the Int'l Criminal Court (A/CONF/183/9, 1998), art. 75.

<sup>31</sup> In Canada, the Ontario Arbitration Act (1991) allows parties to resolve civil matters between individuals outside the mainstream legal system. The recent proposal by Muslim leaders in Toronto to form arbitration tribunals that would apply Shari'a law to civil disputes including family law matters was met with concern by women's rights organizations. The review of the arbitration process submitted by government-appointed expert in December 2004 concluded that

faith-based family law arbitration does not, in itself, constitute an obstacle to the rights of women. The response by the National Association of Women and the Law notes that the report “fails to find a balance between the rights of religious minorities and women. It unquestionably and inappropriately gives preferentiality to religious freedom demonstrating a clear refusal to assume responsibilities for the protection of vulnerable persons within minority groups, women in particular,” N. Bakht. 2005. “Arbitration, Religion and Family Law: Private Justice on the Backs of Women” (March). See [www.nawl.ca/Documents/Arbitration-Final-0305.doc](http://www.nawl.ca/Documents/Arbitration-Final-0305.doc).

<sup>32</sup> See Afghanistan mission report (E/CN.4/2006/Add.5).

<sup>33</sup> CEDAW report (CEDAW/C/2005/OP.8/MEXICO, pp. 275-276); Mexico mission report (E/CN.4/2006/61/Add.4).

<sup>34</sup> APWLD, 12.

<sup>35</sup> A. Barker, “The World Today – Black and white law clash over rape case” (17 August 2005).

<sup>36</sup> See Human Rights Watch, “U.S Restrictive Policies undermine anti-AIDS efforts: Amicus Curiae Brief highlights negative impact on public health interventions by anti-prostitution pledge” (9 November 2005). <http://hrw.org/english/docs/2005/11/09/usdom12006.htm>.

<sup>37</sup> E/CN.4/2004/66, p. 12

<sup>38</sup> S. Sassen, *Globalization and Its Discontents*. New York, 1999, The New Press.

<sup>39</sup> See Special Rapporteur’s mission reports to El Salvador (E/CN.4/2005/72/Add.2 ) and Guatemala (E/CN.4/2005/72/Add.3)

<sup>40</sup> S. Marks and A. Clapham, *International Human Rights Lexicon*, Oxford University Press, 2005, p. 188.

<sup>41</sup> WAVE Office/European Information Centre against Violence, “More than a roof over your head: A survey of quality standards in European women’s refuges, see [www.wave-network.org/cmsimages/doku/wave-moret.a.roof.pdf](http://www.wave-network.org/cmsimages/doku/wave-moret.a.roof.pdf).

<sup>42</sup> Marks and Clapham, p. 415.

<sup>43</sup> Inter-American Commission on Human Rights, *Annual Report 2002*, “The situation of the rights of women in Ciudad Juárez, Mexico: The right to be free from violence and discrimination”, chap. VI, para. 158.

<sup>44</sup> Y. Ertürk, “Considering the role of men in gender agenda setting: conceptual and policy issues”, *Feminist Review*, Issue 78, 2004. Commission on the Status of Women, forty-eighth Session, “The role of men and boys in achieving gender equality”, agreed conclusions, 12 March 2004, see [www.un.org/womenwatch/daw/csw/csw48/ac-men-auv.pdf](http://www.un.org/womenwatch/daw/csw/csw48/ac-men-auv.pdf).

<sup>45</sup> M. M. Dempsey, forthcoming, “What counts as domestic violence? A conceptual analysis”, *William and Mary Journal of Women and the Law*, Volume XII, Issue II.

<sup>46</sup> See [www.australiasaysno.gov.au](http://www.australiasaysno.gov.au).

<sup>47</sup> See E/2002/68/Add.1.

<sup>48</sup> Division for the Advancement of Women, 1999 World Survey on the Role of Women in Development, New York, 1999.

<sup>49</sup> Montreal Principles on Women’s Economic, Social and Cultural Rights, 2002, principle 20.

<sup>50</sup> Preamble, Declaration on the Elimination of Violence against Women.

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