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**Promotion and protection of all human rights, civil,  
political, economic, social and cultural rights,  
including the right to development**

## **Report of the Special Rapporteur on violence against women, its causes and consequences, Rashida Manjoo\***

### *Summary*

The present report addresses the topic of State responsibility for eliminating violence against women. As a general rule, State responsibility is based on acts or omissions committed either by State actors or by actors whose actions are attributable to the State. A longstanding exception to this rule is that a State may incur responsibility where there is a failure to exercise due diligence to prevent or respond to certain acts or omissions of non-State actors. The due diligence standard serves as a tool for rights holders to hold States accountable, by providing an assessment framework for ascertaining what constitutes effective fulfilment of a State's obligations, and for analysing its actions or omissions. For due diligence to be satisfied, the formal framework established by the State must also be effective in practice.

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\* Late submission.

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## Contents

	<i>Paragraphs</i>	<i>Page</i>
I. Introduction .....	1	3
II. Activities .....	2–10	3
A. Country visits.....	2–3	3
B. Communications and press releases.....	4–5	3
C. General Assembly and Commission on the Status of Women.....	6–9	3
D. Other activities.....	10	4
III. State responsibility for eliminating violence against women.....	11–68	4
A. Introduction .....	11–22	4
B. Existing normative standards .....	23–40	8
C. Analysis of information received.....	41–68	12
IV. Conclusions and recommendations.....	69–77	19

## **I. Introduction**

1. The present report is submitted pursuant to Human Rights Council resolution 16/7 by the Special Rapporteur on violence against women, its causes and consequences, Rashida Manjoo. Chapter II summarizes the Special Rapporteur's activities since her previous report to the Council up until 4 March 2013. Chapter III addresses the topic of State responsibility for eliminating violence against women.

## **II. Activities**

### **A. Country visits**

2. During the period under review, the Special Rapporteur requested invitations to visit Azerbaijan, Colombia, Cuba, Israel, South Africa and the State of Palestine. Earlier requests for country visits were also reiterated to the Governments of Bangladesh, Nepal, Turkmenistan, Uzbekistan, Venezuela (Bolivarian Republic of) and Zimbabwe.

3. The Special Rapporteur visited Solomon Islands, from 12 to 16 March 2012 (A/HRC/23/49/Add.1); Papua New Guinea, from 18 to 26 March 2012 (A/HRC/23/49/Add.2); Bosnia and Herzegovina, from 29 October to 5 November 2012 (A/HRC/23/49/Add.3), and Croatia, from 7 to 16 November 2012 (A/HRC/23/49/Add.4). The Special Rapporteur would like to thank these Governments for their cooperation before, during and after the visit, and urges the Governments that have not yet done so to provide a favourable response.

### **B. Communications and press releases**

4. The communications sent to Governments during the reporting period (A/HRC/21/49, A/HRC/22/67, A/HRC/23/51) concerned arbitrary detention; torture or cruel, inhuman or degrading treatment or punishment; summary and extrajudicial executions; sexual violence, including rape, sexual abuse and sexual exploitation; and other forms of violence grounded in discrimination against women.

5. The Special Rapporteur issued numerous press statements, either individually or jointly with other mandate holders.

### **C. General Assembly and Commission on the Status of Women**

6. In October 2012, the Special Rapporteur presented her second written report to the General Assembly (A/67/227). It discusses the issue of violence against women with disabilities.

7. In the report, the Special Rapporteur highlights how women with disabilities experience many of the same forms of violence that all women experience, yet violence against them takes on unique forms, has unique causes, and results in unique consequences. Women with disabilities experience both the stereotypical attitudes directed towards women, and those directed towards persons with disabilities.

8. The Special Rapporteur argues that in addressing violence against women with disabilities, States should ensure an empowerment perspective, as opposed to a

vulnerability perspective, and must also apply a social model of disability, as opposed to a medical or charity model, within their prevention and response work.

9. In March 2013, the Special Rapporteur participated in the fifty-seventh session of the Commission on the Status of Women. She presented an oral statement on her activities for the past two years; convened two side events, on gender-related killings of women and on violence against women in custodial settings; and participated in a number of events organized by United Nations agencies and civil society organizations.

#### **D. Other activities**

10. The Special Rapporteur participated in a number of conferences, workshops and side events on diverse topics related to her mandate.

### **III. State responsibility for eliminating violence against women**

#### **A. Introduction**

11. As a general rule, State responsibility is based on acts or omissions committed either by State actors or by actors whose actions are attributable to the State.<sup>1</sup> A long-standing exception to this rule is that a State may incur responsibility where there is a failure to exercise due diligence to prevent or respond to certain acts or omissions of non-State actors.<sup>2</sup> In the seventeenth century, Grotius articulated principles that can be seen as a precursor to contemporary notions of State responsibility. The principle of *patientia* would hold a community or ruler responsible where there is knowledge of a crime committed by a subject, but there is a failure to prevent it in circumstances where it can and should be prevented.<sup>3</sup> In the early twentieth century, Oppenheim advanced the theory of vicarious State liability, in which a State is responsible for acts of private individuals in its territory where it has failed to disown or disapprove of the impugned conduct.<sup>4</sup> Triepel articulated a doctrine of State responsibility that would hold States responsible in circumstances where they fail to exercise due diligence.<sup>5</sup>

12. The last 25 years has seen developments in legal rules governing State responsibility in general and due diligence in particular as regards the obligations of States to protect individuals within their territory or jurisdiction from human rights violations. The modern approach to State responsibility is set out in the International Law Commission draft articles on responsibility of States for internationally wrongful acts. Articles 2 and 12 broadly provide that a State is responsible for an act or omission attributable to it under international law where the conduct breaches an international obligation of that State and when an act of that State is not in conformity with what is required of it by that obligation, regardless of its origin or character. The standard of fault that applies, whether intent, negligence or the failure to exercise due diligence, depends on the applicable international

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<sup>1</sup> See the draft articles on responsibility of States for internationally wrongful acts, general commentary, *Yearbook of the International Law Commission, 2001*, vol. II (Part Two) and corrigendum, para. 77.

<sup>2</sup> Amos Hershey, *The Essentials of International Public Law* (New York, 1918), p. 162.

<sup>3</sup> Hugo Grotius, *De Jure Belli Ac Pacis* (1922).

<sup>4</sup> L. Oppenheim, *International Law* (1912), p. 218.

<sup>5</sup> See Heinrich Triepel, *Droit International et Droit Interne* (Paris, 1920).

legal rule.<sup>6</sup> The commentary to the articles notes that the standard of due diligence is context specific and is dependent on the substantive international legal rule at issue.<sup>7</sup>

13. The due diligence standard serves as a tool for rights holders to hold States accountable, by providing an assessment framework for ascertaining what constitutes effective fulfilment of a State's obligations, and for analysing its actions or omissions. An assessment framework is especially important where the potential infringement comes through a State's failure to act, as it can be difficult for rights bearers to assess if an omission constituted a violation of their right, in the absence of a normative basis for the appraisal.

14. With regard to non-State actors, it has been argued that: "International human rights law requires a state to take measures – such as by legislation and administrative practices – to control, regulate, investigate and prosecute actions by non-state actors that violate the human rights of those within the territory of that state. These actions by non-state actors do not have to be attributed to the state, rather this responsibility is part of the state's obligation to exercise due diligence to protect the rights of all persons in a state's territory."<sup>8</sup>

15. The Inter-American Court of Human Rights was the first human rights body to hold that the American Convention on Human Rights requires States to exercise due diligence to prevent attacks on a person's life, physical integrity or liberty on its territory and punish perpetrators and to restore the right violated and provide compensation for damages resulting from the violation.<sup>9</sup> This was premised on the State obligation to ensure the applicant's human rights. The duty to prevent entails the use of all means of a legal, political, administrative and cultural nature to promote the protection of human rights and ensure that violations are considered and treated as illegal acts, leading to the punishment of responsible parties and the indemnification of victims.<sup>10</sup> For due diligence to be satisfied, the formal framework established by the State must also be effective in practice.<sup>11</sup>

16. One of the debates within the context of due diligence is whether it is an obligation of conduct/means or an obligation of result.<sup>12</sup> The general opinion is that it is one of conduct, however, failure of conduct will likely constitute failure of result. Thus it can be argued that it is the type of conduct which is important. Treaties that establish obligations to protect against rights violations often require States to take appropriate measures, without explicitly defining what measures are appropriate. Similarly, due diligence standards require States to exercise whatever diligence is due; they do not define such diligence.<sup>13</sup>

17. The mandate of the Special Rapporteur on violence against women has for nearly two decades observed and paid attention to the responsibility of the State in general and to the principle of due diligence in particular. In assessing State responsibility to act with due

<sup>6</sup> Draft articles, commentary to art. 2, para. 3.

<sup>7</sup> Ibid.

<sup>8</sup> Robert McCorquodale and Penelope Simons, "Responsibility beyond borders: State responsibility for extraterritorial violations by corporations of international human rights law", *Modern Law Review*, vol. 70, No. 4 (2007), p. 618.

<sup>9</sup> See Inter-American Court of Human Rights (IACtHR), *Velásquez Rodríguez v. Honduras*, judgement of 29 July 1988.

<sup>10</sup> Ibid., para. 175.

<sup>11</sup> Ibid., para. 178.

<sup>12</sup> Riccardo Pisillo-Mazzeschi, "The due diligence rule and the nature of the international responsibility of States", *German Yearbook of International Law* (1992), pp. 9 and 30.

<sup>13</sup> Monica Hakimi, "State bystander responsibility", *European Journal of International Law*, vol. 21, No. 2 (2010), p. 372.

diligence to address violence against women, it was suggested by the first Special Rapporteur in 1999 that the following questions needed to be asked:

(a) Has the State party ratified all the international human rights instruments including the Convention on the Elimination of All Forms of Discrimination against Women?

(b) Is there constitutional authority guaranteeing equality for women or the prohibition of violence against women?

(c) Is there national legislation and/or administrative sanctions providing adequate redress for women victims of violence?

(d) Are there executive policies or plans of action that attempt to deal with the question of violence against women?

(e) Is the criminal justice system sensitive to the issues of violence against women? In this regard, what is police practice? How many cases are investigated by the police? How are victims dealt with by the police? How many cases are prosecuted? What types of judgements are given in such cases? Are the health professionals who assist the prosecution sensitive to issues of violence against women?

(f) Do women who are victims of violence have support services such as shelters, legal and psychological counselling, specialized assistance and rehabilitation provided either by the Government or by non-governmental organizations?

(g) Have appropriate measures been taken in the field of education and the media to raise awareness of violence against women as a human rights violation and to modify practices that discriminate against women?

(h) Are data and statistics being collected in a manner that ensures that the problem of violence against women is not invisible?<sup>14</sup>

18. The meaning of State responsibility to act with due diligence was further examined by the second Special Rapporteur on violence against women in a 2006 report (E/CN.4/2006/61, para. 19 ff). One of the primary problems she found was that the due diligence standard focused primarily on violence against women as an isolated act and failed to take into consideration the connections between violence and the violation of other human rights, including general principles of gender equality and non-discrimination. She also addressed the need to move away from a public/private dichotomy in viewing violence against women. Her argument is that categorizing some forms of violence against women as part of the private sphere tends to have a normalizing effect, and it makes States' intervention seem to be different in such situations, as opposed to where there are "public" incidents of violence.

19. The previous mandate holder argued that principles of non-discrimination require States "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 other forms of violence" (ibid., para. 35). She noted that due diligence had until then "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" (ibid., para. 15).

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<sup>14</sup> E/CN.4/1999/68, para. 25.

20. The previous mandate holder also highlighted the lack of State accountability for social structural deficiencies, such as ongoing gender discrimination, that create environments that are conducive to acts of violence against women. This theme was addressed in more detail by the current mandate holder in the 2011 report on multiple and intersecting forms of discrimination that contribute to and exacerbate violence against women (A/HRC/17/26). In that report the Special Rapporteur argues that while laws, policies and resources are crucial to address effectively violence against women and girls, efforts must be coupled with renewed will and actions to combat the structural and systemic challenges which are a cause and consequence of such violence. Also, in order to prevent and eliminate violence against women and girls, such violence has to be understood as an element which affects women through their life cycle and is underpinned by a complex interplay of individual, family, community, economic and social factors. This requires recognizing that State responsibility to act with due diligence is both a systemic-level responsibility, i.e. the responsibility of States to create good and effective systems and structures that address the root causes and consequences of violence against women; and also an individual-level responsibility, i.e., the responsibility of States to provide each victim with effective measures of prevention, protection, punishment and reparation.

21. In his 2006 study (A/61/122/Add.1 and Corr.1), the Secretary-General recalled that violence against women is a form of discrimination and a violation of human rights. He endorsed the principle of State responsibility to act with due diligence in the context of violence against women. In addition, resolutions on violence against women emanating from the Human Rights Council and the General Assembly have called upon States to exercise due diligence to prevent and investigate acts of violence against women and girls and punish the perpetrators.<sup>15</sup> These resolutions broadly call upon the State to put in place civil and criminal measures to address offender accountability, to ensure victim safety and, importantly, to provide redress and justice measures that victims can access effectively. States are also urged to adopt laws, policies and programmes that recognize the consequences of multiple and intersecting forms of discrimination which lead to increased vulnerability for some categories of women.

22. One specific area in which the due diligence principle has been developed and applied to human rights violations is in the area of transnational corporations. In 2008, the Special Representative of the Secretary General on the issue of human rights and transnational corporations and other business enterprises issued a report entitled "Protect, Respect and Remedy: a Framework for Business and Human Rights" (A/HRC/8/5). This Framework is focused on States' "duty to protect" and transnational corporations' "responsibility to respect". The duty to protect is a standard of conduct, not result, meaning that States are expected to take appropriate steps to prevent, investigate, punish and redress abuse by private actors (A/64/216, para. 7). In 2011, the Special Representative presented to the Human Rights Council the Guiding Principles on Business and Human Rights (A/HRC/17/31, annex), which articulate foundational principles that clarify and expand on what is entailed by the State duty to protect and the corporate responsibility to respect. These Guiding Principles were endorsed by the Council in its resolution 17/4, and a Working Group on the issue of human rights and transnational corporations and other business enterprises was established to, inter alia, promote their effective and comprehensive dissemination and implementation. There are four elements to human rights due diligence concerning transnational corporations: (a) identification and assessment of actual or potential adverse human rights impacts; (b) appropriate actions being taken based on information from the assessment; (c) tracking the effectiveness of the response; and (d) effective communication with relevant stakeholders concerning the response. These four

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<sup>15</sup> See General Assembly resolutions 64/137 and 65/187, and Human Rights Council resolution 14/12.

elements could serve as a useful assessment tool in the violence against women sphere, whereby States can examine whether their responses are meeting the due diligence standard of responsibility and, more importantly, whether they are also effective in practice.

## **B. Existing normative standards**

### **1. International standards**

23. Many human rights instruments, whether legally binding or “soft law”, include an interpretation and/or basic guiding elements in respect of the State responsibility to act with due diligence. Among others, these include: recognizing the problem; reviewing current policies to identify problem areas; modifying laws and policies to prevent harm or protect a right; punishing and/or rehabilitating the perpetrator; providing the victim with compensation and other remedial measures; reporting to an international body in respect of measures taken towards compliance; and, occasionally, monitoring cases and indicators to follow up and further modify policies. Reparation is a step in the process that is too often neglected, as confirmed in reports of the present mandate. Nevertheless, in general, a due diligence framework is clearly recognizable and coherent in both international and regional human rights instruments, with differing provisions that may impact the realization of the obligations of States parties.

24. As regards the Convention on the Elimination of All Forms of Discrimination against Women, article 2 refers to the obligation of States to pursue by all appropriate means and without delay a policy of eliminating discrimination against women. However, there is no specific provision pertaining to a State’s responsibility to act with due diligence in eliminating violence against women. In an attempt to address the defect, the Committee on the Elimination of Discrimination against Women issued interpretative guidelines in the form of two general recommendations. General recommendation No. 12 (1989) highlights the obligation of States to protect women from violence in the family, workplace, or any other area of social life under articles 2, 5, 11, 12 and 16 of the Convention. In general recommendation No. 19 (1992), the Committee stated that “gender-based violence may breach specific provisions of the Convention, regardless of whether those provisions expressly mention violence” (para. 6). The Committee reiterated “that discrimination under the Convention is not restricted to action by or on behalf of Governments” and that “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” (para. 9). Interpreting within specific articles in the Convention a cumulative prohibition on gender-based violence, the Committee recommended in its general recommendation No. 12 that States include in their periodic reports information concerning legislative and other measures in force to protect women from violence, the existence of support services for women, and statistical data on the prevalence of all forms of violence against women.

25. The same Committee reaffirmed the due diligence standard in 2007 through its consideration of two complaints which alleged a failure on the part of the State to investigate and prosecute acts of violence against women, in violation of articles 1, 2, 3 and 5 of the Convention.<sup>16</sup> In a dissenting opinion in an inadmissible communication, three members of the Committee made reference to the due diligence standard in a complaint against a State for its failure to grant an asylum petition, based on a claim of trafficking, in

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<sup>16</sup> Communications No. 5/2005, *Hakan Goekce et al. v. Austria*, views, 6 August 2007 and No. 6/2005, *Banu Akbak et al. v. Austria*, views, 6 August 2007.



violation of article 6 of the Convention.<sup>17</sup> It is argued that such decisions/opinions reflect that “a state may be liable under international law not only for its officials’ actions but also for its officials’ inaction. It is unlawful for the state: to refrain from assistance where assistance is so clearly required; to fail to investigate and thereby guarantee women’s rights; and, to discriminate in the manner in which it enforces human rights (even where such discrimination is not intentional).”<sup>18</sup>

26. In 2010, the Committee provided further interpretive guidance on State responsibility with the addition of general recommendation No. 28 (2010). It broadly reframed the principle of State responsibility under the Convention as a legal obligation to respect, protect and fulfil women’s right to non-discrimination and to the enjoyment of equality.

27. In paragraph 18 of its general comment No. 2 (2007), the Committee against Torture argues that due diligence generally, and specifically as far as violence against women is concerned, occurs when State authorities or others acting in an official capacity or under colour of law, know or have reasonable ground to believe that acts of torture or ill-treatment are being committed by non-State officials or private actors and they fail to exercise due diligence to prevent, investigate, prosecute and punish such non-State officials or private actors consistently with the Convention. It also argues that the State bears responsibility and its officials should be considered as authors, complicit or otherwise responsible under the Convention for consenting to or acquiescing in such impermissible acts. Since the failure of the State to exercise due diligence to intervene to stop, sanction and provide remedies to victims of torture facilitates and enables non-State actors to commit acts impermissible under the Convention with impunity, the State’s indifference or inaction provides a form of encouragement and/or de facto permission. The Committee has applied this principle to States parties’ failure to prevent and protect victims from gender-based violence, such as rape, domestic violence, female genital mutilation and trafficking.

28. The Declaration on the Elimination of Violence against Women was adopted by the General Assembly in 1993. It reflects provisions found in Committee on the Elimination of Violence against Women general recommendation No. 19, but provides a more thorough and explicit statement on violence against women. The Declaration incorporates State responsibility to act within a due diligence standard, which requires States 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” (art. 4 generally and 4 (c) specifically).

29. The Beijing Declaration and Platform for Action has a list of due diligence steps to be taken by States, including 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; and 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.<sup>19</sup>

30. In its resolution 1325 (2000), the Security Council emphasized the responsibility of States to end impunity and hold accountable those responsible for war crimes concerning sexual and other types of violence against women. The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United

<sup>17</sup> Communication No. 15/2007, *Zheng v. Netherlands*, decision on admissibility, 22 January 2007.

<sup>18</sup> Bonita Meyersfeld, “Developments in International Law and Domestic Violence”, *INTERRIGHTS Bulletin*, vol. 16, No. 3 (2011), p. 110.

<sup>19</sup> Platform for action, para. 124 (d). See also para. 124 (c) and (i).

Nations Convention against Transnational Organized Crime, also places emphasis on due diligence.

31. In 2011, the General Assembly adopted resolution 65/228 on strengthening crime prevention and criminal justice responses to violence against women. In the resolution, the Assembly reaffirmed the 1997 Model Strategies and Practical Measures on the Elimination of Violence against Women in the Field of Crime Prevention and Criminal Justice, and adopted the updated Model Strategies and Practical Measures, as developed by the Commission on Crime Prevention and Criminal Justice. The Model Strategies and Practical Measures are underpinned by notions of State responsibility to act with due diligence, and Member States are urged to be guided by the overall principle that effective crime prevention and criminal justice responses to violence against women are human rights-based, manage risk and promote victim safety and empowerment while ensuring offender accountability (para. 13 (a)).

32. The campaign of the Secretary-General entitled “UNiTE to End Violence against Women” brings together a host of United Nations agencies and other partners to galvanize action across the United Nations system to respond to and prevent violence against women. UNiTE calls on governments, civil society, women’s organizations, young people, the private sector, the media and the entire United Nations system to join forces in addressing the global pandemic of violence against women and girls. UNiTE aims to achieve, by 2015, the following five goals in all countries: adopt and enforce national laws to address and punish all forms of violence against women and girls; adopt and implement multisectoral national action plans; strengthen data collection on the prevalence of violence against women and girls; increase public awareness and social mobilization; and address sexual violence in conflict.<sup>20</sup>

33. In 2010, the United Nations Development Fund for Women (now integrated into the United Nations Entity for Gender Equality and the Empowerment of Women (UN-Women)) produced the National Accountability Framework to End Violence against Women and Girls as a tool to assist Member States in their national-level efforts at monitoring laws, policies and programmes.<sup>21</sup> This framework draws on and expands on many of the issues raised in the 1999 report of the first Special Rapporteur on violence against women. It includes a checklist of key elements for promoting national accountability to end violence against women. The 10 broad questions are:

- (a) Are various forms of violence against women and girls addressed?
- (b) Are data collection, analysis and dissemination systems in place?
- (c) Do policies and programmes reflect a holistic, multisectoral approach?
- (d) Are emergency “Frontline Services” available and accessible?
- (e) Is national legislation adequate and aligned with human rights standards?
- (f) Do decrees, regulations and protocols establish responsibilities and standards?
- (g) Is there a National Action Plan and are key policies in place and under way?
- (h) Are sufficient resources regularly provided to enforce laws and implement programmes?

<sup>20</sup> See <http://endviolence.un.org/>.

<sup>21</sup> See <http://admin.unwomen.org/en/digital-library/publications/2010/1/ending-violence-against-women-and-girls-unifem-strategy-and-information-kit>.

- (i) Are efforts focused on women's empowerment and community mobilization?
- (j) Are monitoring and accountability systems functional and participatory?

## 2. Regional standards

34. In contrast to the international level, at the regional level, the development of specific legally binding instruments, or provisions in other instruments, as regards violence against women, has strengthened the existing human rights frameworks in the African, the Inter-American and the European human rights systems. These instruments include, among others, enforcement mechanisms, and emphasize the incorporation of the responsibility of the State to act with due diligence, as central components.

35. The 1994 Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (Convention of Belém do Pará) represents a regional response to the call for the recognition of violence against women as a human rights issue and the need for stronger enforcement of human rights obligations in respect of women's human rights. The Convention not only imposes a negative duty on States to refrain from violating rights but also a positive obligation to prevent, investigate, punish, and provide a remedy.<sup>22</sup> The State obligation to act with due diligence means that a State can be found liable for an illegal act, even when it is not an act perpetrated by the State, because of a failure to prevent the violation or to respond appropriately.<sup>23</sup>

36. The Belém do Pará Convention is the first human rights instrument on violence against women which incorporates the due diligence standard, with chapter III outlining the duties of States parties, including the obligation to apply due diligence to prevent, punish and eradicate violence against women. States parties must take legal measures to give effect to the objectives of the Convention. The obligations are listed but are not exhaustive, and they include obligations to address specific forms of violence, including harassment and customary practices that sustain violence against women. Article 7 calls on States to establish fair and effective legal procedures for victims, including timely hearings and access to restitution, reparations and other remedies.

37. The preamble of the Council of Europe Convention on preventing and combating violence against women and domestic violence states that the State responsibility to act with due diligence is not an obligation of results, but an obligation of means. Parties are required to organize their response to all forms of violence covered by the scope of the Convention in a way that allows relevant authorities to diligently prevent, investigate, punish and provide reparation for such acts of violence. Article 5, paragraph 1, of the Convention addresses the State obligation to ensure that its authorities, officials, agents, institutions and others acting on behalf of the State refrain from acts of violence against women. Article 5, paragraph 2, sets out State parties' obligations to exercise due diligence in relation to acts perpetrated by non-State actors. In both cases, failure to do so will incur State responsibility.

38. The obligation to ensure civil law remedies is set out in article 29, paragraph 2 of the Council of Europe Convention. This provision allows victims to seek justice and compensation against State authorities, if they have failed in their duty to diligently take preventive and protective measures. Failure to comply with this obligation can result in legal responsibility and civil law remedies, including damages for negligent and gross negligent behaviour. The extent of State authorities' civil liability remains governed by the

<sup>22</sup> Ursula A. O'Hare, "Realizing human rights for women", *Human Rights Quarterly*, vol. 21, No. 2 (1999), p. 395.

<sup>23</sup> IACtHR, *Velásquez Rodríguez* (footnote 9).

internal law of the parties and they have the discretion to decide what kind of negligent behaviour is actionable.<sup>24</sup>

39. The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (the Maputo Protocol) entered into force in 2005. It draws heavily on international law instruments, particularly the Declaration on the Elimination of Violence against Women and the Beijing Declaration. The Protocol defines violence against women and creates a number of positive State obligations in the area of violence against women. Article 2 addresses the elimination of all forms of discrimination through appropriate legislative, institutional and regulatory measures. The due diligence standard is incorporated in several provisions, including in article 4, para. 2 (a), which calls on States to enact and enforce laws to prohibit all forms of violence against women, including unwanted or forced sex, whether the violence takes place in private or public. Article 4, para. 2 (b), broadly directs States to adopt any other measures necessary to ensure the prevention, punishment and eradication of all forms of violence against women.

40. Article 4, paragraph 2 (c) and (d), of the Protocol places a positive obligation on States to study the causes of violence and promote awareness and other measures to eliminate these causes, while paragraph 2 (i) calls on States to fund all appropriate measures. Paragraph 2 (e) and (f) refer to punishment and effective reparations. Article 25 sets out the positive obligation of States to provide all appropriate remedies for women whose rights have been violated. Article 26 addresses implementation issues and calls on States to undertake all necessary measures, and notes in particular the necessity of funding and providing resources for effective implementation. The primary enforcement mechanism for the Protocol is through the reporting process to the African Commission on Human and Peoples' Rights.

### **C. Analysis of information received**

41. In continuity with the analysis already undertaken by the mandate over the past 19 years, the current Special Rapporteur attempted, through an evidence-based approach to research and theoretical and practical knowledge, to analyse the extent to which States are fulfilling their responsibility to act with due diligence to eliminate violence against women. The research was conducted through a call for information to Member States and civil society organizations, and consultations in a few regions. The goal was to collect country experiences, from the perspective of both State and non-State actors, on the interpretation, application and effectiveness of the measures being taken by States in their efforts to eliminate violence against women.

42. Unfortunately, providing substantive findings and recommendations on interpretation, application and effectiveness of measures has been limited by a number of factors: there was a low response rate of both State and non-State sectors; the low response rate was further impacted by the quality of responses received; the mandate faced challenges due to the lack of resources for substantive and specialized empirical research and analysis; and the information gathered at regional consultations was impacted by resource and knowledge constraints. Furthermore, another barrier is the fact that there is no legally binding instrument under international law, specifically on violence against women, to effectively monitor State responsibility to act with due diligence in their efforts to respond to, prevent and eliminate all forms of violence against women.

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<sup>24</sup> Ad Hoc Committee on Preventing and Combating Violence Against Women and Domestic Violence (CAHVIO), Convention on Preventing and Combating Violence Against Women and Domestic Violence: Draft Explanatory Memorandum, Strasbourg, 28 January 2011.

43. Despite the existence of interpretative guidelines and monitoring on violence against women, through the Committee on the Elimination of Discrimination against Women and universal periodic review processes, the limitations of a large and varied monitoring mandate, coupled with time constraints when examining State party reports, results in the insufficient interrogation of the information relating to violence against women, its causes and consequences, and the insufficient assessment of effective compliance with existing standards. Thus these challenges, among others, have an impact on assessing the efficacy of measures developed for addressing all forms of violence against women. The current reality, globally, is one where most Member States have acknowledged that violence against women is the most prevalent human rights violation facing countries, with spousal/partner violence as the most common manifestation of such violence. However, this acknowledgement has not led to the adoption of necessary solutions that are coherent and sustainable, and which would lead to elimination of all forms of violence against all women. In fact, the view from civil society is that the prevalence rates are increasing and also manifesting in new forms in many parts of the world. Also, that impunity for both perpetrators and State officials who fail to protect and prevent violence against women continues to be the norm.

44. Forty-three responses (22 per cent) were received from Member States<sup>25</sup> and 17 responses were received from civil society organizations. Approximately half the State responses directly addressed the issues raised in the call for information. All State responses reflect information on existing national laws, policies and plans; some responses refer to future initiatives at the national level; and some responses refer to State efforts outside of the national context. Less than 10 per cent of States articulate their responsibility to act with due diligence as emanating from legally binding international human rights law, despite the widespread ratification of treaties such as the Convention on the Elimination of All Forms of Discrimination against Women.

45. The Special Rapporteur also convened and/or participated in five regional consultations.<sup>26</sup> The consultations gathered between 10 and 20 experts from within the region, and representatives of United Nations agencies were also invited to attend selected sessions. Participants were provided with a short submission prior to the meeting highlighting national approaches and challenges identified through a desk research process.

<sup>25</sup> The Special Rapporteur thanks the following Member States for responding to her call for information: Australia, Austria, Azerbaijan, Bahrain, Bulgaria, Chile, Colombia, Croatia, Cuba, Czech Republic, Estonia, Georgia, Germany, Greece, Guatemala, Hungary, Iran (Islamic Republic of), Latvia, Lebanon, Lithuania, Mauritania, Mauritius, Mexico, Montenegro, Morocco, New Zealand, Panama, Paraguay, Peru, Qatar, Republic of Moldova, Romania, Singapore, Slovenia, Spain, Suriname, Switzerland, Syrian Arab Republic, Tajikistan, Togo, Turkey, United Kingdom of Great Britain and Northern Ireland, and Venezuela (Bolivian Republic of).

<sup>26</sup> The initial mapping exercise and research on State responsibility to act with due diligence was funded by the United Nations Population Fund (UNFPA). Further voluntary research was carried out by Jonathan Strug (University of Cape Town) and students in the International Human Rights Law Clinic at the University of Virginia, under the supervision of Deena Hurvitz. The Middle East and North Africa consultation was held in Tunisia, on 20 and 21 June 2012 (funded by the Government of the United Kingdom). The Central and South-Eastern Europe consultation was held in Slovakia on 9 and 10 December 2012 (funded by UN-Women). The Pacific Islands consultation was held in Fiji on 27 and 28 January 2013 (funded by UN-Women). The sub-Saharan Africa consultations, attended by the Special Rapporteur on violence against women, were hosted by different organizations and were held in South Africa on 8 and 9 December 2011 and in Uganda on 2 and 3 April 2012. The South Africa meeting was organized and funded by the African Network of Constitutional Lawyers, which is hosted by the Democratic Governance and Rights Unit, University of Cape Town. The Uganda meeting was hosted by the Uganda Association of Women Lawyers (FIDA Uganda) and the Centre for Applied Legal Studies, University of Witwatersrand.

The format of the consultations included a broad overview of the mandate of the Special Rapporteur on violence against women, and of the theme of the State responsibility to act with due diligence, a discussion on country case studies and, lastly, general discussions on the implementation of the due diligence standard in the participants' respective countries. Participants discussed legal, policy and institutional challenges at the national level in the application of the due diligence standard and the identification of good practices and lessons learned in different countries of the region.

46. To differing degrees, all State responses reflect a focus on legislative and policy developments. Highlighted below are a few areas as reflected in the responses received from States; some of the concerns articulated in civil society responses/contributions, as well as in the regional consultations; and information from country missions that the Special Rapporteur conducted.

### **1. Legislation**

47. States have amended or passed new laws at the criminal and civil law levels, either relating to gender equality in general with violence against women as one aspect, or specific laws on violence. The latter laws use a range of terminology and are applicable to family violence, domestic violence, intimate partner violence, trafficking, sexual violence, and female genital mutilation respectively. Most responses reflect developments in the sector of domestic violence, both civil and criminal law remedies, and trafficking. The trend towards gender neutrality in laws, as well as a shift in focus from violence against women specifically, is visible in developments in some countries. Also, law reform initiatives do not necessarily reflect international law developments, whether in respect of equality, non-discrimination, or bodily integrity rights, among others. Despite the existence of laws, reporting, prosecution and conviction rates remain low for acts of violence against women.

### **2. National strategies and action plans**

48. The development of national strategies and action plans is also common across regions, with domestic violence and trafficking being the focus of most such measures. Some States lack a strategy or plan on violence against women, but have a strategy/plan on gender equality which includes violence against women. There is generally a lack of information and awareness on the importance of a holistic approach in respect of policy frameworks that address all forms of violence against women in an overarching manner, with specificity then emanating from the larger focus. Also, the achievement of complementary and mutually reinforcing protection and prevention measures, which take into account multiple and intersecting forms of discrimination and the consequences thereof, are not reflected in such strategies and plans.

49. The lack of information on monitoring and evaluation processes and outcomes in respect of strategies/plans was the norm in State responses. Concerns by civil society organizations include: the existence of strategies without implementation plans; plans that do not set out the responsibility of different State agencies, benchmarks, timelines and budget allocations; the lack of adequate funding and specialized staffing for the implementation of such strategies and plans; the dependence on donors for funding for the implementation of plans; the lack of public education campaigns to generate information and knowledge about such strategies/plans; the lack of research on the effectiveness of such measures; and the lack of coherence and sustainability. While the Special Rapporteur encountered encouraging examples of joint protocols of action, referral systems and multidisciplinary mobile teams, adequate coordination among State service providers and between them and non-State services continues to be a main challenge. Also, the lack of

sensitivity and of a women's rights perspective by these services often results in a lack of substantive protection for women victims.

### **3. Policing**

50. The expansion of the role and/or powers of the police services is addressed in some responses received, including in relation to removal/exclusion of perpetrators and the issuing of police protection orders. Despite some positive developments, some of the main failures in the adequate protection of women victims of violence emerge in the initial response by authorities to an emergency call, and the police are often the first authority that women call on. There is no doubt that the manner in which police officers respond, their attitude toward victims and the protection they provide are a vital first step in ensuring victim safety and offender accountability. A common complaint made by both survivors and activists interviewed by the Special Rapporteur is that police often do not treat cases of violence against women with the same seriousness as other crimes, particularly when it is a case of partner/spousal violence. Another is that police often fail to respond to reports of private violence, and when they do respond, they do so inappropriately.

51. It is common for police officers to encourage informal resolution between the parties instead of arresting perpetrators, or they carry out dual arrests, by accusing victims of also behaving violently. Police officers sometimes allow their own personal gendered views to influence their decisions on whether to detain perpetrators or dismiss a case. In addition to lack of sensitivity and specialized gender training, police officers responses are also greatly limited in some cases simply by the lack of necessary resources to carry out their duties.

52. The Special Rapporteur interviewed police officers who have shared their frustration at being unable to assist women victims of violence due to a lack of basic resources, including vehicles or fuel in some instances. While in some countries specialized police units have been put in place to address domestic violence and/or sexual violence cases, and officers have undergone specialized training, these units are often understaffed and underresourced, and they are not available in all police stations or at all hours. The first responding officers end up being generalist police officers who have no specialized training on violence against women. Thus positive developments are being hampered by the lack of sufficient resources to provide specialist services on a full-time basis.

### **4. Prosecution and punishment**

53. The expansion of power and discretion to prosecutors and judges, in addressing violence against women, is not necessarily accompanied by appropriate training on the issue or on how to effectively interpret and implement new laws. Furthermore, the investigation of cases and the sanctioning of perpetrators is underpinned by patriarchal notions linked to myths and stereotypes about women and men and their gendered roles. Prosecutors also often rely heavily on testimonies of victims and witnesses, rather than collecting the necessary evidence during the investigatory phase. This challenge is linked to the deficiencies in police investigation, in the first instance. Women victims often undergo criminal proceedings without adequate social, psychological and legal assistance and are at risk of re-victimization during these processes. While free legal aid is often available for victims, it is difficult to access, either because application forms are complicated, or due to low-income level requirements, or a lack of awareness about the availability of such assistance.

54. The challenges faced by women victims of violence are also reflected in the classification of crimes and charging patterns. This then affects which cases actually manage to get into the court system. With regard to spousal/partner/domestic violence, even in countries in which it is a criminal offence, such violence is often tried as a misdemeanor and treated in the same way as other minor offences. A common excuse for this is that these

“easier” cases will be processed and finalized more quickly. Although the misdemeanor system is recognized to be faster than the general criminal justice system, the Special Rapporteur received reports indicating unacceptable delays in the issuing and execution of protective measures and also the completion of trials.

55. Courts rarely have the required levels of specialization in respect of violence against women cases. These cases are often decided without the best interest of women in mind, and without due consideration of the particular elements of gender inequality and discrimination rooted in such violence. It is common for only the most serious cases, that is, those that involve serious bodily harm, or death, to be identified as criminal offences. Judicial practices frequently do not reflect an understanding of the dynamics of domestic violence nor sensitivity to victims of long-term, repeated violence. Judges sometimes discredit victims’ experiences, doubt the testimony of women who delay reporting the violence, or accuse them of lying in order to abuse the system or obtain financial gains or property. In addition, due to the allocation of minimum resources and personnel, the possibility of specialization by judges is impossible.

56. In some countries, judicial sentences focus on treatment for perpetrators rather than on the protection of victims. Psychosocial and addiction treatment programmes are ordered along with suspended sentences, even in high-risk cases in some instances. The Special Rapporteur heard testimonies of court decisions being influenced by patriarchal views among judges who feel that they need to be sensitive with men when deciding on a spousal/partner violence case, due to men’s roles as “breadwinners” and the need to take into account the financial support needs of the family. This is a consideration for some judges when they are deciding on whether to incarcerate a male perpetrator. However, these kinds of considerations or concerns regarding the offenders’ family finances are not considered in cases involving drug offences, robbery or other crimes; which the criminal justice system apparently deems much more serious than violence against women crimes. These challenges indicate an urgent need for comprehensive judicial training on violence against women.

## **5. Social services**

57. The provision of social services by State authorities is common to all regions, but there is no information on whether this is underpinned by human rights norms and standards, especially in respect of women’s rights to equality, non-discrimination and bodily integrity. The general consensus, in many regions, is that in cases relating to violence against women, a social welfare approach is the norm. In many country missions the Special Rapporteur witnessed how State-run services, particularly social services or “social-work centres”, often operate with an explicit focus on family reconciliation or reunification. In such countries, the norm is to resolve cases of partner/spousal/domestic violence through reconciliation and not through accountability measures, such as through prosecution and punishment of perpetrators. These institutions often show inadequate and inappropriate responses to the protection needs of women victims, with employees lacking understanding of the complex nature of abusive relationships and failing to respond adequately, sometimes to the point of jeopardizing victims’ safety.

58. Employees have often not undergone any training on violence nor on risk-assessment which would enable them to identify situations of risk in order to decide on suitable preventative measures to protect the victims of violence, if necessary. The focus on preserving the family unity results in employees advising the victims to return home to perpetrators, or warning them that they will be separated from their children should they go to a shelter. The priority given by such services to family reunification is worrying, as the mediation or reconciliation processes followed rarely acknowledge or have any methodology to address the power imbalances which exist between victims and abusers.



59. The Special Rapporteur has also received information on how these social-work authorities sometimes facilitate family visits or even care of children by perpetrators, in cases in which no child abuse was reported. Thus, if a perpetrator is violent towards a woman, but not towards her children, he may still be deemed capable of caring for them and authorities will actually promote and facilitate continued contact between the perpetrator and the children. This practice has devastating consequences, as it minimizes not only the experiences of the battered victim, but also the negative consequences in respect of a child who may have been a witness to the abuse of the mother by the father.

60. In some countries these centres or social workers act as gatekeepers between victims and shelters, particularly NGO-run shelters which are funded by the State. Victims who reach out to the police or to shelters directly will usually need to be referred back to the social workers in order to be registered and approved for accommodation in a shelter. Onerous regulations of shelter access should not result in victims having to face unnecessary red tape and bureaucracy to access urgent and much needed services. While the monitoring and oversight of women's shelters is important in order to ensure appropriate standards, the Special Rapporteur believes that civil society organizations should continue to operate women's protection centres/shelters independently. The mix of publicly and privately run shelters is in the best interests of women, and is indeed an international best practice.

## **6. Data collection**

61. Information on data and recording systems was provided in some instances, but with no detail on how information is used to track trends and patterns and how it shapes laws, policies and programmes. The lack of monitoring and evaluation systems, which would include data collection and indicators, among others, does make it difficult to assess effectiveness and also the impact of measures and interventions adopted. Even in countries with statistical agencies, the lack of analytical disaggregated data on violence against women is a major source of concern to this mandate and also to relevant treaty bodies. Coherence and sustainability in data collection is essential for the effective development and implementation of laws, policies and programmes. It is also essential to include both quantitative data, to measure prevalence and forms, and qualitative data, to assess the efficacy of measures.

## **7. Cooperation with civil society**

62. State responses also reflect the important collaboration and partnerships between the State and civil society organizations, in particular relating to legal and counselling service provision and shelter services. The information provided does not reflect the reality that civil society organizations carry the burden and costs of providing services in many instances; that some States impose burdensome regulations in respect of funding applications and reporting; that bias and preference does play a role in decisions on funding to civil society organizations; and that funding cuts (linked to austerity measures) are having a huge impact on service provision.

63. Furthermore, the shift in focus to men and boys is having a negative impact on holistic service provision to women and children; and men's programmes are in fact competing for funds with established and experienced organizations that provide specialized services for women and children. Also, many of these new men's programmes have not been assessed and evaluated for effectiveness – especially with respect to victim safety and offender accountability. There are views that the recent development towards a shift in focus and funding is a further indicator of the perpetuation of male privilege within already existing patriarchal societies.

**8. Awareness-raising**

64. Awareness-raising programmes in the different sectors is a common feature of measures undertaken by Member States. The question of impact in respect of social transformation, empowerment of women, peer effects and behavioural changes is unclear from the submissions received. Also, it is unclear whether awareness-raising measures take into account and reflect the need for a more sustainable educative process.

**9. Political obstacles**

65. The challenges of political structures, whether federal systems or decentralization measures, do have an impact on law, policy and programmatic design, on the provision of financial support and service provision, and on responsibility and accountability, among other issues. Fragmentation, lack of coherence and consistency, and the possibility of politicization of issues is a reality in some contexts. This has an impact on State responsibility in the provision of substantive services in an equitable manner to all citizens.

**10. Failure to act with due diligence**

66. Considering that the mandate's request for information was on the responsibility of States to act with due diligence to eliminate violence against women – through the promotion of the right to a life free of violence; prevention, protection, investigation and punishment; and the provision of reparations – very little information was provided on the measures in place to address failure of State authorities to act with necessary due diligence in meeting these obligations. The enforcement of standards and sanctioning for non-compliance is a reflection of the acceptance of a State of its responsibility to act with due diligence. The view of victims and civil society organizations is that impunity is the norm, both for non-State perpetrators of violence and for officials who either perpetrate violence and/or fail to protect and prevent violence.

**11. Usage and/or value added of international standards and educative interventions, materials and trainings**

67. Considering the numerous documents generated through expert group consultations and access to technical cooperation, especially from United Nations and other international agencies on the issue of violence against women, it is a source of concern that there is no information on the usage and/or the value added by the generation of such standard-setting and educative interventions, materials and training.

68. Furthermore, a crucial point of reflection concerns the role of United Nations and other international agencies who are involved in formulating research reports, guidelines and other tools. The questions that come to mind include: What is their role and responsibility in follow-up work once they have generated relevant tools and other materials on standards, norms and best practices? Do these agencies have an obligation to conduct educative work in order to disseminate such materials? Do they have an obligation to monitor and assess the usage of such documents, including conducting research at the national level, to assess whether there are barriers to effective usage of such tools and standards? Do they have a role in conducting research on outcomes, through empirical research projects involving both State and non-State actors? Also, do they have a role in identifying best practices and disseminating such information generally and to Member States in particular?

## IV. Conclusions and recommendations

69. Despite numerous developments, violence against women remains endemic, and the lack of accountability for violations experienced by women is the rule rather than the exception in many countries. Some challenges as regards State responsibility include: lack of acceptance of violence against women as a human rights issue; inadequate State responses; minimum effort to deal with the problem in a systematic, comprehensive and sustained manner; minimum time, effort and resources are devoted to the problem; inadequate attention is devoted to investigating patterns, causes and consequences of violence; where cases are reported, few perpetrators are prosecuted, and even fewer convicted; and sanctions often do not reflect the seriousness of the crime perpetrated. Also there continues to be a lack of response to addressing both individual and structural aspects of inequality and multiple and intersecting forms of discrimination, which are a cause and a consequence of violence against women.

70. There is a need to create a framework for discussing the responsibility of States to act with due diligence, by separating the due diligence standard into two categories: individual due diligence and systemic due diligence. This adaptation challenges previous formulations of due diligence, which merged the obligations that States owe to individual victims of violence with States' obligations to create a functioning system to eliminate violence against women. Individual due diligence refers to the obligations States owe to particular individuals, or groups of individuals, to prevent, protect, punish and provide effective remedies on a specific basis. Individual due diligence requires flexibility, as procedures taken in these instances must reflect the needs and preferences of the individuals harmed. States can fulfil the individual due diligence obligation of protection by providing a woman with services such as telephone hotlines, health care, counselling centres, legal assistance, shelters, restraining orders and financial aid. Education on protection measures and access to effective measures can also help fulfil protection and prevention obligations that an individual is owed by the State. Individual due diligence places an obligation on the State to assist victims in rebuilding their lives and moving forward, and can include monetary compensation, as well as assistance in relocating or in finding a job. Individual due diligence also requires States to punish not just the perpetrators, but also those who fail in their duty to respond to the violation.

71. Systemic due diligence refers to the obligations States must take to ensure a holistic and sustained model of prevention, protection, punishment and reparations for acts of violence against women. At a systemic level, States can meet their responsibility to protect, prevent and punish by, among other things, adopting or modifying legislation; developing strategies, action plans and awareness-raising campaigns and providing services; reinforcing the capacities and power of police, prosecutors and judges; adequately resourcing transformative change initiatives; and holding accountable those who fail to protect and prevent, as well as those who perpetrate violations of human rights of women. Also, States have to be involved more concretely in overall societal transformation to address structural and systemic gender inequality and discrimination.

72. A general comprehensive system of protection and prevention must be established, and that system must be implemented in practice in a reasonable manner,

and be generally effective in individual cases.<sup>27</sup> The obligation is one of means and not results, but it requires States to take reasonable measures that have a real prospect of altering the outcome or mitigating the harm.<sup>28</sup> Ultimately, the general system and its application to specific cases should have an adequate deterrent effect to prevent violence against women. While due diligence does not require perfect deterrence in fact in each case, it requires the State to act in a way to reasonably deter violence.<sup>29</sup> Due diligence will look to whether protective measures available in domestic law are appropriate to respond to the situation, and whether they were employed.<sup>30</sup> Ultimately, “it is not the formal existence of judicial remedies that demonstrates due diligence, but rather that they are available and effective”.<sup>31</sup>

73. The State has an obligation to investigate all acts of violence against women, including systemic failures to prevent violence against women. Where a specific incident of violence takes place in the context of a general pattern of violence against women, there is a wider scope required to comply with the due diligence obligation.<sup>32</sup> The investigation should also be conducted with a gender perspective<sup>33</sup> and consider a victim’s special vulnerability.<sup>34</sup> The investigation element has two aims: to prevent future repetition as well as to provide justice in individual cases. This should address both State structures and the actions of the specific public officials involved.<sup>35</sup> Such an investigation must be impartial, serious and exhaustive and hold public officials accountable either administratively, disciplinarily or criminally where the rule of law is contravened.<sup>36</sup> The due diligence requirement is not limited to the way in which an investigation is conducted, but also encompasses a right for victims to access information about the status of an investigation.<sup>37</sup>

74. Due diligence requires the establishment of an independent and efficient judicial system.<sup>38</sup> In the partner/spousal violence context in particular, there is an overlap between the prevention and punishment obligation. Because of the ongoing nature of the relationship between victim and perpetrator, effective sanctions for past violent conduct are necessary to prevent future conduct of a similar nature. Due diligence requires that penalties for violence against women be sufficiently severe to act as a deterrent to future conduct.<sup>39</sup> In addition, while a State retains a degree of discretion to determine what criminal sanctions to impose, due diligence requires that

<sup>27</sup> This approach has been adopted by the Committee on the Elimination of Discrimination against Women as well as the Inter-American System and the European Court of Human Rights (ECtHR). See *Banu Akbak et al.* (footnote 16), paras. 12.1.1-12.1.5; Inter-American Commission on Human Rights (IACHR), case No. 12.051, *da Penha Maia Fernandes v. Brazil*, 16 April 2001.

<sup>28</sup> ECtHR, applications No. 33401/02, *Opuz v. Turkey*, judgement of 9 June 2009, para. 136, and No. 33218/96, *E. and others v. the United Kingdom*, judgement of 26 November 2002, para. 99.

<sup>29</sup> *Opuz*, para. 153.

<sup>30</sup> *Ibid.*, para. 148.

<sup>31</sup> IACHR, case No. 12.626, *Lenahan (Gonzales) v. United States of America*, 21 July 2011, para. 212.

<sup>32</sup> IACtHR, *González et al. v. Mexico*, judgement of 16 November 2009, para. 293.

<sup>33</sup> *Ibid.*, para. 455.

<sup>34</sup> See ECtHR, application No. 47159/08, *BS v. Spain*, judgement of 24 July 2012. The applicant’s complaints of ill-treatment by police were not subject to an effective investigation in part because her vulnerable situation as an African woman working as a prostitute was not taken into account.

<sup>35</sup> *Lenahan (Gonzales)*, para. 178; *González et al. v. Mexico*, para. 242.

<sup>36</sup> *Lenahan (Gonzales)*, para. 178; IACHR, “The situation of the rights of women in Ciudad Juárez, Mexico: the right to be free from violence and discrimination”(2003), para. 142; IACHR, “Access to justice for women victims of violence in the Americas (2007), recommendation 1.

<sup>37</sup> *Lenahan (Gonzales)*, para. 193.

<sup>38</sup> *Opuz*, para. 150.

<sup>39</sup> *Ibid.*, para. 169.

sanctions that are imposed to restrain and deter an offender (for example, psychiatric treatment) are actually enforced.<sup>40</sup> The failure of the judiciary to impose statutorily mandated sanctions for specific offences can also contravene the due diligence obligation.<sup>41</sup> Judicial proceedings aimed at preventing violence against women must be finalized within a reasonable period of time.<sup>42</sup>

75. The due diligence standard requires that remedies not only formally exist, but that they are available and effective.<sup>43</sup> The due diligence obligation in respect of remedies cannot be just about returning women to the situation they were in before the individual instance of violence, but instead should strive to have a transformative potential. This implies that remedies should aspire, to the extent possible, to subvert instead of reinforce pre-existing patterns of cross-cutting structural subordination, gender hierarchies, systemic marginalization and structural inequalities that may be at the root cause of the violence that women experience. As the Special Rapporteur argued in her 2010 report, the notion of a right to reparation is located within the framework of the law of remedies and can serve both individual and societal goals, the underlying purposes of which include corrective justice, deterrence, retribution and restorative justice (A/HRC/14/22, para. 12). Reparations should include a gender perspective, more so when dealing with women victims of acts of discrimination and violence, including in the spheres of satisfaction, rehabilitation, guarantees of non-repetition and compensation.<sup>44</sup>

76. The foundation for dealing with violence against women is laid down by the general principles that define the nature of human rights, i.e., universality, inalienability, equality, non-discrimination, indivisibility, interdependence and interrelatedness; and the principles related to the respect, protect and fulfil goals of human rights. Thus participation, inclusion, the rule of law, and accountability should be core values underpinning the State's response when it acts with due diligence to meet its obligations to eliminate violence against women.

77. The State responsibility to act with due diligence must continue to evolve in a cumulative and inclusive approach. Relevant factors can include: measuring States' obligations and duties to prevent violence; ensuring both State and non-State actor accountability; and addressing root causes of violence and the sources of discrimination that intersect in the actual experiences of women. Eliminating violence against women requires a multi-stakeholder approach to accountability that includes monitoring State and non-State actors for compliance and including them as direct duty bearers for prevention, protection and change. Human rights due diligence requires an investigation and evaluation to assess whether universally accepted human rights principles apply in a State's own behaviour and in a State's monitoring of third party behaviour – be they individuals or organizations.

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<sup>40</sup> See ECtHR, *A. v. Croatia*, application No. 55164/08, judgement of 14 October, paras. 78-79.

<sup>41</sup> See ECtHR, *Hajduová v. Slovakia*, application No. 2660/03, judgement of 30 November 2010, para. 52.

<sup>42</sup> See ECtHR, *Kalucza v. Hungary*, application No. 57693/10, judgement of 24 April 2012, paras. 64-67.

<sup>43</sup> IACHR, *Smith and Armendatriz et al. v. United States*, Report No. 81/10, case No. 12.562 (2010), para. 62; *Gonzales and others v. United States*, decision of admissibility of 24 July 2007, para. 42;

IACHR, "Access to justice", para. 26.

<sup>44</sup> *González et al.*, para. 446 ff.